

Mobilisation of vehicles in Ukraine

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The war in Ukraine has posed challenges to Ukrainian society that require not only unprecedented efforts and resources, but also the full consolidation of the people, business, and the state.

The army's needs to leverage resources are dictated by the need for the country's survival. At the same time, it is equally important to ensure the functioning of Ukraine's economy in times of war. The main goal of orderly and regulated mobilisation is to balance the process of

resource allocation between urgent military and economic needs.

It is also important for businesses to understand the mobilisation process to prevent the invaders from swaying public opinion and conducting disinformation campaigns.

1. Myths about vehicle mobilisation in Ukraine

The military can seize vehicles whenever, however and from whomever they want.

This is not true. Vehicles can be requisitioned for the military only in accordance with the procedure established by law. Any seizure of vehicles without complying with this procedure is a crime and entails criminal liability for the officials conducting such a seizure.

The military can stop a truck on the road and seize it.

No, such a situation cannot be legally implemented – it is impossible to ensure compliance with the procedure for using a vehicle for the needs of the military on the road. No regulation provides for such a possibility.

Vehicles are being taken away without pay.

This is not true. Mobilised vehicles are subject to return, and damages are subject to compensation, and in the case of eminent domain, the owner must receive compensation. Vehicles can only be seized free of charge from state-owned enterprises.

All such myths are caused by the lack of knowledge of the rules and procedures for the involvement of private vehicles for military purposes. Yes, it must be admitted that in times of war, there may be violations of such procedures or certain abuses by the authorised bodies. However, mobilisation is part of our country's ability to defend itself against the invasion. Understanding and following the rules are necessary not to dodge it, but to maintain a balance between the critical needs of national defence, the rule of law and the economy's functioning in wartime.

2. Ways of requisitioning vehicles for military use

During martial law, state authorities may involve transport for military purposes in several ways:

- eminent domain;
- expropriation;

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- mobilisation.

Each of these methods is carried out under a separate procedure.

Related article: Update on reservation of employees liable for military service in Ukraine

Moreover, vehicles can be seized (expropriated) only from state-owned enterprises. Private transport may only be subject to eminent domain or mobilisation.

3. Eminent domain

Legal regulation

The Law of Ukraine "On the Transfer, Compulsory Alienation or Seizure of Property under the Legal Regime of Martial Law or a State of Emergency" regulates the eminent domain of transport under martial law. The procedure of eminent domain is set out in Resolution of the Cabinet of Ministers of Ukraine No. 998 dated 31.10.2012.

Definition

Eminent domain involves depriving the owner of their ownership of a vehicle. Eminent domain is carried out only on condition of full advance or subsequent reimbursement of the cost of the vehicle being seized.

Authorised bodies

Eminent domain during martial law is carried out by the military command together with military administrations (if any) independently or with the involvement of executive authorities and local self-government bodies.

The decision on eminent domain taken by the military command must be approved by the regional, district, Kyiv city state administration or the executive body of the relevant local council.

However, such an approval is not required in areas of active military operations.

The legislation establishes a list of persons who may be referred to as military command and, accordingly, are authorised to make decisions on eminent domain, namely:

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- The General Staff of the Armed Forces of Ukraine;
- Command of the Joint Forces of the Armed Forces of Ukraine;
- Commands of the branches and separate services of the Armed Forces of Ukraine;
- the management of operational commands;
- commanders of military formations, units of the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the State Special Transport Service, the State Service for Special Communications and Information Protection of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the State Protection Department of Ukraine.

Only these bodies and officials are authorised to make decisions (in the form of an order or directive) on the eminent domain of private property during martial law.

Note that military administrations do not belong to the military command and are not authorised to make decisions on the eminent domain of vehicles.

Procedure

Following the decision on eminent domain, the property is appraised. Such an appraisal is financed by the body that made the decision on eminent domain at the expense of the state budget.

After the property is appraised, a relevant act of eminent domain is drawn up as per the form approved by a resolution of the Cabinet of Ministers of Ukraine.

The act of eminent domain is signed by the owner of the vehicle and authorised persons of the military command and the body that approved the decision on eminent domain. The document must be sealed with the seals of the military command and/or bodies that approved the expropriation.

The document must bear the seals of the military command and/or the authorities that approved the eminent domain.

The act may be drawn up, and the vehicle, accordingly, is subject to eminent domain, even in the absence of the owner. In this case, the owner is entitled to review the act and receive a copy of it at any time (this copy will be required for subsequent reimbursement of the value of the seized vehicle).

From the date of signing the act, the property in respect of which the decision on eminent domain was made is transferred to state

ownership.

Compensation

Compensation for the eminent domain of a vehicle may be advance or subsequent.

If the vehicle is subject to eminent domain on the terms of advance compensation, the property owner receives payment based on the property appraisal report prior to the date of the eminent domain act.

If advance compensation is not possible, the eminent domain is carried out on the terms of subsequent compensation for the value of the seized vehicle.

Subsequent compensation for the value of the transport is made within five budgetary periods following the lifting of martial law. To receive a compensation, the owner of the vehicle shall submit an application to the territorial centre for procurement and social support at the place of eminent domain. The application must be accompanied by a property appraisal report issued prior to the eminent domain and an act of eminent domain.

It should be borne in mind that Ukrainian legislation does not specify who decides on the possibility or impossibility of advance compensation. Therefore, in practice, this matter is up to the command and the authorities that approve this decision. In any case, the procedure for reimbursement must be reflected in such a decision.

4. Vehicle mobilisation

Definition and legal regulation

Unlike eminent domain, vehicle mobilisation does not involve the transfer of ownership to the state. Mobilisation of transport is carried out as part of the companies' military transport obligation established by the Law of Ukraine "On Mobilisation Preparation and Mobilisation".

The procedures and order of fulfilment of this obligation are set out in the Regulation on Military Transport Duty approved by the Cabinet of Ministers of Ukraine.

Authorised bodies

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Vehicles are mobilised by territorial recruitment and social support centres, the Central Directorate or regional offices of the Security Service of Ukraine, and relevant units of the Foreign Intelligence Service of Ukraine.

In order for these bodies to mobilise vehicles, a relevant order of local state administrations is required.

Mobilisation limits

Vehicles are mobilised within the limits of vehicle seizure approved by the Cabinet of Ministers of Ukraine.

Information on the limits is not open to the public. To find out the mobilisation limits for your company, you should contact the relevant state administration.

Exemptions

The following companies may be exempt from mobilisation of vehicles:

- companies that perform mobilisation tasks under contracts concluded with the Ministry of Defence of Ukraine;
- companies whose vehicles are involved in the production process related to mobilisation tasks;
- companies of high social need;
- public sector banks.

The list of companies of high public need shall be approved by the Cabinet of Ministers of Ukraine upon the proposal of the Ministry of Defence of Ukraine. However, at the time of writing, this list has not been approved yet.

If the company's activities are of high social need (vehicles are involved in the transportation of humanitarian aid, ensuring the functioning of critical infrastructure facilities, and meeting other critical social needs), it is necessary to ensure that letters justifying the company's high social need are drafted and sent to local executive authorities and recruitment and social support centres in advance.

Additional obligations of vehicle owners in relation to mobilisation

The military transport duty includes not only the obligation to transfer vehicles. The heads of companies whose vehicles are intended to meet the needs of military units are obliged to notify the territorial recruitment and social support centres, where the vehicles are registered, within 7 days in the following cases:

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- change of the company's name or form of ownership;
- sending vehicles and equipment to other regions or outside Ukraine with a long-term stay;
- sale or long-term lease of vehicles;
- vehicles being pledged as collateral;
- other circumstances that impede the transfer of vehicles to military units.

Procedure

Vehicle mobilisation is carried out directly through the territorial recruitment and social support centres by serving the companies with the relevant partial orders.

The partial order must specify the vehicles to be transferred to the military units, as well as the procedure, locations, and terms of their transfer.

The partial order must be signed and sealed by the head of the local state administration and the head of the territorial centre for recruitment and social support.

According to the partial order, companies ensure the delivery and transfer of vehicles to military formations within the deadlines set in the order at the transfer sites. The vehicles must be in good working condition and must be accompanied by the relevant registration documents and documents certifying their technical condition. In addition, the vehicles must be equipped with spare parts, repair tools and fuelling equipment. The list of equipment is clearly defined by the Cabinet of Ministers of Ukraine.

The transfer of vehicles is documented by a relevant transfer and acceptance certificate as per the form established by the Cabinet of Ministers of Ukraine.

The value of the transferred vehicle is usually determined based on its residual book value. However, at the owner's own initiative and at the owner's expense, an independent appraisal of the vehicle or equipment may be carried out by an appraiser.

The transfer and acceptance certificate must be drawn up in three copies. The certificate shall be signed and sealed by the head of the company, the head of the territorial recruitment and social support centre and the commander of the military unit to which the vehicle or equipment is transferred.