



How to Shape the Legal Foundations of Compensation for Ukrainian Citizens?

Magdalena Bainczyk

The Council of Europe is currently working to adopt a comprehensive mechanism for Ukraine and Ukrainian citizens to compensate them for losses incurred in the aftermath of Russian aggression. One of its components is the Register of Damage Caused by the Aggression, created at the Council of Europe Summit in Reykjavik on 16-17 May 2023. Another component is a draft convention establishing an International Claims Commission for Ukraine on 22 October 2025 which has been approved by the Committee of Ministers. The final and most complicated component is to be a compensation fund¹.

HISTORIA (-EST) MAGISTRA VITAE. LEGAL CONTEXT

Eight decades after the end of the Second World War, the international community still lacks binding, universally applicable rules that establish a state's financial responsibility for grave and widespread human rights violations committed in the course of aggression.

The long record of uncompensated losses suffered by Polish citizens during the Second World War exemplifies a persistent pattern of deficient

practice. Although the Potsdam Agreement provided a basis for reparations, meaningful efforts effectively came to a halt in the early 1950s, when the escalating Cold War prompted the major Allied powers to discontinue further collection. These decisions also resulted in the complete absence of compensation for individuals from states that had been occupied by, or had fought against, the Third Reich.

While individuals territorially linked to Germany received compensation

Editorial Board:

Małgorzata Bukiel
Karol Janoś (editor in chief)
Piotr Kubiak

The theses presented
in the following materials reflect
only the opinions of the authors.

Instytut Zachodni im. Z. Wojciechowskiego

ul. Mostowa 27A
61-854 Poznań

tel. (+48) 61 85 27 691
izpozpl@iz.poznan.pl
www.iz.poznan.pl

¹ The text is a modified version of the author's presentation at the international conference "Negotiating Peace for Ukraine: International Law Dimensions and Implications" held on October 3, 2025, organized by the Lithuanian Ministry of Foreign Affairs and the Faculty of Law of Vilnius University.

under West German federal law as early as the 1950s, the citizens of twelve Western European states only received symbolic, one-off payments in the early 1960s after coordinated political pressure from the so-called demarche movement. By contrast, a small group of Polish citizens and others from Central European states had to wait until the early 1990s to receive symbolic compensation. Against this background, it is difficult to imagine Ukrainian families receiving even a few hundred euros in reparations from Russia any time before 2070.

The notion of transgenerational trauma is also crucial here – Ukrainian society will inevitably carry its scars forward. On a related note, it is worth highlighting the remarkable achievements of Italian courts, which, since the early 2000s have awarded substantial compensation – amounting to hundreds of thousands of euros – to legal heirs² of Italian victims of Nazi crimes dating back to 1943 and onwards.

This legal vacuum has tragically hindered Central Europe's social and economic progress. Despite two decades in the EU, this gap is yet to be bridged: the average real GDP of Central European states remains just slightly above half of that of their Western European counterparts³.

After the Second World War, the individual's right to compensation for human rights violations began to take shape. This evolution is reflected in both Article 41 of the European Convention on Human Rights, which promises to "afford just satisfaction to the injured party", together with its application in the European Court of Human Rights judgment of 9 July 2025⁴, as well as Article 75 of the Rome Statute of the International Criminal Court, which provides for the granting of restitution, compensation, and rehabilitation to victims of crimes.

COMPENSATION MECHANISM FOR UKRAINE AND UKRAINIAN CITIZENS

Compared to the legal landscape as of February 2022, and in light of the outright failure of the Potsdam system to compensate individuals harmed during the Second World War, progress has been made, thanks largely to coordinated efforts by Council of Europe member states, to build a compensation mechanism complete with the Register of Damages for Ukraine, a claims commission, and a dedicated compensation fund.

WHAT CONSTITUTES THIS PROGRESS COMPARED WITH 1945?

First, damage registration takes place in real time, during an active conflict, which significantly eases the burden of

² Questions of jurisdictional immunities of the State and measures of constraint against State-owned property (Germany v. Italy), Annex 7. Overview of judgments rendered by Italian courts against Germany since Judgment No. 238/2014, <https://www.icj-cij.org/case/183>

³ K. Popławski, S. Baniak, A glass half full. Searching for new sources of economic growth in Central Europe, Warszawa 2024, pp. 9–10, https://www.osw.waw.pl/sites/default/files/OSW_Report-A%20glass-half-full_net.pdf

⁴ ECHR, Judgment 9.7.2025, Ukraine and the Netherlands v. Russia – 43800/14, 8019/16, 28525/20 et al.



proving claims, which usually become harder with time. Second, this initiative is supported by the international community, helping to reduce the political, economic, and financial disparity between Ukraine and Russia. Third, the process targets not just the Ukrainian state but also its citizens. Claims may be filed by individuals and legal entities, covering a broad range of damages and fully embodying the modern human rights framework developed since the Second World War.

However, despite these impressive milestones, what really matters moving forward are the substantive provisions, particularly how much reparations and compensation will actually be paid, how they will be funded, and whether the political will to make it happen lasts over time.

SEVEN LESSONS FROM THE PAST

The experience Europe has gained over the past decades offers a number of takeaways regarding what reparations and compensation agreements should contain. As a rule, their provisions belong in a peace treaty, ideally between Ukraine and Russia, but given Europe's postwar history and today's political climate, other scenarios are also on the table. Currently, compensation agreements are being negotiated within the Council of Europe among Member States and some third countries, not including Russia.

1. It is crucial to distinguish reparations – payments from the aggressor state to the victim state for damage to public

assets – and compensation for individuals harmed by mass violations of international law and human rights. The distinction comes not just from the history of the last eighty years but also from how human rights doctrine has evolved, with tools like Ukraine's Register of Damage reflecting this shift. Keeping compensation for individuals separate and clearly defined serves as a safeguard both internationally and domestically.

2. All legal arrangements that bring Russia's aggression against Ukraine to an end, including reparations and compensations, as well as the aforementioned mechanisms, must be enshrined in a legal instrument that counts Ukraine as a "constitutive" party, especially given the current political circumstances. This is not just a formality; the last eighty years of history shows the cost of leaving a victim state out. For example, Poland was excluded from the Potsdam Agreement of August 1945 and the German External Debt Deal of 1953, which froze reparations and compensation questions, also in relation to Poland, until the conclusion of a peace treaty – which never occurred. Similarly, the 1990 Two Plus Four Treaty, supposed to replace the peace treaty ending World War II, as its very name indicates, did not include Poland as a party. Without prejudging the form of the legal act that will provide for the payment of compensation to Ukrainian citizens, one must emphasize Ukraine's sovereign role in creating or co-creating its content.

3. Any agreement or other legal act must contain precise reparation, compensation, and restitution provisions for both public and private property and cultural assets. Such precise regulations must set out the amount of reparations and compensation, payment methods and timelines, and precise institutional arrangements. While international law is often vague on the details, history shows that the obligated state must be left with no wiggle room. In particular, compliance with international laws must not be left to the national legislature, which in this case would be Russian.

The advance determination of compensation can only ever be made on a de minimis basis. The experience of the Second World War demonstrates that assessed compensation payments consistently fall short of the actual damage incurred. This is not because victims overstate their claims, but because – even in Vilnius or Warsaw, let alone in Brussels or the Hague – one is unable to envisage the full extent of wartime devastation. The current mechanism for registering losses will undoubtedly enable swifter and more accurate assessments. The use of artificial intelligence could further enhance both the registration and assessment of losses. Nonetheless, lump sums will remain necessary – not only in relation to household furnishings, service facilities, and farms, but regrettably also

with respect to human life, health, and liberty. I speak on the basis of Poland's experience in estimating wartime losses accumulated over the past several years. The work of a team of experts, including economists, sociologists, historians, and lawyers, culminated in the three-volume *Report on the Losses Sustained as a Result of German Aggression*⁵.

4. The disbursement of successive tranches of reparations and compensations must be undertaken swiftly and overseen by an international body. One must note the time component: compensation for individuals must be disbursed as quickly as possible, as the biological – and economic – future of the Ukrainian nation depends on it. The reconstruction of the Ukrainian nation is, above all, an act of justice, carrying strategic significance for Europe's security, as Jerzy Giedroyc argued over 70 years ago advocating for an independent Lithuania, Belarus, and Ukraine.

In this regard, another aspect warrants attention. Since 2022, hundreds of thousands of Ukrainian citizens have received free medical care. By September 2024, Poland had spent PLN 4.3 billion for this purpose, helping, for example, 457,000 individuals to receive hospital treatment⁶. Even after the war ends, continued medical support will be vital for those who have suffered physical or psychological harm as a

⁵ <https://instytutstratwojennych.pl/en/abridged-war-report>.

⁶ Polska pomoc dla Ukrainy, 23.02.2025, <https://www.prezydent.pl/kancelaria/archiwum/andrzej-duda/aktualnosci/wydarzenia/polska-pomoc-dla-ukrainy-plen,93620>



result of the war. Neighboring states, should Ukraine so wish, will undoubtedly play a role by providing medical and sanatorium care. Such expenditures must be anticipated in agreements governing reparations and compensation.

The recovery of the Ukrainian nation demands particular attention to children and youth, who must be afforded the means to attain full personal development – psychological, spiritual, and material. By autumn 2024, approximately 21,000 Ukrainian citizens had already received specialized inpatient and outpatient psychiatric care in Poland, and Ukrainian children and youth are now present at every level of the Polish education system. This process could also be supported from within Poland – not necessarily from Warsaw alone but also from cities that have become major logistical hubs for assistance to Ukraine and are home to large Ukrainian diasporas, including many students across all levels of the Polish school system.

5. In cases of looting of public and private property, the experience of the Second World War shows that restitution plays only a marginal role. Ukraine must therefore have the decisive voice regarding the form in which reparations and compensation will best serve to rebuild, at least in part, the state and individual households. I have deliberately chosen the term “partial

reconstruction”, for reparations and compensation can never cover the totality of the losses suffered. In war, the occupied state is the economically defeated state, regardless of the manner in which the conflict is concluded.

As noted above, the sovereignty of Ukraine and its citizens must in no way be constrained with regard to the form in which reparation and compensation obligations are fulfilled. The transfer by the USSR of German reparations in the form of the works of Marx and Lenin⁷ should remain no more than a tragic anecdote. The repayment of reparation and compensation debt must be carefully prepared at the political, legal, organizational, and administrative levels. This is the responsibility of the states supporting Ukraine, acting with full respect for Ukraine’s sovereignty.

6. Bearing in mind the lessons drawn from eight decades of Polish-German settlements – or rather the absence thereof – for the damage inflicted between 1939 and 1945, it is clear that the Cold War political context was among several factors contributing to this failure. Equally consequential were the economic, organizational, and administrative weaknesses of the Polish state, which have created – and continue to create – an asymmetry in relation to states with established structures of power and economic strength. A similar asymmetry characterizes Ukrainian-Russian relations,

⁷ Protokół Końcowy z Sesji Polsko-Radzieckiej Komisji Mieszanej ds. Reparacji, odbytej w Berlinie w okresie od 28 stycznia do dnia 8 lutego 1949 r. załącznik, in: S. Dębski, W.M. Góralski, Problem reparacji, odszkodowań i świadczeń w stosunkach polsko-niemieckich 1944-2004, vol. II, p. 240.

operating to Ukraine's detriment. Efforts to mitigate this imbalance must begin now, so that it does not weigh upon the negotiation, enforcement, disbursement, and management of reparations and compensation in Ukraine. The work of the Council of Europe, including the development of a compensation mechanism, forms a crucial aspect of such support

7. Finally, an indispensable component of any international agreement or legal instrument must be provisions addressing the restitution of looted cultural property – not only from public institutions but also from private collections. In the case of post-1945 looting of cultural property, including activities involving, inter alia, American forces, the restitution of looted cultural property, especially from German private collections, was minimal, and neither the Washington Principles on Nazi-Confiscated Art of 1998 nor the famous Gurlitt case⁸ fundamentally altered this reality.

In the case of Russia, it is unrealistic to expect compliance with the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 or with the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970. Restitution of looted

property, particularly cultural goods, is extremely difficult, even at the preliminary stage of determining the fate of the stolen items. This applies not only to well-known state collections but also to private ones, which may not possess high material value yet often carry immense identity and cultural significance.

In private conversations about Poland, one often hears the view that its economic and social development has made the Polish landscape almost indistinguishable from that of Western countries, yet the disparity becomes evident inside private homes and apartments, where objects predating 1945 are exceedingly rare. Since 2022, hundreds of thousands of Ukrainian families have shared a similar fate, having lost their domestic microcosms they had built up, in many cases, over decades.

CONCLUSION

In conclusion, it is worth quoting Karl-Heinz Roth, a scholar who has extensively studied reparations and compensation for the citizens of Poland and Greece:

"Those who, together with the victims and their descendants, demand compensation payments, are attempting to place them on an equal footing with the perpetrators and their heirs. (...)

⁸ Germany: Gurlitt case, <https://lootedart.com/QDES2J142461>; E. Campbell, Gurlitt Trove Research Ends with 1,000 Works Still in "a Very Large Grey Area", <https://liberalarts.du.edu/art-collection-ethics/news-events/all-articles/gurlitt-trove-research-ends-1000-works-still-very-large-grey-area>

A constitutive element of this equality-building legal act is that the resulting material compensation payments deprive the obligated debtors of income that is redistributed to the benefit of the victims. Only in this way is compensation possible, which may (but need not) be accompanied by an acknowledgment of apology or even reconciliation. This is precisely the process: the recognition of an equal relationship, whose precondition is the transfer of assets to compensate for material destruction and humanitarian harm.”

In light of the above, the compensation mechanism under discussion is not only a *conditio sine qua non* for Ukraine’s reconstruction and the breaking of the cycle of suffering endured by the Ukrainian nation, but also, with a view to the future, the beginning of reconciliation. The payment of reparations and compensation is an act of justice; it must deprive the aggressor of the profits of war and serve as a deterrent. Last but not least, this mechanism may mark a groundbreaking moment in the development of universal international law.

Magdalena Bainczyk – Professor at Andrzej Frycz Modrzewski University of Kraków and serves as Chief Analyst at the Institute for Western Affairs. She earned her Ph.D. from the University of Heidelberg and completed her habilitation at the Institute of Legal Sciences of the Polish Academy of Sciences. Her areas of expertise include German public law, EU law, and the legal dimensions of Polish-German relations.