WORK OF THE COMMISSION ON ESTABLISHING THE FACT OF DEPRIVATION OF PERSONAL LIBERTY AS A RESULT OF ARMED AGGRESSION AGAINST UKRAINE

ANALYTICAL REPORT ON THE CONDUCTED PUBLIC EXPERT REVIEW

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CONTRIBUTORS TO THE REPORT:

Ihor Kotelianets, Project Lead, Advocacy Manager, Head of the Association of relatives of political prisoners of the Kremlin;

Kateryna Levchenko, Author of the public expert review report, Chief Legal Counsel, Legislative Drafting Expert;

Serhii Melnykovych, LL.M, Research Coordinator, Co-author and Editor of the Analytical Report, Human Rights Lawyer;

Nataliia Hladynets, Project Manager, Proofreader.

Design and layout – Olha Makarevych.

ORGANISATION CONTACTS:

info@relativespp.org

https://www.facebook.com/relativespp

https://www.relativespp.org

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ABSTRACT

This analytical report was prepared based on the results of a public expert review of the activities of the Commission on Establishing the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine. Within the framework of an independent professional assessment, the normative foundations of the Commission's work were systematised, its actual administrative practice analysed, and key problems in decision-making procedures and access of affected persons to social guarantees identified.

Particular attention is paid to issues related to the allocation of the burden of proof, the determination of the political motive of persecution, and the safeguarding of the applicant's right to be heard.

Based on a comprehensive legal analysis, a review of the Commission's decisions, and interviews with affected persons, the report formulates a set of recommendations aimed at improving the regulatory framework, institutional capacity of the Commission, and procedural fairness of its decisions, with a view to strengthening the state mechanism of support and symbolic recognition of victims of unlawful deprivation of liberty.

RECOMMENDATIONS

This analytical report proposes a set of institutional, regulatory, and organisational measures aimed at improving the effectiveness of the Commission on Establishing the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine (hereinafter – the Commission) and ensuring proper implementation of the Law of Ukraine *"On Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families" (hereinafter – the Law).*

The recommendations were developed taking into account the powers of the Ministry for Communities and Territories Development of Ukraine (hereinafter – Ministry), as the central executive authority responsible for the implementation of the Law, as well as the feasibility of their implementation at the ministerial level, in particular through ministerial orders, internal procedures, by-laws, and coordination decisions. Each recommendation includes a proposed implementation mechanism and the expected outcome.

1. ON THE FORMALISATION OF THE COMMISSION'S DECISIONS AS FULL-FLEDGED ADMINISTRATIVE ACTS

It is recommended to:

- Develop and approve, by an order of the Ministry, a unified standard template for the Commission's decisions, containing mandatory elements: requisites, preamble, descriptive, reasoning and operative parts, as well as information on appeal procedures and time limits, in accordance with the Law of Ukraine "On Administrative Procedure".
- Amend the Regulation on the Commission to formally закрепити requirements regarding the form and content of individual administrative acts.

Expected outcome: abandonment of the practice of notifying applicants exclusively through reply letters; increased transparency and legal certainty of decisions; reduction in the number of court appeals by at least 50% within one year.

2. ON THE ASSESSMENT OF EVIDENCE AND THE ALLOCATION OF THE BURDEN OF PROOF

It is recommended to:

- Issue a ministerial order establishing the mandatory application of the principle of officiality in the work of the Commission, including proactive requests for information from state authorities (Security Service of Ukraine, Ministry of Internal Affairs, Ministry of Defence, Ministry of Foreign Affairs, Prosecutor's Office) and international bodies, without placing the full burden of proof on the applicant.
- Develop methodological guidelines for the Commission on the assessment of indirect evidence (testimonies, medical records, media reports, information from human rights organisations), taking into account the context of armed conflict and the presumption of good faith of the applicant.

Expected outcome: an increase in the proportion of positive decisions on applications submitted by

civilians by at least 30%; a reduction in refusals justified by the "absence of proper documents".

3. ON THE IMPLEMENTATION OF THE RIGHT OF APPLICANTS TO BE HEARD AND THE INVOLVEMENT OF EXPERTS
It is recommended to:

- Introduce into the Regulation on the Commission a provision on the mandatory invitation of the applicant or their representative in cases where oral explanations may affect the outcome of the review, with mandatory recording of the hearing in the minutes.
- Regulate the mechanism for involving experts, in particular in the fields of international humanitarian law (IHL), medicine, documentation of torture, analysis of war crimes, and trauma psychology.
- Conduct pilot Commission meetings with hearings of applicants in order to test and refine the procedure.

Expected outcome: systematic recording of hearings in all relevant cases; improved quality of the Commission's decisions.

4. ON THE COMPOSITION OF THE COMMISSION AND THE COMPETITIVE SELECTION OF CIVIL SOCIETY REPRESENTATIVES
It is recommended to:

- Approve, by an order of the Ministry, a Procedure for the competitive selection of representatives of civil society organisations, providing for an open call, competency criteria, experience requirements, a transparent evaluation procedure, and rotation every two years.
- Initiate amendments to the Law in order to expand the composition of the Commission by including additional institutions whose activities are directly related to the search for and documentation of cases of deprivation of personal liberty, namely:
    - Enterprise "Ukrainian National Centre for Peacebuilding" (National Information Bureau);
    - Commissioner for Persons Missing under Special Circumstances;
    - National Police of Ukraine.

Expected outcome: increased representativeness, expertise, and renewal of the Commission's composition; minimisation of risks of closed decision-making and monopolisation of representation.

5. ON ENHANCING COMPETENCIES IN INTERNATIONAL HUMANITARIAN LAW AND ADMINISTRATIVE PROCEDURE
It is recommended to:

- Introduce mandatory annual training modules on IHL and administrative procedure for members of the Commission, representatives of civil society organisations, and relevant state authorities (in cooperation with the ICRC, human rights institutions, and academic centres), with at least four sessions per year.
- Develop methodological materials, document checklists, and practical guidelines on the application of IHL in procedures for establishing the fact of deprivation of personal liberty.

Expected outcome: a 40% reduction in procedural errors; improved quality of evidence collection and

decision-making; establishment of sustainable expertise with 100% coverage of relevant actors.

6. ON ENSURING PAYMENT OF ANNUAL STATE FINANCIAL ASSISTANCE
It is recommended to:

- Amend Procedure No. 1281 to regulate the mechanism of authorised persons, including the algorithm for changing authorised persons, the possibility of multiple authorised persons, reporting requirements, and verification.
- Ensure payment of assistance for 2023–2025 within reasonable time limits (up to 30 days from the date of application), using budget allocations under programme code 3101050.

Expected outcome: 100% payment coverage for at least 153 applicants; elimination of delays.

7. ON RESTORING THE FUNCTIONING OF THE LEVKO LUKIANENKO STATE SCHOLARSHIP
It is recommended to:

- Establish a separate commission under the Ministry with the involvement of civil society and human rights organisations to review applications and submit proposals to the President of Ukraine regarding the awarding of scholarships.
- Ensure immediate payment of scholarships to current recipients and their families for 2024–2025.

Expected outcome: award of at least 20 scholarships annually; restoration of the symbolic value of state recognition of affected persons.

Implementation of these recommendations may be initiated by the Ministry and carried out in cooperation with the Cabinet of Ministers of Ukraine, the Office of the President, and other public authorities. The introduction of systematic monitoring of implementation, with the participation of civil society organisations, will ensure transparency of the process, oversight of execution, and trust of affected persons and society in the state protection mechanism.

INTRODUCTION

The full-scale invasion of Ukraine by the Russian Federation has caused an unprecedented crisis, both in scale and systematic nature, of unlawful deprivation of personal liberty of civilians. The vast majority of such individuals are held by the Russian occupying authorities incommunicado: without access to legal counsel, without contact with their families, and without any official notification of the place of detention or formal charges. In effect, the occupying state conceals the very fact of deprivation of liberty. Given these circumstances and the limited access of international institutions, the actual number of unlawfully detained civilians may reach tens of thousands.

The unlawful deprivation of liberty of civilians in the context of an international armed conflict constitutes a grave violation of international humanitarian law, primarily the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as international human rights law. Ukraine, as a State Party to key international treaties — including the International Covenant on Civil and Political Rights, the Geneva Conventions, the European Convention on Human Rights, and the Convention against Torture — is obliged to ensure effective recognition, protection, and restoration of the rights of persons who have become victims of such violations. First and foremost, this includes guaranteeing the right to recognition of the fact of unlawful deprivation of personal liberty, access to social support, compensation, and rehabilitation.

One of the key instruments for fulfilling these obligations is the Commission on Establishing the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine, established in 2022. The Commission's decisions are decisive for the official state recognition of the fact of unlawful deprivation of liberty and for access by affected persons and their families to social guarantees and rehabilitation programmes. At the same time, the Commission's decisions directly influence the documentation of the scale of violations of international humanitarian law, the formation of national policy regarding civilian victims of Russian aggression, and fulfil an important function of symbolic state recognition of the harm suffered.

However, based on the results of public monitoring, analysis of the regulatory framework, and feedback from affected persons, the Commission's work demonstrates a number of systemic problems. Some of these issues stem from the fact that the current Law of Ukraine "On Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families" and its subordinate regulations were developed prior to the full-scale invasion and therefore do not account for either the scale or the new forms of persecution of civilians. Other problems relate to procedural shortcomings, including non-compliance with administrative standards, lack of transparency, unjustified refusals, and insufficient institutional capacity.

At the same time, the role of the Commission is critically important not only from the perspective of legal recognition and social protection, but also in the broader context of transitional justice, documentation of war crimes, ensuring the right to truth, and shaping memory policy. Its effectiveness affects the lives of tens of thousands of people and simultaneously serves as an indicator of the state's willingness to fulfil its international obligations.

In view of the above, the purpose of this analytical report is to:

- comprehensively assess the effectiveness and practices of the Commission's work;
- identify regulatory, procedural, and institutional gaps;
- determine the compliance of the Commission's activities with national legislation and international standards;
- formulate concrete recommendations for improving relevant legislation, procedures, and subordinate regulations;
- propose mechanisms to enhance the institutional capacity and transparency of the Commission;
- strengthen the protection of the rights of persons unlawfully deprived of personal liberty and their families.

This report considers the Commission not merely as a legal instrument, but as an element of human rights guarantees and state responsibility towards citizens who have suffered the gravest violations in the context of armed aggression.

METHODOLOGY

This analytical report was prepared on the basis of materials from a public expert review of the activities of the Commission, a comprehensive analysis of regulatory documents, and surveys of affected persons. The study draws on the following sources:

REGULATORY AND LEGAL SOURCES:

- Constitution of Ukraine;
- Law of Ukraine ''On Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families'';
- Law of Ukraine ''On Administrative Procedure'';
- Regulation on the Interagency Commission on Establishing the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine (hereinafter – the Regulation);
- budget programmes governing payments to affected persons and members of their families;
- relevant norms of international humanitarian law, primarily the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as international human rights law, in particular the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).

PRACTICAL MATERIALS:

- analysis of the Commission's decisions and accompanying administrative practice;
- official responses of the Ministry for Communities and Territories Development of Ukraine and other authorities to information requests;
- statistical data obtained within the framework of the public expert review;
- written submissions and interviews with affected persons and members of their families;
- a survey of eleven persons affected by unlawful deprivation of personal liberty as a result of armed aggression against Ukraine regarding the importance of symbolic recognition of their experience;
- decisions and correspondence with applicants;
- materials from open sources, including documents confirming cases of unlawful deprivation of liberty.

THE EFFECTIVENESS OF THE COMMISSION'S WORK WAS ASSESSED USING THE FOLLOWING CRITERIA:

- compliance with national legislation;
- compliance with international instruments and standards, in particular the Geneva Conventions, the ICCPR, and the Convention against Torture;
- observance of the principles of due administrative procedure, including reasoned decision-making, official collection of evidence, the right to be heard, and the right to appeal;
- non-discrimination of procedures;
- timeliness and effectiveness of the review of applications;
- transparency and accountability of the Commission's work.

This analytical report is limited by the absence of publicly available registers of the Commission's decisions and statistical data that are not disclosed by public authorities.

1. ANALYSIS OF THE COMMISSION'S PRACTICE

This section demonstrates systemic problems in the work of the Commission, including the absence of full-fledged administrative decisions, a formalistic approach to establishing facts, the shifting of the burden of proof onto applicants, failure to take into account the specific context of armed conflict, and the almost complete absence of hearings of affected persons. Particular attention is paid to the issue of establishing the political motive of persecution and the need to apply broader international criteria. The importance of involving experts in assessing evidence and substantiating decisions is also emphasised.

1.1. ANALYSIS OF THE FORMAL CONTENT OF DECISIONS

Although the Law and the Regulation on the Commission explicitly provide for the adoption of a full-fledged decision on establishing the fact of deprivation of personal liberty or a reasoned refusal, actual administrative practice differs significantly from the regulatory requirements. Instead of an individual administrative act, applicants receive a short informational letter from the Ministry stating, without any description of circumstances, legal grounds, or reasoning, that ''the Commission has decided not to confirm the fact of deprivation of personal liberty.'' The text of the decision itself is not provided to applicants — neither in full nor in abridged form.

Such an approach does not comply with the requirements of due administrative procedure and contradicts its basic principles. It effectively deprives the individual of the possibility to understand the reasons for refusal, the specific circumstances that the Commission considered established or not established, the evidence on which it relied, and the legal norms it applied. This contradicts the principle of transparency and legal certainty of administrative acts. It also makes effective judicial or administrative appeal impossible, as such appeal requires a clear, individualised act rather than merely an informational letter. Ultimately, the substance of the decision must be distinguished from the method by which it is communicated to the applicant, which is precisely what the Ministry's letters purport to replace.

The Law of Ukraine ''On Administrative Procedure'', which entered into force in December 2023, establishes clear standards regarding the form and content of individual administrative acts. A decision must contain information about the authority that adopted it, as well as its number, date, and place of adoption. It must consist of an introductory part indicating the grounds for consideration, a descriptive part setting out the factual circumstances, a reasoning part providing a concrete and substantiated analysis of evidence and legal norms, and an operative part clearly formulating the conclusion, as well as information on appeal procedures. These requirements are not merely technical details — they constitute a legal guarantee of fair treatment of the applicant, their right to understand the motives of the decision, and their right to an effective legal remedy.

In practice, none of these elements are complied with by the Commission. The letters received by applicants do not contain the mandatory structural components, do not assess evidence, and do not clarify which circumstances the Commission considers proven and which it does not. Instead, they typically repeat a formal reference to the provision of the Regulation concerning voting procedures ("a decision is deemed adopted if supported by more than half of the members present"), which has no relevance to the reasoning for refusal and cannot be regarded as justification. The voting procedure defines the internal mechanism of decision-making but does not explain the logic of law application in a specific case and does not relieve the Commission of its obligation to provide detailed reasoning.

Applicants frequently encounter overly general formulations referring to the absence of documents confirming circumstances envisaged by the Law, without any clarification as to which specific documents are lacking, which facts remain unproven, whether the Commission requested information from other authorities, or which sources were used. Such uncertainty creates a vicious circle: the applicant does not understand what evidence the Commission expects, cannot prepare it, and has no opportunity to challenge specific negative conclusions.

This practice of the Commission has received a clear assessment in judicial decisions. In its judgment of 27 March 2025 (case No. 480/5652/24), the Supreme Court confirmed that a mere reference to voting cannot replace the reasoning part of a decision and that failure to provide the applicant with the full text of the decision violates the principles of legal certainty and legitimate expectations. Similar conclusions are contained in decisions of district administrative courts, which in 2023–2025 repeatedly declared the Commission's decisions unlawful due to the absence of proper form and reasoning, obliging the Commission to reconsider cases [1]. Taken together, this case-law leads to an unequivocal conclusion: the problem is not isolated, but systemic. It also demonstrates a lack of proper understanding by the Commission of its role as a body that adopts legally significant decisions, rather than merely informing applicants of the results of internal voting.

1.2. ANALYSIS OF THE SUBSTANTIVE CONTENT OF THE DECISIONS, THE ALLOCATION OF THE BURDEN OF PROOF, AND EVIDENTIARY STANDARDS IN THE CONTEXT OF ARMED AGGRESSION

An analysis of the materials obtained in the course of the public expert review and the documentation of cases of unlawful deprivation of personal liberty reveals the existence of systemic and deep-rooted problems in the Commission's practice. First and foremost, these problems stem from an incorrect understanding of the nature of proof in cases arising in the context of an international armed conflict. As a

result, the central issue in the review process becomes not the establishment of the fact of unlawful deprivation of personal liberty, but an attempt to ascertain the motives and intentions of the aggressor state — circumstances that the applicant cannot know, prove, or document. Such an approach is conceptually flawed and places victims in an inherently disadvantageous position.

Instead of primarily determining the elements decisive under the Law — the fact of deprivation of personal liberty, the circumstances of detention, the place and duration of captivity, and the conditions under which the person was held — the Commission focuses on whether the applicant's conduct can be classified through the prism of narrow statutory formulations relating to a specific "activity" or "hostage" status. Even where the factual circumstances of actual imprisonment are obvious and supported by available materials, they are not always taken as the basis for the decision. This shift in emphasis is fundamentally incorrect, as it imposes requirements on applicants that are incompatible with the nature of evidentiary assessment in cases involving war crimes, occupation, and unlawful deprivation of liberty.

In the Commission's practice, the burden of proof is effectively shifted onto the applicant. Refusal letters repeatedly refer to the absence of documents confirming activities or actions envisaged by the Law, despite the fact that applicants often have no possibility of obtaining such documents in the context of armed conflict. Most information regarding detention, the nature of accusations, exchange conditions, places of detention, transfers, and the actions of the aggressor state is held by Ukrainian state authorities, international organisations, or remains within the closed systems of the Russian Federation. Under these circumstances, requiring a civilian to provide confirmation of certain actions or status is not merely legally unjustified — it renders the procedure meaningless by making compliance dependent on sources that are inaccessible to applicants.

At the same time, the Commission's practice demonstrates an almost complete absence of the presumption of good faith of the affected person and a failure to apply the principle of officiality, which is a cornerstone of administrative proceedings and is particularly important in cases related to armed conflict. Despite having both the need and the capacity to request relevant information from competent authorities — representatives of which are, inter alia, members of the Commission — the body does not initiate such requests in practice. This concerns, in particular, information regarding the affiliation of the unit that carried out the detention with the structures of the aggressor state; the existence or absence of charges brought by occupation authorities; the involvement of Ukrainian institutions in negotiations for release; inclusion of the person in official lists of detainees or exchange candidates; and the nature of demands put forward by the aggressor in the exchange process. All such information lies within the sphere of access of state authorities, not the victim. It is the state that possesses the relevant operational materials, criminal proceedings, diplomatic correspondence, communication channels with international bodies, and data on negotiations and interaction with the ICRC, the Coordination Headquarters, or intelligence agencies.

Nevertheless, despite having the capacity to obtain reliable information regarding detention and its motives, the Commission continues to require such data from applicants, transferring the burden of proof entirely onto those who have suffered harm.

Evidentiary assessment in cases arising in the context of armed conflict is fundamentally different from that in ordinary administrative or civil proceedings. Events occur in occupied territories, without access to Ukrainian institutions, in closed facilities where no official documentation is maintained, and where detainees are often held incommunicado — without detention records, without communication, and without access to legal counsel. In such circumstances, an acceptable evidentiary basis must include a broad range of materials: statements of the applicant, testimonies of fellow detainees and other witnesses, medical certificates, information regarding exchanges, materials from international organisations, reports by human rights groups, open-source information, and data from Russian media and proxy resources of occupation administrations.

Limiting proof exclusively to primary written documents contradicts both international standards [2] and the very nature of violations committed in the context of armed conflict. A proper review procedure should be based on a different approach: the applicant provides a comprehensive account of the circumstances of detention and captivity, submits available materials, testimonies, and medical documentation, after which the Commission independently initiates the collection of information from competent authorities. These include law enforcement bodies, intelligence services, Ukrainian and international humanitarian institutions, as well as entities involved in search, exchange, and return mechanisms. The state should recognise manifestations of unlawful deprivation of liberty not only when an individual can provide a full set of official documents, but when the totality of evidence forms a sufficiently coherent and plausible account of events, corroborated by consistency and the broader context of armed aggression.

1.3. ESTABLISHING THE POLITICAL MOTIVE OF UNLAWFUL DEPRIVATION OF PERSONAL LIBERTY

Another critical aspect of the Commission's work concerns the establishment of the political motive of persecution. Under the Law, the fact of deprivation of personal liberty must be linked to a person's activities aimed at defending the state sovereignty, independence, territorial integrity of Ukraine, and other national interests, which constituted a real or potential risk of unlawful persecution by the aggressor state. This requires identifying a political motive in the actions of the aggressor, which is often disguised as ordinary criminal charges. According to established doctrine, including the expert position of Mykhailo Savva [3], as well as PACE Resolution No. 1900 (2012) [4], political motive should be interpreted far more broadly. Its essence lies in the use of repressive instruments by state authorities for the purpose of consolidating power, intimidating the population, suppressing dissent, coercing cooperation,

as well as violating the European Convention on Human Rights (for example, freedom of expression) and conducting unfair trials. In Russian occupation practices, political motive is systemic: detention for a pro-Ukrainian position, extraction of ''confessions,'' torture aimed at obtaining information, fabrication of criminal charges, and the use of civilians as bargaining chips in exchanges — all of these correspond to internationally recognised criteria of political persecution.

In establishing the political motive underlying deprivation of personal liberty, the Commission must take into account the specific nature of the Russian Federation's armed aggression and the repressive practices employed in occupied territories. The Law requires determining a link between persecution and the state-political interests of Ukraine; however, in the real conditions of war and occupation, the aggressor's motives are rarely articulated explicitly. Therefore, political motive should be established not solely on the basis of declarations by occupation authorities, but through an analysis of factual indicators of persecution. Such indicators may include, first and foremost, the absence of convincing evidence supporting the charges, where a ''case'' is built on empty or dubious materials, without proper search warrants, interrogations, expert examinations, or other procedural actions. Similar investigative practices have been widely documented in criminal proceedings of the Russian Federation under provisions such as Article 207.3 of the Criminal Code of the Russian Federation in the context of the war against Ukraine.

Another indicator of political motive is the selective application of law, for instance where a person is persecuted for non-violent forms of civic engagement, support for Ukraine, or refusal to cooperate with occupation structures, while identical or more serious actions by others remain unpunished. In many documented cases, detentions and abductions in occupied territories occurred precisely following the public expression of a civic position, volunteer activities, prior military training experience, or alleged ''preparation of unrest'' without any real incidents.

The temporal context is also relevant, as waves of detentions often coincide with politically sensitive periods, including escalations of armed conflict, annexation of territories, the imposition of sanctions, or the announcement of mobilisation measures by the Russian Federation. Examples include the period following the annexation of Crimea in 2014 or the full-scale invasion in 2022. This indicates that repression in the form of deprivation of personal liberty functions as an instrument of pressure, intimidation of the population, and control over occupied regions.

A further factor clearly demonstrating the political nature of persecution is the involvement of high-level Russian authorities and the instrumentalisation of detentions for public and propaganda purposes. Documented cases include situations where detainees were forced to give interviews, record fabricated video ''confessions'' for Russian media, or participate in staged broadcasts aimed at legitimising the occupation. Such practices further confirm that the objective was not criminal justice, but demonstrative punishment and coercion into political loyalty.

In summary, establishing political motive requires a comprehensive assessment of the circumstances of the case rather than the search for direct documentary confirmation, which may simply not exist in the context of armed conflict. Political motive is not limited to active participation in certain actions, but encompasses situations where the aggressor state used deprivation of personal liberty as a tool of control, intimidation, or repression. The Commission should proceed from the understanding that abnormal, disproportionate, or procedurally defective criminal charges in conditions of occupation are, with a high degree of probability, indicators of political persecution rather than evidence of the absence of grounds for establishing the legal fact.

The current approach, which requires applicants to substantiate the aggressor's motives, is legally incorrect and effectively nullifies the possibility of exercising the rights guaranteed by the Law. It results in mass refusals, deprives victims of access to social support, and prevents the state from fulfilling its positive obligations to ensure an effective legal protection mechanism. Under such conditions, the procedure for establishing the fact of deprivation of personal liberty fails to perform its core function — recognition of harm and restoration of human rights — and requires urgent revision both at the level of the Commission's practices and at the level of regulatory framework.

1.4. THE RIGHT TO BE HEARD: NORMATIVE GUARANTEES AND THE PROBLEM OF ITS ABSENCE IN THE COMMISSION'S PRACTICE

The Law explicitly provides for the possibility of hearing the applicant or their representative, where necessary, during the consideration of materials by the Commission. A similar guarantee is enshrined in the Law of Ukraine "On Administrative Procedure", which establishes the general principle of the right of a person to be heard before the adoption of an individual administrative act affecting their rights, freedoms, or legitimate interests. In cases concerning deprivation of personal liberty in the context of armed aggression, this guarantee is of particular importance, as a significant portion of critically relevant information does not exist in the form of formal documents or is inaccessible to the applicant for reasons beyond their control. Oral explanations may supplement the case file with details regarding the circumstances of detention, conditions of captivity, evidence of pressure or coercion, transfers between places of detention, and may assist the Commission in resolving inconsistencies between available sources.

The right to be heard is not a mere formality, but a substantive instrument enabling a public authority to adopt decisions that more accurately reflect the factual reality of the experienced events. For the applicant, it constitutes an opportunity to explain their story, clarify details, respond to doubts and questions raised by Commission members, and address evidentiary gaps that cannot be filled through documentation. For the Commission, it serves as a

mechanism for direct information-gathering, enhancing the quality of legal analysis and contributing to the objectivity of decisions.

Actual practice demonstrates the opposite. Throughout the entire period of the Commission's operation, the right to be heard has been exercised only once in an individual case. The vast majority of applicants are not invited to Commission meetings and are not offered the opportunity to provide oral explanations, even in cases where submitted materials are incomplete, contradictory, or contain significant information gaps. The reply letters received by applicants instead of full-fledged decisions do not mention consideration of the possibility of a hearing, refusal to hold such a hearing, or the reasons why the Commission did not avail itself of this procedural mechanism.

Thus, despite the existence of an explicit legal provision, the right to be heard does not function in practice. This gives rise to several systemic consequences. First, a substantial body of potentially relevant information never enters the case file, which undermines the factual basis for decision-making. Second, applicants are deprived of the opportunity to defend their position, dispel doubts, and explain circumstances that cannot be documented. Third, the absence of direct communication between the Commission and persons who have experienced unlawful deprivation of liberty generates distrust in the procedure, undermines perceptions of its fairness, and contradicts fundamental principles of administrative law and fair process.

In procedures where the state is called upon to recognise the fact of a serious human rights violation, the functioning of the right to be heard is not a technical element, but a cornerstone of human dignity within the administrative process. Its absence deprives the Commission of one of the key instruments for establishing the truth and significantly complicates the realisation of citizens' right to effective protection.

1.5. INVOLVEMENT OF EXPERTS IN THE PRACTICE OF THE COMMISSION: NORMATIVE OPPORTUNITIES AND LOST POTENTIAL

The Law of Ukraine "On Administrative Procedure" grants public authorities the right to involve experts where the proper establishment of the circumstances of a case requires specialised knowledge. For the Commission on Establishing the Fact of Deprivation of Personal Liberty, this possibility is not a technical addition but a key instrument without which an objective review of applications in most cases remains incomplete or excessively formalistic. Establishing the fact of unlawful deprivation of liberty in the context of an international armed conflict requires analysis that goes far beyond ordinary administrative practice: application of norms of international humanitarian law and international human rights law, differentiation between the status of civilians,

prisoners of war, and persons detained within criminal proceedings, as well as assessment of the impact of torture and detention conditions on the physical and mental health of victims. Frequently, there is a need to interpret documents obtained from international organisations, diplomatic missions, and ICRC bodies, as well as to analyse medical records, photo and video materials, open-source information, and testimonies of other detainees. By their very nature, such issues cannot be resolved exclusively through administrative means without recourse to interdisciplinary expertise.

The involvement of external specialists could serve as a mechanism for ensuring objectivity and consistency of practice, mitigating the risks of subjective assessments, and grounding decisions in internationally recognised standards for documenting crimes against civilians. The Commission's work should regularly involve experts in international humanitarian law, medical professionals, psychologists, specialists in documenting war crimes, and experts on politically motivated persecution. Their expert opinions could assist in establishing or refuting the political motive of detention, confirming the nature of torture or ill-treatment, assessing the credibility of submitted materials, and determining their consistency with typical patterns of persecution by the aggressor state. More broadly, expert involvement would help align the Commission's practice with international standards and reduce the risk of subjectivity or excessive formalism in interpreting the Law.

However, actual practice demonstrates a failure to utilise this instrument. The Commission does not initiate expert assessments, does not establish a pool of accredited experts, and does not request independent expert opinions even in cases where key circumstances cannot be established through documentary evidence. As a result, a significant number of applications are rejected due to the absence of ''proper documents,'' despite the fact that their provision cannot reasonably be expected from a person who has been deprived of personal liberty. In the context of armed conflict, where information on detention, places of captivity, and negotiation mechanisms may be under the control of the Russian Federation rather than the applicant, it is the Commission that should initiate the collection of additional information, including expert analysis.

The logic of due procedure presupposes a different allocation of roles: the applicant provides information known to them and any available materials, while the Commission, where necessary, resorts to interdisciplinary expert analysis, requests information from competent authorities, involves specialists, and assesses the evidentiary base comprehensively.

An essential component of such a procedure should also be the commissioning of substantive expert opinions (approximately 15–25 pages) from specialists in international humanitarian law, human rights organisations, researchers of politically motivated persecution, and political scientists. Such opinions should address key questions relevant to establishing the fact of captivity: whether the case file contains indicators

of a political motive for detention; whether there were risks to the life and health of the applicant during captivity; whether a fair trial was realistically possible in the aggressor state; and to what extent the nature of persecution corresponds to typical practices documented by international bodies.

Furthermore, the Commission's work should include systematic use of international mechanisms for confirming the status of persons deprived of liberty. Appeals and requests to the United Nations, the Parliamentary Assembly of the Council of Europe, the OSCE, the ICRC, and international human rights organisations such as Human Rights Watch or Amnesty International should become a procedural norm rather than an exception in cases where confirmation of captivity or the political nature of persecution cannot be established solely on the basis of domestic Ukrainian materials. This would allow the Commission not only to expand its evidentiary base but also to ensure compliance of its decisions with international standards for recognising victims of unlawful deprivation of liberty in armed conflicts.

Doubts that cannot be resolved due to the inaccessibility of information in conditions of occupation should be interpreted in favour of the applicant, in accordance with the principle of humanity and standards for the protection of victims of conflict.

The involvement of experts must become a full-fledged element of the procedure rather than a theoretical possibility. This would not only enhance the quality of decisions, but also align the Commission's practice with international approaches, including Ukraine's obligations under the 1949 Geneva Convention on the protection of civilians and its duty to ensure an effective mechanism for restoring the rights of victims. In the long term, institutionalising expert participation — through the gradual establishment of a list of accredited experts, procedures for their involvement, and the possibility to commission independent opinions — will constitute one of the key steps towards building an effective system for recognising the fact of deprivation of personal liberty and ensuring social protection of affected persons.

2.COMPOSITION OF THE COMMISSION AND ITS INSTITUTIONAL CAPACITY

This section analyses the current composition of the Commission and highlights the lack of renewal, the absence of a competitive selection process for civil society representatives, and the absence of key institutions within its membership. It proposes mechanisms to enhance transparency, rotation, and expansion of representation within the Commission, and identifies the need to strengthen the qualifications of Commission members and related actors in the fields of international humanitarian law and administrative law in order to ensure fair and legally sound consideration of cases.

2.1. COMPOSITION OF THE COMMISSION AND THE NEED FOR ITS RENEWAL

The Commission is an interagency body established under the Ministry for Communities and Territories Development of Ukraine. It operates for the purpose of implementing the Law and adopts decisions that determine access to social guarantees, state support, medical and psychological assistance, and also play a significant role in restoring justice for victims of armed conflict.

The Commission is composed of representatives of central executive authorities and other state institutions [5], a representative designated by the President of Ukraine, as well as up to five representatives of civil society organisations working in the field of protection of the rights of unlawfully detained persons, documentation of violations, and search activities. The personal composition of the Commission is approved by an order of the Ministry. At present, the Commission effectively includes four representatives of civil society, as well as a representative of the Mejlis of the Crimean Tatar People, included under the civil society quota.

Despite the fact that the full-scale war has radically changed the scale of unlawful deprivation of personal liberty, the composition of the Commission has remained almost unchanged since 2020 — dating back to the period when the Commission operated under other institutions (the Ministry of Veterans Affairs, the Ministry of Reintegration, and the Ministry of National Unity). During this time, the number of affected persons has increased from hundreds to tens of thousands, while the range of organisations engaged in documenting detentions, searching for missing persons, advocacy, and supporting families has expanded significantly. At the same time, civil society representation within the Commission has not been renewed or expanded to include new participants, despite the substantial change in context, needs, and scale of challenges. This creates risks of monopolisation of participation, lack of rotation, and a decline in institutional dynamism, contrary to generally accepted approaches to the governance of collegial bodies.

In addition, current legislation does not provide for clear and open procedures for the selection of civil society representatives to the Commission. At present, such appointments are made without a competitive mechanism, which creates risks of narrowing the circle of represented actors and limits equal access for other organisations that, in practice, possess substantial experience in working with detainees and their families. The introduction of an open competitive selection process with clearly defined criteria would ensure equality of opportunity in line with Article 24 of the Constitution of Ukraine and would contribute to transparency and accountability in the formation of the Commission's composition. Such a procedure would also be consistent with the constitutional right of citizens to participate in the administration of state affairs (Articles 5 and 38 of the Constitution of Ukraine), the principles of transparency, accountability, and integrity enshrined in the Law of Ukraine "On Prevention of Corruption", as well as international standards of the Council of Europe and the OECD on good governance, including:

- the principle of renewal and rotation of membership of collegial bodies, which is necessary to update expertise, ensure political and societal pluralism, and prevent monopolisation of influence;
- the principle of collegiality and representation of diverse interests, which requires that the composition of the Commission not be formed unilaterally and that the mechanism of its formation be transparent;
- the principle of competitiveness and meritocracy, which is essential for selecting individuals based on competence and reputation rather than loyalty, through open calls, clear evaluation criteria, and transparent procedures;
- the principle of prevention of corruption and conflicts of interest, which allows for reducing the risks of institutional capture through professional competitive selection and limited terms of office.

The application of a competitive selection principle would help eliminate these risks and ensure the involvement of individuals who possess real experience in working with unlawfully detained persons, access to data sets, documentation methodologies, contacts with affected families, and international partners. A competitive procedure should include an open call for applications, criteria of professional competence and integrity, fixed terms of office, and periodic rotation. This corresponds to the principle of meritocracy — the involvement of qualified experts in decision-making based on competence rather than political loyalty.

These principles of openness and transparency are fundamental not only from the perspective of good governance, but also as a prerequisite for building public trust in the Commission's decisions. Although the Commission's decisions take the form of individual administrative acts, each of them has a significant public dimension, as it concerns persons affected by armed aggression, their economic and social guarantees, and the state's approach to recognition and rehabilitation of victims of war. An institutional mechanism operating in a closed manner inevitably generates distrust, whereas openness, clear criteria, and reasoned decisions create the conditions for perceiving the Commission's decisions as fair and legitimate. One effective means of ensuring such trust is meaningful civil society participation in decision-making. The current Regulation formally

provides for the inclusion of civil society representatives in the Commission, thereby enabling participation of the non-governmental sector in the review process.

A separate issue concerns the composition of state authorities represented in the Commission. A number of key institutions that were established after the onset of the full-scale invasion and whose core mandates are directly aimed at facilitating the search for, and the restoration of the rights of, persons unlawfully deprived of personal liberty, or which possess up-to-date and relevant information about such persons, are currently not represented in the Commission. These include, in particular:

- the State Enterprise "Ukrainian National Centre for Peacebuilding" (National Information Bureau), which operates pursuant to the Geneva Conventions of 12 August 1949 relative to the Treatment of Prisoners of War and the Protection of Civilian Persons in Time of War, and which coordinates with other state authorities and international organizations, including the International Committee of the Red Cross, in matters related to the search for and exchange of persons affected by Russian aggression;
- the Commissioner for Persons Missing under Special Circumstances, who directly conducts searches for such persons, among whom are many victims of unlawful deprivation of liberty prior to their whereabouts becoming known;
- the National Police of Ukraine, which carries out operational-search activities and criminal procedural actions in cases concerning persons deprived of personal liberty as a result of Russian aggression.

The involvement of representatives of these bodies would enable the prompt receipt of information from criminal proceedings, missing persons registers, and international communication channels, which directly affects the quality of the Commission's decisions.

The introduction of a competitive selection procedure for representatives of civil society organizations may be regulated through subordinate legislation adopted by the Ministry for Communities and Territories Development, without amending the Law. A draft of such a regulation, developed by the Association of relatives of political prisoners of the Kremlin, is proposed in Annex No. 2 to this report. By contrast, the expansion of the range of state institutions represented in the Commission would require corresponding amendments to the Law. Nevertheless, both reforms are equally necessary, as they ensure balanced representation, openness of the process, accountability, professional expertise, pluralism, and the mitigation of risks of political or administrative monopolization.

Accordingly, at the level of institutional design, the Commission requires modernization and greater openness to new participants, both from civil society and state institutions. Updating the composition of the Commission is not a technical adjustment but a systemic element of improving the mechanism for recognizing the fact of deprivation of liberty as a result of Russian aggression. It is a necessary step to ensure the legitimacy, transparency, and effectiveness of the body's work, to restore the trust of affected persons and society at large, and it directly impacts the protection of the rights of individuals who have endured unlawful deprivation of personal liberty.

2.2. THE NEED TO ENHANCE KNOWLEDGE AND COMPETENCIES OF THE COMMISSION MEMBERS

The practice of reviewing applications concerning the establishment of the fact of deprivation of personal liberty in the context of armed aggression demonstrates that the effectiveness of the Commission's decisions directly depends on proper legal qualification of the circumstances of each case, correct determination of the status of affected persons, and accurate application of international humanitarian law (IHL) and national legislation. Difficulties in the review of cases are often caused not by a lack of evidence, but by an insufficient level of specialised knowledge among participants in the process — both representatives of state authorities and civil society actors. This creates risks of formalistic decisions that fail to comply with Ukraine's international obligations and may result in violations of applicants' rights.

As a State Party to the 1949 Geneva Conventions and other international treaties, Ukraine is obliged not only to respect but also to ensure respect for the norms of IHL, including through dissemination of knowledge among state authorities responsible for their application. The Geneva Convention relative to the Protection of Civilian Persons in Time of War explicitly provides for the obligation of the State to conduct training and inform competent authorities. In the context of armed conflict, particular importance attaches to the correct understanding of such categories as *"protected civilian person," "person deprived of liberty in connection with the conflict," "hostage," "prisoner of war," and "victim of a war crime,"* as well as the corresponding standards of treatment and protection guarantees. This requires specialised knowledge of IHL on the part of all actors involved in procedures for establishing the relevant facts with respect to applicants. Improper differentiation between these concepts may lead to erroneous assessment of case circumstances and denial of status to persons who, in fact, fall within the scope of state protection.

Additional significance attaches to the entry into force of the Law of Ukraine "On Administrative Procedure" on 15 December 2023, which introduced uniform standards for the adoption of individual administrative acts. The Law is grounded in the principles of legality, proportionality, proper participation of the person in the procedure, adversarial process, comprehensive clarification of circumstances, transparency, and reasoned decision-making. For their effective implementation, Commission members and officials of responsible authorities must possess practical skills in applying these norms, including conducting due administrative proceedings, collecting and assessing evidence, communicating with applicants, providing adequate reasoning for decisions, and ensuring the right to appeal. The Constitutional Court of Ukraine has repeatedly emphasised that procedural guarantees are an integral component of constitutional protection of human rights, and that violations of procedure may in themselves constitute grounds for declaring a decision unlawful.

The participation of civil society representatives within the Commission is intended to strengthen the balance of interests, transparency, and accountability of public authority, as well as to ensure inclusiveness of the process. However, effective fulfilment of this role is possible only if such representatives possess sufficient knowledge of IHL, international mechanisms for the protection of victims of armed conflict, administrative procedure, and the legal status and procedural guarantees of applicants. Enhancing the competencies of civil society representatives would improve the quality of applications and evidentiary submissions, reduce the number of formal refusals, and facilitate better communication between applicants and state institutions.

Similarly, representatives of law enforcement bodies, the security and defence sector, social services, and other authorities involved in the collection and transmission of information must possess adequate knowledge of IHL and administrative procedure. These actors often serve as the primary sources of information regarding deprivation of liberty; the completeness and quality of case files on which the Commission bases its decisions depend on their qualifications. Existing educational programmes of the ICRC, state institutions, and specialised human rights platforms already provide a foundation for such training, but their effective use requires systematisation and institutional anchoring.

Accordingly, systematic capacity-building of Commission members, representatives of civil society organisations, and state authorities constitutes a key prerequisite for:

- fulfilment by Ukraine of its international obligations in the field of international humanitarian law;
- ensuring consistency and predictability of the Commission's decision-making practice;
- full realisation of the rights of affected persons and members of their families;
- reduction in the number of judicial appeals due to procedural violations and inadequate reasoning of decisions;
- restoration of public trust in state mechanisms for the protection of victims of armed conflict.

In light of the above, it is advisable to develop and implement comprehensive training programmes for Commission members and involved institutions, with a focus on the practical application of international humanitarian law and the Law of Ukraine "On Administrative Procedure" in the Commission's practice.

3. SOCIAL GUARANTEES AND THEIR NON-IMPLEMENTATION

This section addresses the critical problem of non-payment of annual state financial assistance to persons in respect of whom the fact of deprivation of personal liberty has been established, as well as to members of their families, during 2023–2025. It analyses legal collisions and regulatory gaps that have been used as formal grounds for refusal of payments, and emphasises the inconsistency of such practice with the principles of social justice and constitutional guarantees. The section underscores the necessity of amending relevant subordinate legal acts and regulating the mechanism for determining and verifying authorised persons.

3.1. ANNUAL STATE FINANCIAL ASSISTANCE: LEGAL REGULATION AND THE ACTUAL STATE OF IMPLEMENTATION

As reported on 14 October 2025 during a meeting of the Expert Council under the Representative of the Ukrainian Parliament Commissioner for Human Rights on the Rights of Residents of the Autonomous Republic of Crimea and the City of Sevastopol — of which the Association of relatives of political prisoners of the Kremlin is a member — the right to receive annual state financial assistance by persons in respect of whom the fact of deprivation of personal liberty has been established has, in practice, not been realised during 2023–2025. According to information provided by the Office of the Ombudsman and discussed at the meeting, 153 relevant applications were recorded; however, the actual number of cases of non-payment is likely to be significantly higher.

This situation indicates not only the systemic nature of the problem, but also violations of fundamental constitutional principles. Article 3 of the Constitution of Ukraine defines the human being and their rights as the highest social value, and the protection of these rights as the primary duty of the state. Article 46 guarantees the right to social protection; Article 95 establishes the social orientation of the budgetary system; and Article 24 prohibits discrimination and unequal treatment of specific categories of recipients of social guarantees. Accordingly, selective or de facto non-provision of assistance to one category of beneficiaries, while analogous rights are ensured for others, directly contradicts the principle of equality before the law.

Since 2023, annual financial assistance has not been paid to persons who, pursuant to subparagraph 2, paragraph 8, subparagraph 6 of the Regulation, submitted an application and exercised the right to designate an authorised person to receive funds during the period of deprivation of liberty. This mechanism provided for the possibility of submitting an application in free form with the participation of a

lawyer or consul and indicating the bank account details of the authorised person. Initially, the Ministry for Reintegration refused payments on the grounds that the authorised person was a civil servant; later, refusals were justified by the fact that in many cases applicants designated the same authorised person. In 2024, applications were submitted designating two authorised persons who were not civil servants; however, payments were again not made.

In 2025, the Commission under the Ministry for Communities and Territories Development required re-submission of applications and proposals for amendments to the existing regulatory framework, citing that Resolution No. 1281 allegedly does not provide a mechanism for changing an authorised person or submitting their details after the establishment of the fact of deprivation of personal liberty. As a result, applicants have been effectively deprived of the possibility to receive the guaranteed payment, despite the existence of a relevant decision of the Commission.

The interpretation adopted by the Ministry for Reintegration / Ministry for Communities and Territories Development — according to which an authorised person may be designated exclusively at the stage of initial application — is inconsistent with the general rules on representation set out in the Civil Code of Ukraine and the Law of Ukraine "On Administrative Procedure". A subordinate legal act may not narrow the scope of rights guaranteed by law. The Civil Code explicitly provides for the right of a person to freely choose a representative, define the scope of their powers, amend or revoke a power of attorney, and delegate authority (Chapter 17).

Similarly, Article 31 of the Law "On Administrative Procedure" allows participation in administrative proceedings through a representative without limiting the moment of their designation. The exercise of these rights does not require special authorisation in a subordinate act. The mere fact that the Regulation describes the possibility of designating an authorised person at the stage of submitting an application for establishing the fact of deprivation of personal liberty does not entail the loss of the general right to choose or change a representative for subsequent actions, including receipt of financial assistance.

Once the fact of deprivation of liberty has been established and a person or a member of their family has been recognised as a beneficiary under the Law, they are entitled to independently choose a representative for the purpose of receiving payment. This is consistent with the second paragraph of point three of the Procedure for the Assignment and Payment of Assistance to Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families, which provides that applications for payment may be submitted by the affected person, a family member, their legal representative, or the legal representative of a family member.

In this context, the issue concerns not only procedural representation, but also the determination of the method of performance of the state's monetary obligation. If a person is entitled to assistance, they, as a creditor, may determine the bank account to which the funds should be transferred, including the account of a third party on the basis of a power of

attorney, agency agreement, or other legal instrument. The Civil Code does not prohibit the transfer of social payments to the account of an authorised person with the consent of the beneficiary, nor does the special law on social protection contain such a prohibition. Accordingly, a subordinate act may not introduce additional restrictions not provided for by law, nor may such restrictions be used as grounds for the state's failure to fulfil its financial obligation.

It must also be emphasised that, pursuant to paragraph 3 of Article 2 of the Law, family members are independent subjects of the right to social payments, while the authorised person serves solely as a technical mechanism for their actual receipt during the period of deprivation of liberty. Imperfections in subordinate regulation or the absence of a procedure for changing an authorised person cannot nullify the substance of the right guaranteed by law and do not absolve the competent authority of its obligation to ensure its implementation.

In its responses to inquiries from applicants and human rights organisations, the Ministry for Communities and Territories Development of Ukraine cites a number of reasons which, in the Ministry's view, make the payment of assistance impossible. Among the arguments invoked are:

- the need to amend the existing Resolution, as authorised persons were designated prior to the transfer of competence to the Ministry for Communities and Territories Development;
- the absence of a mechanism for verification of authorised persons and confirmation of their acquaintance with the applicant;
- the need to develop a reporting form to be submitted by an authorised person after receipt of state financial assistance;
- the need for legislative determination of the permissible number of authorised persons for one applicant.

However, these technical and procedural difficulties cannot be regarded as sufficient legal grounds for the long-term non-fulfilment of the state's obligations, as the subjective right to annual state financial assistance is directly provided for by law and confirmed by the Commission's decision establishing the fact of deprivation of personal liberty. Gaps or deficiencies in subordinate legislation cannot be shifted onto affected persons, and the lack of regulation of certain procedures does not absolve an administrative authority of its obligation to ensure actual implementation of an adopted decision within a reasonable time.

This position is also confirmed by the Ministry's response to an inquiry from the Association of relatives of political prisoners of the Kremlin [6], in which the Ministry stated:

> *"Pursuant to paragraph 3 of the Procedure, annual state financial assistance in the amount of UAH 100,000 is provided, inter alia, to family members of a person in respect of whom the fact of deprivation of personal liberty as a result of armed aggression against Ukraine has been established, during the period when such person remains in places of deprivation of liberty. Payment is carried out by transferring funds by the Ministry*

for Communities and Territories Development to the personal bank accounts of recipients opened with banking institutions.

It should be noted that current legislation does not establish a time limit for making such payments."

Such an approach, both on the part of the liquidated Ministry for Reintegration of the Temporarily Occupied Territories and the Ministry for Communities and Territories Development, effectively shifts the burden of managerial inconsistency, lack of procedural solutions, and deficiencies in normative implementation onto the beneficiaries of the Law. This contradicts the principle of good governance, the standards of a social state, and undermines the right of affected persons to effective access to social support.

Annual state financial assistance is granted on the basis of an application submitted by the person in respect of whom the fact of deprivation of personal liberty has been established, a member of their family, or their legal representatives. Although legislation does not specify a special time limit for payment, the principle of performing administrative actions within a reasonable time applies, deriving both from the Law on Administrative Procedure and from the general principles governing the activities of public authorities. In the context of social payments, a "reasonable time" cannot be interpreted as unlimited and, in any event, cannot extend beyond the boundaries of a budgetary year.

First, Article 19 of the Constitution of Ukraine obliges public authorities to act solely on the basis, within the limits of authority, and in the manner prescribed by the Constitution and laws of Ukraine. The absence of a specifically defined payment deadline does not relieve the Ministry of its obligation to realise the applicant's right within a reasonable time and to ensure actual execution of the adopted decision. Failure to do so contradicts both constitutional guarantees and the general principles governing public administration.

Second, the Law of Ukraine "On Administrative Procedure" establishes fundamental principles binding on all administrative authorities, including the principles of timeliness and reasonable time (Article 13), effectiveness (Article 14), presumption of legitimacy of an individual's claims (Article 15), good faith, and proportionality. Application of these principles means that an authority must not only adopt a decision, but also ensure its actual implementation within the shortest possible time sufficient for consideration of the application, taking into account the significance of the relevant right for the applicant.

Third, the Law of Ukraine "On Citizens' Appeals" (in particular Articles 15, 18, and 20) provides that appeals must be considered within reasonable time limits not exceeding 30 days, and that responses of public authorities must be reasoned and contain references to legal norms. References in the Ministry's letters exclusively to the absence of a statutory payment deadline, without analysis of the requirements of the Constitution, Law No. 2010-IX, the Law on Administrative Procedure, the Budget Code, and the case-law of the European Court of Human Rights, do not meet the criteria of a proper administrative decision.

Fourth, the Law of Ukraine "On State Social Standards and State Social Guarantees" enshrines the binding nature of state social guarantees, including monetary payments established by law. Annual state financial assistance provided for by special legislation and detailed in the relevant Procedure has the status of such a guarantee and therefore cannot be cancelled or de facto suspended on the pretext of gaps in subordinate regulation. The absence of a mechanism for changing an authorised person or other technical procedures cannot serve as grounds for refusal to pay guaranteed funds.

Fifth, the provisions of the Budget Code of Ukraine (Articles 46, 48, and 51) and Procedure No. 228 establish that budget expenditures are carried out within approved estimates and appropriations during a single budgetary year. The passport of budget programme code 3101050 ("Measures for the social and legal protection of persons in respect of whom the fact of deprivation of personal liberty has been established...") has been approved and published on the Ministry's official website, indicating the existence of budgetary allocations for such payments. Consequently, there are no legal grounds for their systematic non-execution, and delays in payments create a state of legal uncertainty and place applicants in a situation of indefinite waiting.

Thus, even in the absence of a specifically defined statutory payment deadline, assistance must be paid within a reasonable time, which, taking into account the Law on Citizens' Appeals, the Law on Administrative Procedure, and the annual budget cycle, reasonably cannot exceed 30 days from the date of submission of the application and necessary documents, and must be effected within the same budgetary year.

The approach whereby public authorities, referring to the absence of statutory deadlines or deficiencies in subordinate regulation, effectively fail to make social payments for years contradicts the legal positions of the Constitutional Court of Ukraine, the Supreme Court, and the European Court of Human Rights. Established case-law of these bodies consistently affirms that:

- state social payments established by law cannot be made contingent upon the availability of budgetary funds and must be paid in full;
- refusal or delay in payments undermines trust in the state and violates the right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights;
- a statutory entitlement to a social payment, confirmed by a decision of a competent authority, gives rise to a legitimate expectation protected under the Convention.

Accordingly, failure to pay annual state financial assistance in the manner prescribed by law and without proper legal justification not only violates the principle of legal certainty, but also exacerbates the social vulnerability of persons affected by armed aggression and unlawful deprivation of personal liberty. The result of such administrative practice is the unacceptable transfer of risks arising from regulatory deficiencies and administrative inefficiency from the state authority onto the beneficiaries of the right, contrary to Ukraine's status as a social state and fundamental principles of human rights protection.

3.2. LEVKO LUKIANENKO STATE SCHOLARSHIP: REGULATORY FRAMEWORK AND DE FACTO SUSPENSION OF IMPLEMENTATION

It is important to note that the issue of the Levko Lukianenko State Scholarship does not fall within the direct mandate of the Commission and, accordingly, is not a direct subject of the public expert review of its activities. However, since the state scholarship constitutes one of the elements of the system of social protection and recognition of persons unlawfully deprived of personal liberty as a result of Russian aggression, and its award and payment are situated within the same legislative framework governing assistance to released persons and their families, this report considers it appropriate to address the functioning of the scholarship within the scope of this analysis.

The inclusion of this subsection is justified by the fact that the scholarship fulfils an important social, moral-symbolic, and rehabilitative function, contributing to the recognition of the experience of unlawfully detained persons, supporting their personal and civic status, and underscoring their contribution to the struggle for the freedom and independence of Ukraine. Thus, while the scholarship is not an instrument of the Commission, it constitutes an integral component of the broader state policy towards persons affected by unlawful deprivation of liberty, rendering its analysis relevant to the subject matter of this report.

By Presidential Decree No. 216/2018 of 25 July 2018, ''On Urgent Measures to Protect the Rights, Freedoms and Legitimate Interests of Persons Illegally Detained or Held by the Russian Federation or Its Occupation Administration, Released from Such Detention, and to Support Such Persons and Their Family Members,'' the Levko Lukianenko State Scholarship was established. Its introduction represented a response by the state to the need to support unlawfully detained citizens of Ukraine and their families, as well as recognition of their civic and political stance. Subsequently, Presidential Decree No. 417/2018 of 7 December 2018 approved the Regulation on the Levko Lukianenko State Scholarships (hereinafter – the State Scholarships), defining the procedure for their award and mechanisms of implementation.

Under the Regulation, State Scholarships are awarded to citizens of Ukraine who were unlawfully detained or held by the Russian Federation or its occupation administration in the temporarily occupied territories of Ukraine or in the territory of the Russian Federation in connection with their civic or political activity associated with a consistent public position aimed at defending Ukraine's sovereignty and restoring its territorial integrity. Scholarships may also be awarded to persons released from places of deprivation of liberty. The amount of the scholarship is equivalent to three subsistence minimums for able-bodied persons, and the maximum number of awards is up to 100 persons annually. Scholarships are awarded by

individual Presidential Decrees, either to a group of recipients or on an individual basis.

Petitions for the award of scholarships may be submitted by a wide range of entities, including the Ukrainian Parliament Commissioner for Human Rights, the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea, central executive authorities, local state administrations, as well as civil society organisations working in the field of protection of the rights of unlawfully detained persons. Review of petitions is conducted by the Ministry for Communities and Territories Development of Ukraine within 20 working days; based on the assessment of submitted materials, the Ministry submits proposals to the Cabinet of Ministers of Ukraine regarding candidates, together with draft Presidential Decrees on the award of scholarships.
Since the establishment of the scholarship, 34 citizens of Ukraine have been awarded the State Scholarship [7]. Prior to the liquidation of the Ministry for Reintegration, that ministry was responsible for preparing proposals to the President regarding scholarship awards. For this purpose, a dedicated commission operated within the ministry, composed of both ministry officials and representatives of civil society.

Following the commencement of the liquidation of the Ministry for Reintegration, an institutional gap emerged in the mechanism for reviewing scholarship petitions. By Presidential Decree No. 618/2025 of 23 August 2025, amendments were introduced to the Regulation, transferring the function of reviewing materials and submitting candidates to the Ministry for Communities and Territories Development. As a result, for nearly one year there existed a de facto vacuum of competence, during which the authority previously responsible for implementation was undergoing liquidation, while a new competent authority had not yet been formally designated in the regulatory framework. Notably, even after the transfer of powers, the implementation mechanism was not restored, as the most recent Presidential Decree awarding scholarships dates back to 2023, and no scholarships were effectively awarded in 2024–2025.

With the changing nature of Russian aggression and the transformation of institutions responsible for implementing policies to support unlawfully detained citizens, the awarding of the Levko Lukianenko State Scholarship was effectively suspended, as was the work of the commission responsible for reviewing petitions. However, such suspension cannot be justified in light of the objectives for which this instrument was created. While the material value of the scholarship is relatively modest, its primary significance lies in official state recognition of the recipients' contribution to the struggle for freedom, independence, and territorial integrity of Ukraine.

The Levko Lukianenko State Scholarship functions as a special form of moral and symbolic state distinction. Its award publicly affirms the value of civic position, activism, and courage of those who have endured unlawful deprivation of liberty or persecution as a result of activities supporting Ukrainian statehood. State-level recognition fosters

a culture of respect for individuals who consistently defend human rights and national interests even amid ongoing armed aggression. In this sense, the scholarship serves as a mechanism of moral rehabilitation, support, and restoration of agency for affected persons.

Within the system of social support measures provided by the Law, the Levko Lukianenko State Scholarship occupies a unique place. Its essence lies not in its financial equivalent, but in the recognition of civic resilience and struggle. The symbolic dimension of this support is further reinforced by the personality whose name the scholarship bears. Levko Lukianenko — a Ukrainian dissident, human rights defender, founder of the Ukrainian Helsinki Group, author of the Act of Declaration of Independence of Ukraine, Hero of Ukraine, and Member of Parliament of several convocations — is a key figure in the history of Ukraine's struggle for freedom and dignity. For this reason, the awarding of the scholarship should be perceived as a form of state recognition and continuity of dissident traditions.

In light of the above, it is appropriate to establish a separate competitive commission comprising not only representatives of the relevant ministry, but also respected civil society figures, including human rights defenders, former political prisoners, civic activists, scholars, and representatives of specialised organisations. Civil society participation in decision-making would promote a more objective, transparent, and impartial selection of candidates, allow for assessment not only of formal criteria but also of the real contribution of applicants to human rights protection and the development of civil society, and enhance trust in the scholarship as a moral distinction.

The involvement of the human rights community and former political prisoners in the selection process would not only reflect the spirit and legacy of Levko Lukianenko, but also emphasise that the scholarship is awarded for civic position, commitment to the ideals of freedom, democracy, and human dignity. Such an approach would restore the scholarship's original symbolic function — not merely to support, but to honour the struggle of Ukrainians against repression and occupation.

Separate consideration must be given to the situation regarding the payment of scholarships to the few recipients and their family members who remain in places of deprivation of liberty and retain the right to receive the State Scholarship. According to available information, at least two families of scholarship recipients have not received the due payments since December 2024. Following the liquidation of the Ministry for Reintegration, Cabinet of Ministers Resolution No. 33 of 14 January 2025 introduced editorial amendments to the Procedure for the Use of State Budget Funds Allocated for Measures on Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families, as well as for Payment of the Levko Lukianenko State Scholarship [8], replacing references to the "Ministry for Reintegration" with the "Ministry for Communities and Territories Development."

Accordingly, from 14 January 2025, the Ministry for

Communities and Territories Development has served as the budgetary administrator responsible for payments under the state budget programme, including the Levko Lukianenko State Scholarship. Under paragraph 8 of the Regulation on the Levko Lukianenko State Scholarships, where a scholarship recipient is unable to receive payments personally due to detention by the Russian Federation, the scholarship may be transferred to a bank account opened in the name of a family member, legal representative, close relative, or another person designated in the application. Such application must be submitted in writing in the presence of a lawyer or consul, confirmed by their signature.

The right to social protection is constitutionally guaranteed and constitutes a fundamental human right under Article 22 of the Constitution of Ukraine. It may not be abolished even during a state of martial law, and any restrictions are permissible exclusively within the limits established by the Constitution (Article 64). Failure to pay the scholarship to current recipients without lawful grounds — and especially to families of unlawfully detained Ukrainian citizens who remain in places of deprivation of liberty — constitutes a direct violation of these guarantees.

The withholding of social payments established by law and confirmed by a decision of a competent authority, without a defined timeline for restoration and without the adoption of appropriate procedural decisions, exhibits the characteristics of unlawful inaction by a public authority. This situation creates unjustified risks of deepening the vulnerability of families of unlawfully detained persons, including the families of Valentyn Vyhivskyi and Volodymyr Dudka, who, as of the date of this expert review, continue to be held on the territory of the Russian Federation. In light of the applicable legal framework and constitutional guarantees, the de facto suspension of scholarship payments to these families is unlawful and requires immediate restoration.

4. THE SIGNIFICANCE OF THE COMMISSION'S DECISIONS AS AN INSTRUMENT OF SYMBOLIC RECOGNITION OF THE EXPERIENCE OF PERSONS UNLAWFULLY DEPRIVED OF PERSONAL LIBERTY

This section examines the Commission's decisions not only as a legal mechanism for establishing the fact of deprivation of personal liberty, but also as an important instrument of symbolic recognition of the lived experience, restoration of dignity, and return of a sense of justice to affected persons. Based on a survey of eleven victims of unlawful detention, the section highlights that a significant proportion of respondents perceive the Commission's decision as official confirmation of the harm suffered, moral support, and state acknowledgement of injustice, which is critically important in the context of a human-centred approach, psychological rehabilitation, and post-war recovery.

Beyond the legal function of establishing the fact of deprivation of personal liberty and granting access to social guarantees, the Commission's activities have an additional, no less important dimension — symbolic and moral recognition of the experience endured by victims. For persons unlawfully deprived of liberty in the context of armed conflict, recognition at the state level is not merely an element of an administrative procedure, but an act of restoring dignity, affirming truth, and ensuring public acknowledgement of the suffering inflicted.

For affected persons, documentary fixation of the fact of unlawful detention or imprisonment is not merely a bureaucratic outcome, but a mechanism for restoring agency, re-establishing the status of a full-fledged member of society whose trauma has been heard and recognised. State acknowledgement of unlawful deprivation of liberty, enshrined in a decision of the Commission, relieves the individual of the burden of continuously having to ''prove'' their suffering and prevents them from being left alone with an experience that often lacks understanding or acceptance by the broader public. In the context of post-conflict recovery, recognition of past harm constitutes a key component of reintegration and prevention of secondary victimisation. Mechanisms of transitional justice are based on the understanding that, alongside material compensation, the state must ensure the right to memory, the right to truth, and the right to be heard. For former detainees, this entails not only financial assistance, but also official confirmation that the violence inflicted upon them was a crime rather than an episode subject to doubt or silence.

The survey conducted by the Association of relatives of political prisoners of the Kremlin among eleven persons affected by unlawful deprivation of personal liberty demonstrates that the need for recognition is among the most pressing. Nine of the eleven respondents explicitly stated that their experience has not received adequate societal or state recognition. One participant described this as a sense of living through an experience that lacks sufficient public attention or political weight. For

others, the absence of official recognition is directly associated with feelings of devaluation: ***"I sacrificed everything and survived by chance, and the state betrayed me."*** This indicates that non-recognition is not an abstract moral issue, but has direct psycho-emotional consequences for victims, including increased distrust, feelings of isolation, and diminished belief in justice.

The majority of respondents emphasised that recognition should primarily come from the state, with the Commission serving as the institutional channel through which such recognition materialises. It is the Commission that represents the point of entry into the system of rehabilitation and social support. For many respondents, a Commission decision constitutes a symbolic act affirming: ***"what happened was an injustice, and the state acknowledges it."*** One respondent explicitly noted that official status is necessary ***"so that I do not feel like an outcast."*** Another stressed that official certificates or status acquire meaning only if they are equivalent in significance to the status of a combatant, thereby becoming an expression of societal respect.

The survey also revealed that for many respondents, formal recognition alone is insufficient; visible forms of recognition are also important, including opportunities for public speaking, media coverage, and documentary preservation for historical memory. Some respondents underscored the importance of international visibility — ***"so that people abroad know what the Russians are doing."*** This highlights that the Commission's decisions serve not only as a mechanism of legal recognition and access to social protection, but also as a means of establishing truth about crimes that may subsequently be utilised for international advocacy and documentation of violations of international humanitarian law.

Accordingly, the effective functioning of the Commission extends beyond administrative procedure, as it constitutes an element of transitional justice, a mechanism for restoring justice, and a tool of collective memory concerning victims of Russian armed aggression. Each Commission decision affirms that the state recognises the pain and losses of its citizens, while each delay or unreasoned refusal deepens trauma, undermines trust in state institutions, and reinforces feelings of abandonment.

The continuation of inaction or procedural deficiencies in the Commission's work is not a neutral administrative outcome, as such shortcomings directly affect the lives of individuals who have already suffered grave violations of their rights. Formal recognition, which the Commission is tasked with ensuring, is not a privilege but a right of victims to respect, remembrance, and justice, and an obligation of the state to guarantee their full realisation.

CONCLUSIONS

The analysis conducted within the framework of this public expert review demonstrates that the Commission on Establishing the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine currently fails to ensure effective implementation of the Law of Ukraine "On Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families". The identified shortcomings are systemic in nature and stem from a combination of outdated regulatory approaches, procedural deficiencies, and insufficient institutional capacity.

First, the Commission does not comply with fundamental standards of administrative procedure. Instead of adopting and communicating full-fledged individual administrative acts, it limits itself to sending informative letters that do not contain the reasoning, factual analysis, or legal justification required by law. This practice violates the principles of legal certainty, transparency, and the right to effective remedy, depriving applicants of the ability to understand, challenge, or appeal decisions affecting their rights.

Second, the Commission applies an incorrect approach to the assessment of evidence and allocation of the burden of proof. By requiring applicants to substantiate circumstances that they cannot reasonably know or document in the context of armed conflict and occupation, the Commission effectively nullifies the purpose of the Law. The failure to apply the principle of officiality and the presumption of good faith of the applicant leads to unjustified refusals and exclusion of large categories of affected persons from access to social guarantees.

Third, the procedure for establishing the political motive of persecution is applied in an excessively narrow and formalistic manner. Political motive is treated as an element requiring direct documentary confirmation, rather than being assessed through a comprehensive analysis of factual indicators typical of repression in occupied territories. This approach contradicts international standards and established doctrine on politically motivated persecution and results in denial of status to persons who have objectively suffered unlawful deprivation of liberty as a consequence of their civic position or identity.

Fourth, the Commission systematically fails to ensure the implementation of procedural guarantees, in particular the right to be heard. Despite the existence of a legal basis for hearings, applicants are almost never invited to provide oral explanations, even in complex cases where documentary evidence is incomplete or contradictory. This deprives both the Commission and applicants of a critical mechanism for establishing the factual truth and undermines the fairness of the procedure.

Fifth, the Commission does not utilise the legally available mechanism for involving experts, despite the complexity of cases and the need for interdisciplinary assessment. The absence of expert

involvement results in overly formalistic decision-making and an inability to adequately assess evidence in the context of armed conflict, international humanitarian law, and politically motivated persecution.

Sixth, the composition of the Commission has not been revised or renewed in light of the radically changed scale and nature of unlawful deprivation of personal liberty following the full-scale invasion. The absence of transparent competitive procedures for selecting civil society representatives and the limited institutional representation reduce pluralism, hinder the renewal of expertise, and negatively affect public trust in the Commission's work.

Seventh, even in cases where the fact of deprivation of personal liberty has been established, the state fails to ensure effective implementation of social guarantees. The non-payment of annual state financial assistance during 2023–2025 and the de facto suspension of the Levko Lukianenko State Scholarship demonstrate that recognition of rights at the formal level does not translate into their realisation in practice. Such failures undermine the credibility of the state's social protection system and exacerbate the vulnerability of persons affected by armed aggression.

Finally, the Commission's work must be viewed not solely through the prism of administrative procedure, but as part of a broader system of human rights protection, transitional justice, and symbolic recognition of victims of armed conflict. The Commission's decisions have a profound impact on the dignity, rehabilitation, and reintegration of affected persons, as well as on the state's ability to document violations of international humanitarian law and fulfil its international obligations.

In light of the above, urgent and comprehensive reform of the Commission's practices is required. This reform should focus on aligning administrative procedures with legal standards, revising evidentiary approaches, ensuring effective participation of applicants, institutionalising expert involvement, renewing the composition of the Commission, and guaranteeing the actual implementation of social guarantees provided by law. Only through such measures can the Commission fulfil its mandate as an effective mechanism for recognising harm, restoring rights, and affirming the state's responsibility towards victims of unlawful deprivation of personal liberty as a result of armed aggression against Ukraine.

FOOTNOTES

1. The Dnipropetrovsk, Sumy, Zaporizhzhia, Ivano-Frankivsk, Donetsk, Luhansk, Odesa, and Vinnytsia District Administrative Courts have considered a number of such cases (Nos. 160/23425/24, 480/2445/24, 280/4003/24, 300/8676/23, 200/3489/25, 200/6602/25, 360/1260/24, 420/25176/24, 120/7338/24).

2. In particular, this approach is consistent with the general principles of international criminal law, which allow for the use of witness testimony, indirect evidence, and contextual materials in cases concerning war crimes and unlawful deprivation of personal liberty, as well as with the UN Istanbul Protocol (para. 264) and the case law of the European Court of Human Rights.

3. Mykhailo Savva, ''Political Motives of Criminal Prosecution: How to Identify Them and How to Counteract Them,'' available at: https://www.youtube.com/watch?v=CtY-dcr24lc.

4. Parliamentary Assembly of the Council of Europe, Resolution 1900 (2012) — ''The Definition of Political Prisoner'' (adopted on 3 October 2012), available at: https://pace.coe.int/en/files/19150/html.

5. One representative each from the Ministry for Communities and Territories Development, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Defence, the Ministry of Internal Affairs, the Ministry of Social Policy, the Ministry of Health, the Ukrainian Parliament Commissioner for Human Rights, the Office of the Prosecutor General, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, and the Office of the President of Ukraine in the Autonomous Republic of Crimea.

6. Letter of the Ministry for Communities and Territories Development of Ukraine No. 7932/35/10-25 dated 2 April 2025.

7. Pursuant to Presidential Decrees of Ukraine No. 237/2019 of 17 May 2019, No. 514/2019 of 11 July 2019, No. 662/2021 of 16 December 2021, No. 663/2021 of 16 December 2021, No. 324/2022 of 10 May 2022, No. 853/2022 of 9 December 2022, and No. 831/2023 of 22 December 2023.

8. Approved by Resolution of the Cabinet of Ministers of Ukraine No. 328 of 18 April 2018.

ANNEXES

1. Report on the Results of a Public Expert Review of the Activities of the Ministry for Communities and Territories Development of Ukraine with regard to Compliance with Social and Legal Protection of Persons in respect of whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families.

2. Annexes to the Report on the Results of a Public Expert Review of the Activities of the Ministry for Communities and Territories Development of Ukraine with regard to Compliance with Social and Legal Protection of Persons in respect of whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine Has Been Established, and Members of Their Families.

3. Survey of Eleven Persons Affected by Unlawful Deprivation of Personal Liberty as a Result of Armed Aggression against Ukraine on the Importance of Symbolic Recognition of Their Lived Experience.

Annexes are available via QR code:

info@relativespp.org
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https://www.facebook.com/relativespp

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Sweden Sverige
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