АСОЦІАЦІЯ ПРАВНИКІВ УКРАЇНИ
UKRAINIAN BAR ASSOCIATION

ІНСТИТУТ З ПРАВ ЛЮДИНИ
HUMAN RIGHTS INSTITUTE

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PRAVO-JUSTICE

EXPERTISE FRANCE
GROUPE AFD

REPORT

ON THE RESULTS OF THE 3RD PHASE OF THE PROJECT

MONITORING OF COURT PROCEEDINGS AND ANALYSIS OF COURT DECISIONS IN WAR CRIMES CASES

(UNDER ARTICLE 438 OF THE CRIMINAL CODE OF UKRAINE)

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This report was prepared by the Ukrainian Bar Association and the UBA Human Rights Institute within the framework of the Project «Monitoring of Court Proceedings under Article 438 of the Criminal Code of Ukraine and Analysis of Court Decisions on War Crimes and Crimes Against the Fundamentals of National Security", which started on 1 November 2024 with the support of the American people through the United States Agency for International Development (USAID) under the Justice for All Action. On 27 January 2025, the Project was suspended.

Since the end of March 2025, the activities to monitor court hearings and analyse court decisions on war crimes have continued with the support of the EU Project Pravo-Justice, implemented by Expertise France.

The initiative is being implemented with the support of the Supreme Court, the Office of the Prosecutor General and the Coordination Center of Legal Aid Provision. Expertise is provided by the International Bar Association (IBA) and its Human Rights Institute (IBAHRI).

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CONTENTS

LIST OF ABBREVIATIONS AND WORDS OF FOREIGN ORIGIN

AF of RF – Armed Forces of the Russian Federation

CCCU SC – Criminal Court of Cassation of the Supreme Court

CCU – Criminal Code of Ukraine

CoE CM – Committee of Ministers of the Council of Europe

Convention – Convention for the Protection of Human Rights and Fundamental Freedoms

CPC of **Ukraine** – Criminal Procedure Code of Ukraine

CRSV – Conflict-related sexual violence

ECtHR – European Court of Human Rights

FLA – Free legal aid

FPV – First Person View - drones with a first-person camera, often used in reconnaissance or as attack drones.

Geneva Convention – Geneva Convention relative to the Treatment of Prisoners of War

HCJ – High Council of Justice

HQCJ – High Qualification Commission of Judges (of Ukraine)

IBA – International Bar Association

IBAHRI – International Bar Association's Human Rights Institute

ICCPR – International Covenant on Civil and Political Rights

IHL – International Humanitarian Law

OPG – Office of the Prosecutor General

PPO – public prosecutor's office

Protocol Additional I to the Geneva Conventions – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Rome Statute – Rome Statute of the International Criminal Court

SC – Supreme Court

SJA – State Judicial Administration (of Ukraine)

UBA – Ukrainian Bar Association

Universal Declaration – Universal Declaration of Human Rights

USRCD – Unified State Register of Court Decisions

VC – Videoconference

FOREWORD

Ukraine's judicial system today not only ensures the rule of law, but also forms the basis for the country's future recovery. Despite the war, Ukrainian courts continue to administer justice in cases that are extremely challenging, both legally and morally.

This report is the result of the hard work of monitors, experts, and partners who together strive to improve the quality of war crimes trials. We are convinced that respect for human rights, even in the most difficult circumstances, is the key to justice, trust, and the true strength of a democratic state.

We are grateful to everyone who contributed to this process. We hope that the recommendations of the report will be useful for the professional community and will contribute to strengthening justice in Ukraine.

Ukrainian Bar Association and UBA Human Rights Institute

The Ukrainian justice system continues to fulfil its constitutional function even during wartime. Courts try cases, prosecutors support indictments, lawyers defend their clients' rights, and civil society monitors compliance with fair trial standards. The daily work of thousands of people builds public trust and upholds the rule of law in wartime.

Monitoring court proceedings in war crimes cases is particularly important. It helps to identify both the strengths and challenges of the system and to develop specific recommendations for its improvement.

We are grateful to all the experts, monitors and partners who have contributed to this work. This report is not only a summary of observations, but also a roadmap for further action that will contribute to strengthening justice and bringing Ukraine closer to the European Union.

Team leader of the EU Project Pravo-Justice Oksana TSYMBRIVSKA

Judicial authorities play a key role in bringing those guilty of war crimes to justice, ensuring that those who violate the laws and customs of war are punished and that victims have the opportunity to be heard and receive compensation for the harm caused by the crimes. The prompt, full and impartial adjudication of war crimes cases is also important for preventing similar crimes in the future, which is important not only for Ukraine but also for the entire international community, and contributes to the restoration of peace, stability and trust in the judicial system.

At the same time, systematic monitoring of court proceedings allows for more active communication with Ukrainian and international society regarding the judicial review of war crimes cases.

It is the Supreme Court that ensures the formation of uniform approaches to the application of legal norms, in particular in war crimes cases, and eliminates discrepancies in the decisions of courts of first and appellate instances.

At the same time, uniformity of practice is achieved, among other things, through the exchange of experience, clarification of legal issues and other forms of interaction with the professional community, in particular the Ukrainian Bar Association.

Chairman of the Supreme Court Stanislav KRAVCHENKO

Investigations and trials in war crime cases are intended to ensure justice, prevent impunity and contribute to the preservation of historical memory of the evil committed by the aggressor state against Ukraine.

Not only the public prosecution service supports public prosecution of these crimes but also coordinates law enforcement agencies' interventions at the pre-trial stage to ensure that these crimes are prosecuted in a systemic and targeted manner.

Ensuring proper quality of the prosecution and the trial as a whole is also one of the prosecutor's tasks, which always remains in the focus of attention.

It is important that the state of play with war crimes proceedings is reviewed not only by state authorities, but also by civil society. This helps to see the bigger picture, ensure objectivity, and draw attention to problems that might otherwise go undetected.

Head of the Department for Combating Crimes Committed in the Context of Armed Conflict, Office of the Prosecutor General, Yurii Belousov

Fair justice in war crimes cases is impossible without real, meaningful and professional enforcement of the right to defence and adequate support for victims. The monitoring materials confirm the scale of the challenge: the vast majority of proceedings are conducted in special *in absentia* trials, which creates additional risks for the effective exercise of the right to defence and requires lawyers to have special training and adapted procedural decisions. At the same time, there is a need for significant improvement in the quality of legal aid, in particular its practical component and ensuring the effective participation of the defence. Monitoring has also shown that sensitive treatment of victims and witnesses, including informational, psychological and organisational support, significantly improves the quality of court proceedings. Taking into account the recommendations of the report's authors, the Coordination Centre for Legal Aid will develop specialised training programmes for lawyers working on war crimes cases and will consider strengthening institutional and psychological support for lawyers who bear this difficult professional burden.

The free legal aid system is consistently involved in this joint effort alongside the Supreme Court, the Office of the Prosecutor General, professional and public partners, supporting the monitoring of court proceedings and the implementation of recommendations from all three phases of the Project.

With gratitude to all partners and colleagues who participated in monitoring and preparing this report, we consider it a roadmap for further strengthening access to justice and fairness in Ukraine.

Director of the Coordination Centre for Legal Aid Oleksandr BARANOV

Trial monitoring is a tool for strengthening the right to a fair trial. It is a method of gathering information that allows for the assessment of both the strengths and weaknesses of the system and the identification of areas in need of reform. Trial monitoring contributes to ensuring the transparency and accountability of all participants in the process and prevents abuse within the system. The very fact

that courts allow monitors to carry out this important work sends a powerful signal: the courts are willing to cooperate, they have nothing to hide, and they are open to the scrutiny that monitoring entails.

Despite the importance and significance of this activity, in many countries around the world, trial monitors are prohibited from doing their work. In particular, we encountered this in Myanmar, where we were not allowed to monitor the trial of a former political leader.

In Ukraine, on the contrary, we saw overwhelming support from the courts: they facilitate monitoring, engage in dialogue, listen to conclusions, and accept reasonable criticism. All this is happening against the backdrop of an ongoing armed conflict, which is now in its fourth year and shows no sign of ending. As observers have told us, some court hearings take place during shelling, with air raid sirens, the sound of explosions and debris hitting buildings. We both visited Ukraine after the start of Russia's full-scale invasion and saw the realities of war with our own eyes.

Ukraine is processing a huge number of court cases, and the number of reports of war crimes is even greater. Although not all reports will lead to indictments and court cases, the sheer volume of evidence creates an incredible burden on Ukraine's judicial system. No judicial system in the world could remain unburdened under the conditions Ukraine faces, especially in the context of ongoing war.

We admire Ukrainian resilience.

The resilience of Ukrainian judges, prosecutors, lawyers, and above all, victims and witnesses, testifies to Ukraine's deep need for justice and accountability. Justice and accountability that Ukraine has been deprived of for decades. We must support these efforts with all available means. Our response to these atrocities will determine Ukraine's future. And Ukraine's future is only possible with an adequate legal response. Impunity will rob Ukraine of its future.

This does not mean that there are no challenges, but it is clear that Ukraine is ready to face them head-on.

Further legal reforms are needed to protect victims and witnesses. This includes both changes to legislation and the implementation of new projects that help victims and witnesses navigate all stages of the criminal process.

More needs to be done to ensure the safety of all participants in court proceedings. In particular, this concerns the availability of shelters and ensuring that existing shelters can accommodate everyone who is at risk.

The number of *in absentia* proceedings needs to be reduced. Currently, the vast majority of cases are heard in absentia, and lawyers try to provide effective defence to suspects. Ukraine is resorting to creative approaches to ensure that defendants are informed about the course of court proceedings. This deserves approval. However, more needs to be done to ensure that victims and witnesses have the opportunity to meet the perpetrators in person, hear their apologies and experience the process of restoring justice.

Work needs to continue on optimising case management, digitising evidence, ensuring secure communication between investigative bodies, etc. Ukraine is moving in this direction, but progress often depends on available resources. Against the backdrop of declining international aid worldwide, the support Ukraine currently receives is insufficient to implement new technologies, despite their critical importance for court proceedings.

All these steps can be implemented — over time and with the support of the international community, which is ready to lend a hand where needed.

Unfortunately, in recent months we have heard about the closure of one key justice project after another due to cuts in external support. Over the past three years, the international community has provided Ukraine with unprecedented support. But the work is not yet complete. Premature termination of this assistance will mean the loss of the progress already achieved.

We must remember: justice requires investment. And overcoming the consequences of impunity will be much more expensive.

We warmly welcome the ongoing work of the Ukrainian Bar Association in monitoring war crimes trials and supporting justice in this way.

IBA Executive Director, Dr Mark Ellis

Senior Lawyer, IBAHRI Programme, Dr Evelina Ochab

INTRODUCTION

Since the beginning of the full-scale armed aggression of the Russian Federation against Ukraine, the issue of prosecution for war crimes has become particularly important – both for the victims and for the State, which is obliged to ensure justice and protection of human rights in times of war. In these circumstances, the judicial system of Ukraine not only fulfils its constitutional function of administering justice, but also lay the basis for overcoming impunity, restoring trust in institutions and strengthening Ukraine's international reputation as a state governed by the rule of law. The quality and openness of justice in war crime cases largely determines the perception of the state's ability to protect human rights in times of war, as well as the trust in its international obligations.

According to the Office of the Prosecutor General, as of 1 September 2025, 179 803 offences classified under Article 438 of the Criminal Code of Ukraine (war crimes) were registered in Ukraine. For comparison, as of the end of May 2024, there were 129,065 cases. The overall dynamics shows a steady increase in the number of registered episodes, which reflects both the scale of the crimes and the efforts of law enforcement agencies to document and investigate them.

Since July 2023, the Ukrainian Bar Association has been implementing an initiative to monitor court hearings and analyse court decisions in war crime cases, focusing on proceedings under Article 438 of the Criminal Code of Ukraine.

In 2023-2024, these activities were implemented in cooperation with the USAID Human Rights in Action Program, implemented by the Ukrainian Helsinki Human Rights Union (UHHRU).

During the first two phases of the Project, which covered the periods of July-October 2023 and December 2023-May 2024, respectively, 605 court hearings in 172 unique criminal proceedings on war crimes were monitored, as well as 35 verdicts of first instance courts, 10 rulings of appellate courts, and 2 decisions of the cassation court. The monitoring was conducted in 10 regions of Ukraine based on the approved methodology, covering the key components of the right to a fair trial and related human rights.

The monitoring focused on such fundamental guarantees as the right to an independent and impartial court, the right to translation, the presumption of innocence, publicity and proper reasoning of court decisions. The scope of exercise of certain elements of the right to defence may raise doubts, in particular in the context of proceedings in absentia (which accounted for 98% of all monitored cases). Particular attention should be paid to the mechanism for notifying the accused of the proceedings: the practice of publishing in the Uriadovyi Kurier newspaper prevailed, which is a formal approach, often far from being effective. In some cases, other means of notification were used, but they failed to become common practice.

The monitors also identified structural challenges that tend to worsen: a shortage of judges, an increased workload for individual courts, frequent postponements of hearings, and difficulty in accessing complete information on cases. Although translation was usually provided in cases where the accused were present, in some cases doubts arose as to whether the right to defence had been exercised in full. Additionally, the project identified the need to improve the quality of legal aid, both in terms of its availability and practicality. The project also identified moral dilemmas and security risks for lawyers working on war crime cases.

Despite the challenges, there is a positive trend towards an increase in the quality of court decisions: verdicts are becoming more reasoned, contain a comprehensive legal analysis of the crime, and the narrative of the verdicts is more structured and better motivated.

Full reports on the first two phases are available here:

Report on Phase I (July-October 2023)

Report on Phase II (December 2023 - May 2024)

The third phase of the Project covers the period from 1 November 2024 to 30 June 2025. Until 27 January 2025, it was implemented with the support of the American people provided through the United States Agency for International Development (USAID) under the Justice for All Action. After a two-month break in February-March 2025, the activity was resumed with the support of the EU Project Pravo-Justice implemented by Expertise France.

In the third phase, 292 criminal proceedings and over 1100 court hearings were monitored[1] . The geographical coverage included: Dnipro city and Dnipro region, Zaporizhzhia city and Zaporizhzhia region, Kyiv city and Kyiv region, Mykolaiv city and Mykolaiv region, Odesa city and Odesa region, Sumy city and Sumy region, Kharkiv city and Kharkiv region, Kherson city and Kherson region, Cherkasy city and Cherkasy region, Chernihiv city and Chernihiv region. Compared to the previous phases, monitoring was not conducted in Donetsk region due to the absence of proceedings in the courts of this region.

Despite limited resources, the monitors attended 644 court hearings. This volume allowed us to form a representative sample for the analysis of court practice.

As part of the analytical component, 55 verdicts of first instance courts delivered under Article 438 of the Criminal Code of Ukraine were analysed. Information on four out five is not subject to disclosure in accordance with paragraph 4 of part one of Article 7 of the Law of Ukraine "On Access to Court Decisions". Nine court rulings of the courts of appeal were also analysed, two of out of nine were appealed to the Criminal Cassation of Court the Supreme Court. During the analysed period, no decision of the cassation instance was issued in cases under Article 438 of the Criminal Code of Ukraine.

This report is being prepared against the backdrop of an important historical step: on 21 August 2024, the Verkhovna Rada of Ukraine ratified the Rome Statute of the International Criminal Court. This decision confirmed Ukraine's commitment to the consistent implementation of the principles of international humanitarian and criminal law, and also reinforced the importance of analysing national practices in light of the obligations that the country undertakes as a party to the Rome Statute.

The monitoring was coordinated and the analytical report was prepared by the team of the Ukrainian Bar Association, the UBA Human Rights Institute, and Project experts. The process involved professional monitors – attorneys and lawyers who were trained and acted on the basis of a unified methodology.

The Project is being implemented with the support of the Supreme Court, the Office of the Prosecutor General, and the Coordination Center for Legal Aid Provision, which have been facilitating its implementation throughout all three phases.

The International Bar Association and its Human Rights Institute have played a special role in strengthening the analytical component of the Project, providing expert support since the beginning of its implementation.

We are grateful to all monitors, experts and partners of the Project for their constructive dialogue and cooperation.

1 Due to the interruption in the Project implementation, information was collected in fragments during certain periods, so the exact number of meetings held cannot be determined.

METHODOLOGY

The Project's monitoring and analysis of court proceedings was based on a comprehensive approach that combines direct observation of court hearings and analysis of published court decisions. The main goal of the methodology is to provide an objective, impartial and representative study of the practice of considering war crime cases under Article 438 of the Criminal Code of Ukraine.

Monitoring principles

The monitoring was carried out in compliance with the following principles:

- **Independence** – monitors did not represent any of the parties to the proceedings;
- **Objectivity and impartiality** – conclusions were based solely on facts;
- **Non-interference** – monitors did not influence the course of the trial;
- **Confidentiality and integrity** – monitors keep personal data and other sensitive information that may become known to them while participating in court proceedings confidential and adhere to high ethical standards.

Monitoring algorithm

For the purposes of monitoring:

- a sample of criminal proceedings under Article 438 of the CCU was formed based on open sources;
- visits were made to court hearings in selected regions;
- observations were registered using a standardised **Monitor's Questionnaire** (see Annexes), which contained both a block of general information about the proceedings and a number of thematic sections that allowed assessing compliance with key guarantees of a fair trial. In particular, the analysis covers the issues of publicity of the proceedings; independence and impartiality of the court; ensuring the right to defence and participation in the proceedings; equality of arms; presumption of innocence; observance of reasonable time limits; efficiency of proceedings; provision of translation services; inviolability of the person, and reasoning of court decisions.

Approach to the analysis of court decisions

The analysis of court decisions was criteria-based. The following were assessed:

- completeness and reasonableness of the factual circumstances stated;

- correctness of legal qualification of actions in accordance with national and international law;
- depth of evidence analysis and application of international legal norms;
- quality and clarity of the reasoning part of the judgement.

The breakdown of court decisions by types to identify common practices, deviations and trends, was exercised, which allowed for a comparative analysis and formulation of recommendations. The analysis was carried out using logical, dialectical, systemic and structural, and synergistic methods.

Limitations and challenges

During the implementation of the third phase, the Project team faced the following impediments:

- **Incomplete access to information**: the lack of a centralised database of proceedings required manual collection of data from open sources;
- **Security factors:** some court hearings were held in regions close to the war zone, which made it difficult or impossible for monitors to be physically present;
- **Interruption in implementation**: in February – March 2025, monitoring was suspended, which affected its continuity;
- **Institutional barriers**: in some cases, there was limited access to court hearings or information about them.

SECTION 1. ANALYSIS OF THE RESULTS OF COURT HEARINGS MONITORING

1.1. General overview

During the third phase of the Project, 292 proceedings and 1,100 court hearings in war crime cases were identified. Despite a temporary break and limited resources, the monitors attended 644 court hearings in ten regions across Ukraine. Below is a summary of the proceedings monitored, indicating the courts and the case numbers, which allows us to assess the geographical coverage and the scope of the empirical base collected.

Dnipro city and Dnipro region – 26 proceedings

Industrialnyi District Court of the city of Dnipro	№ 242/5554/21 № 202/6572/24	
Kirovskyi District Court of Dnipropetrovsk city	№ 203/6992/24 № 203/7699/24 № 203/7699/24	№ 242/930/24 № 203/2682/25
Leninskyi District Court of Dnipropetrovsk city	№ 205/1739/24	
Novomoskovskyi City District Court of Dnipropetrovska oblast	№ 183/1655/25	
Pavlohradskyi City District Court of Dnipropetrovska oblast	№ 185/7043/23 № 185/3969/23 № 185/6845/24 № 201/4513/23 № 185/10275/22 № 185/11252/24	№ 185/3990/23 № 185/13596/24 № 185/490/25 № 185/13999/24 № 185/2507/25 № 185/1532/25

Pershotravenskyi City Court of Dnipropetrovska oblast	№ 186/812/24 № 186/1644/23
Petropavlivskyi District Court of Dnipropetrovska oblast	№ 188/1910/24
Sinelnykivskyi City District Court of Dnipropetrovska oblast	№ 191/3943/24 № 191/2189/25

Zaporizhzhia city and Zaporizhzhia region – 17 proceedings

Zaporizhzhia District Court of Zaporizhzka oblast	№ 317/2944/24	
Zhovtnevyi District Court of Zaporizhzhia	№ 331/6415/24	
Zavodskyi District Court of Zaporizhzhia	№ 332/2574/24 No. 332/3499/24 – in the presence of the accused	
Kommunarskyi District Court of Zaporizhzhia	№ 333/8149/23 № 333/5566/24	№ 333/116/25 № 333/3856/25
Leninskyi District Court of Zaporizhzhia	№ 334/9583/24 № 334/2065/25	
Ordzhonikidzevskyi District Court of Zaporizhzhia	№ 335/3484/24	
Khortytskyi District Court of Zaporizhzhia	№ 337/2029/24 № 337/6022/24 № 337/4647/24	№ 337/1545/25 № 337/2093/25 № 337/2348/25

Kyiv city and Kyiv region – 136 proceedings

Boryspilskyi City District Court of Kyiv oblast	№ 939/1024/23	
Borodianskyi District Court of Kyiv oblast	№ 939/1258/24 № 939/226/23 № 939/2192/24 No. 369/6338/23 № 939/1024/23 № 939/899/24	№ 939/897/24 № 939/1178/24 No. 939/2033/24 – in the presence of the accused № 369/6336/23 № 939/2099/23

Brovary City District Court of Kyiv oblast	№ 361/10694/23 № 361/1552/23 № 361/1117/24 № 361/8369/24 № 361/5761/22 № 361/4941/24 № 361/4358/23	№ 361/3366/23 № 361/9743/24 № 361/4245/24 № 361/3674/24 № 361/4695/22 № 361/2508/25
Vyshgorodskyi District Court of Kyiv oblast	№ 363/2563/24 № 363/872/23 № 363/2119/24 № 363/2107/24 № 363/3994/23 № 363/4781/24	№ 363/2983/24 № 363/6664/23 № 363/972/24 № 363/581/24 № 363/2767/25
Darnytskyi District Court of Kyiv	№ 753/20268/24 № 753/7566/25	
Desnianskyi District Court of Kyiv	№ 754/18236/23 № 754/9472/24 № 754/15727/23 № 754/4075/22	№ 754/12142/22 № 754/17063/23 № 754/994/25
Dniprovskyi District Court of Kyiv	№ 755/20220/21 № 752/11014/22	
Holosiivskyi District Court of Kyiv	№ 752/28858/21 № 761/9766/22 № 752/22869/23	

Irpin City Court of Kyiv oblast	No. 367/3598/23 – in the presence of the accused № 367/6497/24 № 367/8696/23 № 367/3387/23 № 367/4005/24 № 367/10949/24 № 367/4183/22 № 367/4583/23 № 370/140/24 № 367/6476/24 No. 367/2115/23 – in the presence of the accused № 367/11332/24 № 367/6336/24 № 367/3121/24 No. 367/6457/24 – in the presence of the accused № 367/8744/23 № 370/1485/23 № 367/1893/24 № 367/11407/24 № 367/2497/23 № 367/5761/23 № 367/3395/23 № 367/11498/24 № 367/4599/22 № 367/6700/24	№ 367/4529/22 № 367/11492/24 № 367/2016/23 № 367/1734/23 № 367/7122/24 № 367/11845/24 № 367/2276/23 No. 367/7326/23 – in the presence of the accused № 367/4723/24 № 367/8716/24 № 367/2397/23 № 367/2218/23 № 367/206/23 № 367/3951/24 № 367/2769/23 № 367/304/25 № 367/2004/25 № 367/1956/25 № 367/165/25 № 367/5463/24 № 370/1630/24 № 367/3612/25 № 367/3608/25 № 367/3720/25 № 367/5038/25
Kyievo-Svyatoshinskyi District Court of Kyiv oblast	№ 370/2813/23 № 370/816/23 № 369/3671/24 № 369/15425/24	№ 370/511/24 № 369/20625/24 № 369/2003/25 № 369/2004/25
Shevchenkivskyi District Court of Kyiv	№ 761/9575/22 № 761/37938/24 № 761/28971/22 № 761/10603/23 № 761/2773/25	№ 761/10609/23 № 761/18214/24 № 761/7560/25 № 761/12118/25

Solomianskyi District Court of Kyiv	№ 760/7344/22 № 761/9765/22 № 760/21748/24 № 760/2175/24 № 760/11796/22	№ 760/9698/22 № 760/27399/24 № 760/8511/24 № 760/6081/22 № 761/9706/22
Makarivskyi District Court of Kyiv oblast	№ 370/1757/23 № 370/731/24 № 370/2058/22	№ 370/399/23 № 370/182/23 № 370/272/25
Obolonskyi District Court of Kyiv	№ 756/2514/22	
Pecherskyi District Court of Kyiv	№ 757/37652/24 № 757/58283/24	

Mykolaiv city and Mykolaiv region – 11 proceedings

Mykolaivskyi Court of Appeal	№ 485/1015/23	
Snihurivskyi District Court of Mykolaiv oblast	№ 485/2061/23 № 485/2099/24 № 485/742/24 № 485/2098/24 № 485/2029/24	№ 485/2543/24 № 485/167/25 № 485/848/25 № 485/1155/25
Tsentralnyi District Court of Mykolaiv	№ 490/2519/24	

Odesa city and Odesa region – 4 proceedings

Malynovskyi District Court of Odesa	№ 521/14869/23 № 521/217/23 № 521/14861/23
Odesa Court of Appeal	№ 523/224/23

Sumy city and Sumy region - 7 proceedings

Krasnopilskyi District Court of Sumy oblast	№ 578/264/24
Lebedynskyi District Court of Sumy oblast	№ 950/3216/24
Sumy Court of Appeal	№ 950/3703/23

Trostianetskyi District Court of Sumy oblast	№ 588/1952/24 № 588/800/24 – in the presence of the accused	№ 588/376/25 № 588/811/25

Kharkiv city and Kharkiv region – 38 proceedings

Balakliiskyi District Court of Kharkiv oblast	№ 610/3973/24 № 610/1715/24 № 610/4551/24	
Derhachivskyi District Court of Kharkiv oblast	№ 619/2354/24 № 619/10509/24	
Dzerzhynskyi District Court of Kharkiv (Shevchenkivskyi District Court of Kharkiv)	№ 638/4038/24 № 638/8749/23 № 638/18046/24 № 638/87/24	№ 638/24182/24 № 638/4464/25 № 638/5357/25 № 638/6562/25
Chervonozavodskyi District Court of Kharkiv (Osnovianskyi District Court of Kharkiv)	№ 646/3362/23 № 646/485/25	
Chuhuivskyi City Court of Kharkiv oblast	№ 636/3302/23 № 646/3363/23 № 636/8387/24 № 636/2264/24 № 636/2365/24 № 636/2650/24	№ 636/10059/24 № 636/2920/24 № 636/1342/25 № 636/1388/25 № 636/837/25 № 636/2634/25
Ordzhonikidzevskyi District Court of Kharkiv (Industrialnyi District Court of Kharkiv)	№ 644/9444/24 № 638/11148/23 № 644/502/24	№ 644/685/24 № 644/9874/23 № 644/5405/24
Kharkiv Court of Appeal	№ 953/7767/22	
Kharkivskyi District Court of Kharkiv oblast	№ 635/12445/24 № 635/2700/23	№ 635/11013/23 № 635/3904/25

Kherson city and Kherson region – 36 proceedings

Velykooleksandrivskyi District Court of Kherson oblast	№ 650/3777/24 № 650/866/25 № 650/2921/25
Novovorontsovskyi District Court of Kherson oblast	№ 954/72/24 № 954/266/23 № 650/1572/25

Kherson City Court of Kherson region	№ 766/16568/24 № 766/18628/24 № 766/6280/24 № 766/1133/24 № 766/7468/23 № 766/759/23 № 766/648/23 № 766/6489/23 № 766/764/23 № 766/10357/24 № 766/4546/24 № 766/9963/24 № 766/15093/24 № 766/10206/23 № 766/16263/24	№ 766/16458/24 № 766/9640/23 № 766/3040/23 № 766/10363/24 № 650/1147/24 № 766/9711/23 № 766/14523/24 № 766/10362/24 № 766/1299/25 № 766/2074/25 № 766/1633/25 № 766/6245/25 № 766/1539/25 № 766/7069/25 № 766/332/25

Cherkasy city and Cherkasy region – 1 proceeding

Sosnivskyi District Court of Cherkasy	№ 712/3576/24

Chernihiv city and Chernihiv region – 16 proceedings

Bobrovytskyi District Court of Chernihiv oblast	№ 729/861/24 № 729/169/25	
Ichnianskyi District Court of Chernihiv oblast	№ 733/37/24	
Menskyi District Court of Chernihiv oblast	№ 739/772/24	
Prylutskyi City District Court of Chernihiv oblast	№ 733/312/25	
Ripkinskyi District Court of Chernihiv oblast	№ 743/908/24 № 743/319/25 № 743/262/24	
Chernihivskyi District Court of Chernihiv oblast	№ 748/4032/24 № 748/3480/24 № 748/2174/24 № 748/2577/24	№ 748/4732/24 № 748/1793/24 № 748/3438/24 № 748/5045/24

1.2. Accessibility and publicity of justice

INTERNATIONAL STANDARD

The right for access to justice and public trial are integral components of a fair trial and the rule of law. These rights are enshrined in a number of key international instruments:

- **para. 1 of Article 6 of the Convention**, which provides that everyone is entitled to a public hearing by an independent and impartial tribunal, except where publicity would prejudice the interests of justice, national security, public order, morals, the interests of minors, or the privacy of the parties;[2]

- **Article 14 of the International Covenant**, which provides for similar exceptions and requires public pronouncement of judgments, except where the interests of minors require otherwise or where the case concerns matrimonial disputes or child custody;[3]

- **Articles 8 and 10 of the Universal Declaration**, which guarantee an effective judicial defence and a fair and public hearing by an independent tribunal;[4]

- **Articles 102, 104, 105, 107 of the Geneva Convention**, which stipulate that prisoners of war have the right to a public trial, notification of charges, etc;[5]

- **Article 75 of Protocol Additional I to the Geneva Conventions**, which enshrines the obligation of a fair and public trial, which ensures basic judicial guarantees;[6]

- **Articles 63, 64, 67 of the Rome Statute**, which stipulate that trials must be held in public, except in situations where secrecy is necessary to protect victims or witnesses; the accused has the right to a public hearing, etc.[7]

ECtHR PRACTICE

The ECtHR emphasises that restrictions on the right to access to justice or publicity of the trial must be proportionate, have a legitimate aim and not undermine the very essence of the right (Deweer v. Belgium, Guérin v. France, Rocchia v. France). Although the presence of the public in criminal proceedings is to be expected, it may sometimes be necessary to limit the openness and publicity of the proceedings in accordance with Article 6 of the Convention, for example, to protect a witness or his/her privacy, or to facilitate the free exchange of information and opinions in the interests of justice (B. and P. v. the United Kingdom, Frâncu v. Romani in terms of Article 8). [8]

OBSERVATIONS[9]

Information accessibility: good practices

2 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

3 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

4 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

5 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

6 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

7 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

8 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

9 Note: The examples provided are for illustrative purposes only and are not exhaustive, unless otherwise expressly stated. This approach is used in this section and throughout the report.

- **Public accessibility of information.** In most cases, information on the consideration of criminal proceedings for war crimes was open to the public, in particular, published on the official resources of the judiciary.

Information accessibility: areas for improvement

- **Lack of a centralised database** . Information on criminal proceedings for war crimes is still not accumulated in a single public system. As in previous phases, the Project team had to collect data manually from various sources: the Judiciary of Ukraine website, individual court websites, the USRPTI and court announcements. The fragmentation of sources and the lack of a unified presentation make it impossible to fully cover all hearings in this category of cases.

- **Lack of courtroom schedules.** In a number of courts (in particular, Kherson City Court, Vyshhorodskyi District Court of Kyiv oblast, Snihurivskyi District Court of Mykolaiv oblast, Pavlohradskyi City District Court of Dnipropetrovs'k oblast, Krasnopilskyi District Court of Sumy oblast, Bobrovytskyi District Court of Chernihiv oblast, Novovorontsovskyi District Court of Mykolaiv oblast, Zavodskyi District Court of Zaporizhzhia, etc.), court schedules were not posted in the court premises, although they remained available on their official websites.

- **Limited availability of procedural documents in the USRPTI.** In a number of criminal proceedings (No. 752/22869/23, Holosiivskyi District Court of Kyiv; No. 369/6338/23, Borodikanskyi District Court of Kyiv oblast; No. 367/8696/23, Irpin City Court of Kyiv oblast), there was insufficient publicity of procedural documents. For example, in the proceedings No. 752/22869/23, as of 05.05.2025, only one document was published, although the case was already at the stage of examination of evidence. The absence of key decisions (in particular, on the appointment of special proceedings) makes it impossible to properly inform the public.

Physical accessibility: good practices

- **General accessibility and cooperation.** In the vast majority of cases, monitors had free access to court hearings. The national judiciary and law enforcement agencies generally facilitated the monitoring. The Project team maintains constant interaction with the Supreme Court, the Office of the Prosecutor General, as well as regional courts and PPOs.

- **Presence of third-party observers.** The monitors regularly registered the participation in court hearings of representatives of other organisations – both international (in particular, foreign investigative journalists, No. 367/3598/23, No. 367/1956/25, Irpin City Court of Kyiv region) and national (NGO Media Initiative for Human Rights, NGO Human Rights House, representatives of the Coordination Center for Victims and Witnesses, etc.

- **Friendly reaction of the parties to the process to the presence of the public.** For example, the defence counsel praised the presence of monitors and the public, noting that it contributes to the observance of procedural discipline (No. 367/8696/23, Irpin City Court of Kyiv oblast).

- **Proper organisation of courtroom space.** During the monitoring, different approaches to the organisation of the space where court hearings were held were registered. In most cases, hearings were held in properly equipped courtrooms, with appropriate room size and technical equipment. For example, the courtroom in the Kyievo-Sviatoshynskyi District Court of Kyiv oblast was spacious and well-equipped, and was one of the best of the courtrooms visited.

Physical accessibility: areas for improvement

- **There were isolated cases of restricted access to open court sessions.** In several courts, there were isolated cases of non-admission of public representatives to court hearings,

in particular i) with reference to the order of the head of the court (No. 754/12142/22, No. 754/18236/23, No. 754/4075/22, Desnianskyi District Court of Kyiv); ii) the monitor not having any procedural status (No. 370/1757/23, Makarivskyi District Court of Kyiv oblast); iii) without providing clear explanations or for unknown reasons (No. 202/6572/24, Industrialnyi District Court of Dnipro; No. 331/6415/24, Zhovtnevyi District Court of Zaporizhzhia). In the previous phase, similar restrictions were registered more frequently in other courts, in particular in the Solomianskyi District Court of Kyiv. The indicated examples are not systemic, but signal potential limitations and additional obstacles.

- **Inadequate response to the presence of members of the public.** In certain cases, there was a wary reaction of the participants to the presence of monitors. In particular, in proceedings No. 754/18236/23 (Desnianskyi District Court of Kyiv), the defence counsel demanded official confirmation of the credentials of the Project representative and information about the monitoring itself. The monitor provided a letter and helped to find the second phase report in the public domain.

- **Suboptimal conditions for court hearings.** In some cases, due to limited resources or damaged infrastructure, court hearings were held in judges' offices or in premises that do not provide adequate accessibility, capacity and convenience for all participants in the process. For example:

i) Borodiansky District Court in Kyiv region has only one small courtroom. After the building was damaged as a result of the occupation, the court has partially adapted: there is a possibility of remote hearings and alternative energy sources;

iii) in Irpin City Court of Kyiv region, some hearings were held in the judges' offices (No. 367/4583/23, No. 367/6700/24). In criminal proceedings No. 367/6700/24, only the prosecutor and the monitor participated, so there was enough space. If more people had participated, the room might have been too small. The meeting was technically recorded;

(iii) In Chernihivskyi District Court of Chernihiv oblast, the courtroom was too small. The prosecution had access to a workstation, while the defence counsel was forced to speak from the public bench, without a properly equipped seat. The court did not provide reasons for the impossibility of allocating a more spacious room (no. 748/4732/24).

- **Disruption of the schedule of court hearings.** During the monitoring, multiple delays in the start of hearings (from 10 minutes to 2 hours) were registered, caused by both external circumstances and organisational constraints. The hearings were postponed due to:

  i) **air raids.** In a number of cases, court hearings continued despite the announcement of an air raid alert, without a technical break . This practice may pose risks to the safety of participants to the process;

  ii) **limited number of courtrooms.** In some courts, especially when the infrastructure is damaged or the workload is high, there was a lack of court rooms. For example, in Irpin City Court, this is a systemic problem;

  (iii) **involvement of judges or panel members in other proceedings**. For example, in the Irpin City Court in Kyiv region, delays occurred due to judges' participation in several trials at the same time. For example, a hearing scheduled for 14:00 did not start until 16:00 due to the fact that the presiding judge was busy. Lawyers noted the systematic nature of such delays, which is often caused by excessive workload and staff shortages;

  (iv) **Participants to the proceedings arriving late, in particular due to their involvement in other proceedings.** In several cases, there were delays in the start of court hearings due to the lawyers who were simultaneously involved in other proceedings, including in the same court. This resulted in situations where other participants had to wait, sometimes for more than one hour;

v) **technical constraints with VCCH.** In a number of cases, there were malfunctions during the VCCH, despite requests for remote participation submitted in advance, which caused delays or impossibility of holding the hearing;

vii) **logistical difficulties with bringing the accused to a court hearing.** In some proceedings, delays occurred due to the untimely bringing of defendants from the places of detention (for example, the delay in bringing a defendant from the SI 'Zaporizke SIZO' in case No. 332/3499/24, Zavodskyi District Court of Zaporizhzhia);

vii) **combined delays.** In a number of proceedings, delays occurred for several reasons being in place simultaneously, for example: first, waiting for a defence counsel involved in another trial; then the lack of a free courtroom; and then the announcement of an air raid alert;

- **Systematic postponements of the trial.** A significant number of war crimes proceedings take place with regular postponements of court hearings. Hundreds of such cases have been registered, which indicates a systemic problem which negatively affects the speed and accessibility of justice. The massive and recurrent nature of these postponements demonstrates low resilience of the judicial process to both external and internal disruptions. In some cases, trials would not take place for months. The main reasons are the following:

  i) **absence of participants to the process** (No. 766/18628/24, Kherson City Court of Kherson oblast (2 months); No. 754/9472/24, Desnianskyi District Court of Kyiv; No. 761/37938/24, Shevchenkivskyi District Court of Kyiv; No. 361/1117/24, Brovary City District Court of Kyiv oblast; No. 363/872/23, Vyshhorodskyi District Court of Kyiv oblast; No. 333/5566/24, Kommunarskyi District Court of Zaporizhzhia; No. 367/11332/24, Irpin City Court of Kyiv oblast; No. 755/20220/21, Dniprovskyi District Court of Kyiv oblast (postponed for one month). Kyiv (postponed for the fifth time due to the victim's repeated failure to appear); 367/4183/22, Irpin City Court of Kyiv oblast (the defence counsel's systematic failure to appear without notice, the participants requested her to be replaced); 361/487/24, Brovary City District Court of Kyiv oblast (failure of all defence counsels to appear to decide on the delineation of powers after the proceedings were merged); No. 367/4723/24, No. 367/8716/24, No. 367/2397/23, Irpin City Court of Kyiv oblast (absence of defence counsels who claimed to file motions by telephone, but such motions were not registered with the court, in two cases the replacement of a defence counsel was initiated); etc;)

  iii) **lack of electricity supply, problems with VCCH**: it is impossible to connect or the broadcast is interrupted (№ 332/2574/24, Zavodskyi District Court of Zaporizhzhia; № 754/4075/22, Desnianskyi District Court of Kyiv; No. 485/2099/24, Snihurivskyi District Court of Mykolaiv oblast; No. 361/1117/24, 361/8369/24, Brovary City District Court of Kyiv oblast; No. 766/759/23, No. 766/648/23, Kherson City Court of Kherson oblast; No. 636/3302/23, Chuhuiv City Court of Kharkiv oblast; No. 370/1757/23, Makarivskyi District Court of Kyiv oblast; No. 635/12445/24, Kharkiv District Court of Kharkiv oblast; No. 760/2175/24, Solomianskyi District Court of Kyiv (there is a generator in the court, but it is used exclusively for urgent criminal proceedings, such as deciding on detention or on a preventive measure, etc;)

  iii) **air raids, shelling, mining of the court building, etc.** (No. 367/4599/24, No. 650/3777/24, No. 367/4529/24, Irpin City Court of Kyiv oblast (air raids); No. 766/1133/24, Kherson City Court of Kherson oblast (shelling of the city); No. 521/14861/23, Malynovskyi District Court of Odesa (mining));

  iv) **involvement of a judge in other proceedings; being on leave or sick leave; recusals, etc.** (No. 766/18628/24, Kherson City Court of Kherson oblast; No. 367/3387/23, Irpin City Court of Kyiv oblast (systematic postponement of cases registered with the previous stages of the Project); No. 485/1015/23, Mykolaiv Court of Appeal; No. 760/7344/22, Solomianskyi District Court of Kyiv);

  v) **motions from the parties** to postpone hearings due to overlaps, replacement of a defence counsel, possible death of the accused, other procedural or personal cir-

cumstances (No. 752/28858/21, Holosiivskyi District Court of Kyiv; No. 367/10949/24, Irpin City Court of Kyiv oblast; No. 939/2192/24, Borodianskyi District Court of Kyiv oblast, etc;)

vi) **difficulties with the proper summoning of the accused.** Lack of publications in the Uriadovyi Kurier, insufficient number of notifications, in particular due to lack of funding, or other procedural restrictions (No. 939/1258/24, Borodianskyi District Court of Kyiv oblast (for 3 weeks); No. 361/1552/23, Brovary City District Court of Kyiv oblast (for 1.5 months); No. 203/2682/25, Kirovskyi District Court of No. 205/1739/24, Leninsky District Court of Dnipropetrovs'k; No. 370/816/23, Kyievo-Sviatoshynskyi District Court of Kyiv oblast; No. 333/8149/23, Komunarsky District Court of Zaporizhzhia; No. 363/872/23, Vyshgorodsky District Court of Kyiv oblast; No. 370/2813/23, Kyievo-Sviatoshynskyi District Court of Kyiv oblast, etc.).

Publicity: good practices

- **Openness of the trial.** As in the previous stages of the Project, most of the court hearings visited were open. The courts generally facilitated the participation of the public (monitors, representatives of NGOs) and the media in war crimes proceedings. In some cases, judges clearly explained the terms of attendance and recording of the proceedings, which increased trust in the judiciary. There were no unjustified restrictions on the dissemination of information.

- **Legal restrictions on the publicity of sensitive cases.** Closed court hearings took place mainly in CRSV-related proceedings and where there were risks to the safety of participants to the proceedings.

In CRSV-related cases, this approach is in line with national legislation and international standards for the protection of victims' privacy (case No. 185/6845/24 (Pavlohrad City District Court of Dnipropetrovska oblast), case No. 635/12445/24 (Kharkiv District Court of Kharkiv oblast). In case No. 361/1117/24 (Brovary City District Court of Kyiv oblast), despite similar circumstances, the proceedings were held in open court.

In cases where there were real risks to the safety of victims, witnesses or their relatives who remained in the temporarily occupied territories, the courts would decide to hold trials *in camera*. For example, in case No. 333/8149/23 (Kommunarskyi District Court of Zaporizhzhia), the court granted the prosecutor's motion, and the monitor was forced to leave the courtroom. In case No. 334/9583/24 (Leninskyi District Court of Zaporizhzhia), the victim's representative initiated a similar motion due to security risks.

- **Ensuring publicity in the absence of the parties.** Despite the absence of the parties, the court and the registrar ensured proper procedural recording of the absence of the parties by inviting an independent observer (Project monitor) to the courtroom (№ 363/2983/24 Vyshgorodskyi District Court of Kyiv oblast).

- **Balance between the publicity of a trial, safety of participants, and protection of privacy.** In a number of proceedings, the courts demonstrated a balanced approach to ensuring publicity, striking a balance between the openness of the process, the rights of participants to the process, and the security needs. The courts ensured proper communication with members of the public and the media, explaining the legal regime for recording and broadcasting court hearings.

In case No. 367/8696/23 (Irpin City Court of Kyiv oblast), the victim asked the court to clarify the purpose of the monitors' presence and the conditions for recording the trial. After the court provided explanations and assured that there was no recording, the presence of monitors was positively assessed by the defence.

In case No. 335/3484/24 (Ordzhonikidzevskyi District Court of Zaporizhzhia), the victim's representative asked the audience to refrain from disclosing personal data in the media, which demonstrates the importance of maintaining a balance between publicity and privacy.

In proceedings No. 332/3499/24 (Zavodskyi District Court of Zaporizhzhia), the court granted the journalists' request for video recording. At the same time, the prosecutor raised the issue of restricting the filming in regards to the part where the defence counsel and the interpreter could be recorded, given the anonymous threats received by the defence counsel. The journalists agreed to comply with these conditions, and the defence counsel supported the motion. A separate request was filed by NGO Media Initiative for Human Rights to broadcast the hearing on YouTube. The parties to the proceedings did not object, but stressed the need for technical support for visual anonymity. The court granted the motion, and the broadcast is available here: https://court.gov.ua/affairs/online/58945. Representatives of the Security Service of Ukraine, who accompanied the defendant, also took measures to ensure their visual anonymisation.

In a number of other criminal proceedings, the courts also provided online access to court hearings, while respecting the rights of all participants. In particular, in proceedings No. 683/87/24 (Dzerzhynskyi District Court of Kharkiv) and No. 748/1793/24 (Chernihivskyi District Court of Chernihiv oblast), the courts granted the motion of media representatives for video broadcasting, having previously ascertained the consent of the participants to video recording.

At the same time, in proceedings in the border regions (No. 766/6280/24, No. 766/7468/23, No. 766/764/23, No. 766/9963/24 Kherson City Court of Kherson oblast; No. 650/3777/24 Velykoolexsandrivskyi District Court of Kherson oblast; No. 644/5405/24 Ordzhonikidzevskyi District Court of Kharkiv; No. 588/800/24, Trostyanetskyi District Court of Sumy oblast), the courts reasonably refused broadcasting, in particular in response to a motion from representatives of NGO Media Initiative for Human Rights. The main grounds for refusals were security risks for victims and witnesses, as well as the prevention of disclosure of sensitive information before interviewing them. In a number of cases, all parties to the proceedings upheld the court's decision, which demonstrates a balanced approach to respecting both publicity of a trial and protection of participants.

Publicity: areas for improvement

- **Risks to the privacy of victims and/or witnesses when recording court proceedings.** For example, in case No. 367/2276/23 (Irpin City Court of Kyiv oblast), a representative of NGO Media Initiative for Human Rights took photos of the participants to the trial, including the victims (the wife of the deceased and their son). Given that the accused is in the territory of the Russian Federation and participates in the armed conflict, without clear regulation of the scope and conditions of further use of the photos, the publication of the victims' images may pose risks to their safety.

RECOMMENDATIONS

For courts and judges:

- **Clarifying the regime of openness.** Provide participants to the proceedings and the public with clear information on the openness of the hearing, the terms of recording (photo, video) and restrictions on the disclosure of personal data.

- **Physical and informational accessibility.** Avoid unreasonable restrictions on access to court hearings. In case of closure of a hearing or refusal to broadcast, make reasoned decisions with reference to security or procedural risks. Provide public access to court schedules.

- **Scheduling.** Coordinate judges' schedules in a centralized manner and proactively schedule cases based on the availability of a presiding judge or panel members to avoid postponements and overlaps.

For prosecutors:

- **Organising properly the prosecutor's participation in court proceedings.** Informing the court in advance of objective reasons for not being able to participate (business trips, training, etc.) to avoid unreasonable postponements.

- **Proper procedural communication with participants.** Ensure proper interaction with witnesses and victims regarding participation in the hearing or submission of requests for the continuation of a trial in their absence to prevent delays in the proceedings.

For lawyers:

- **Substantiation of motions.** Avoid filing formal or unreasonable motions to postpone court hearings without good reason in order not to delay the proceedings.

- **Procedural behaviour.** If there are concerns about the presence of monitors, adress to the court in accordance with the established procedure, without initiating conflicts or making pressure.

For judicial governance, self-government, and administration bodies:

- **Optimising the court network.** Implement the concept of a new map of courts with the consolidation of institutions to ensure adequate staffing; introduce specialisation; meet reasonable deadlines and improve the quality of justice (HQCJ, HCJ, SJA).

- **Overcoming the staff shortage.** Take effective measures to address the staffing crisis in the courts, which critically affects the workload of judges and the overall efficiency of justice (HQCJ, HCJ).

- **Modernise the judicial infrastructure.** Facilitate the renovation of court premises, especially in the conflict-affected regions, to ensure proper conditions for holding hearings and access to justice (SJA).

- **Budgetary support for procedural actions.** Guarantee stable funding, in particular for the publication of summonses of the accused in the Uriadovyi Kurier, as a prerequisite for ensuring accessibility and openness of the judicial process and compliance with reasonable time of trials (HCJ, SJA).

For the media and the public:

- **Adherence to ethical standards.** Avoid disclosing personal data of victims and witnesses without their consent, and respect the privacy of participants to the trial.

- **Agreeing on the recording in advance.** Submit a request for photo/video recording in advance and coordinate it with the participants to the process to prevent conflicts and violations of rights.

- **Avoiding public pressure.** Refrain from making comments or publications that may affect the course of the trial or put pressure on the participants in the trial.

1.3. Independence and impartiality of the court

INTERNATIONAL STANDARD

The right to a fair trial encompasses guarantees of independence and impartiality of the court, which are key principles of the rule of law and confidence in justice.

These principles are enshrined in **Article 6(1) of the Convention**[10] **, Article 14 of the International Covenant**[11] **, Article 10 of the Universal Declaration**[12] . Also, the principle of independence and impartiality of the court is defined in detail in numerous other international legal acts. In particular: **Geneva Convention** (UN; Convention, Agreement, Regulations of 12 August 1949); **Protocol Additional I to the Geneva Conventions** (UN; Protocol, International Document, Rules of 8 June 1977); **Rome Statute** (UN; Statute, International Document, Amendments of 17 July 1998); **Basic Principles on the Independence of the Judiciary** (UN General Assembly resolutions 40/32 and 40/146 of 29 November and 13 December 1985); **Recommendations for the Effective Implementation of the Basic Principles on the Independence of the Judiciary** (adopted by the United Nations Economic and Social Council resolution 1989/60 and endorsed by the UN General Assembly resolution 44/162 of 15 December 1889); **European Charter on the Status of Judges** (Council of Europe, 1998); **Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: Independence, effectiveness and duties** (adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 at the 1098th meeting of deputy ministers); Magna **Carta of Judges. Fundamental Principles** (adopted in Strasbourg, 17 November 2010, Consultative Council of European Judges (2010); **OSCE Kyiv Recommendations on the Independence of the Judiciary in Eastern Europe, South Caucasus and Central Asia** (Kyiv, 23-25 June 2010); **OSCE/ODIHR Warsaw Recommendations on the Independence of the Judiciary and the Accountability of Judges** (Warsaw, 2023); **Report of the European Commission for Democracy through Law (Venice Commission) "European Standards in the Field of the Judiciary – A Systematic Review**" (3 October 2008, CDL-JD (2008) 002); **Report of the European Commission for Democracy through Law (Venice Commission) on the Independence of the Judiciary, Part I: Independence of the Judiciary** (adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010); **Montreal Universal Declaration on the Independence of Justice** (First World Conference on the Independence of Justice, Montreal, 1983); **Universal Charter of the Judge** (adopted on 17 November 1999 by the Central Council of the International Association of Judges in Taipei); **Opinion No. 1 (2001) of the Consultative Council of European Judges to the Committee of Ministers of the Council of Europe on standards of judicial independence and the irremovability of judges**, etc**.** These documents define the key principles, including: institutional autonomy of the judiciary, guarantees of irremovability of judges, protection from external pressure, proper procedures for appointment, promotion and disciplinary responsibility of judges, as well as conditions under which a judge's participation in a particular case may be restricted in view of impartiality.

ECtHR PRACTICE

The ECtHR considers the concepts of independence, impartiality and a court established by law as interrelated institutional guarantees that are necessary for the observance of the rule of law.[13]

The ECtHR emphasises that

- a body that does not meet the requirements of independence and impartiality cannot be considered a "court" within the meaning of Article 6 § 1 of the Convention;

10 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

11 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

12 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

13 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

- impartiality within the meaning of Article 6(1) of the Convention must be established in accordance with: i) a subjective criterion, which should take into account the personal beliefs and behaviour of a particular judge (i.e. there should be no personal bias or hostility towards the parties); ii) an objective criterion, i.e. by establishing whether the court itself (and, among other aspects, its composition) provided sufficient guarantees to exclude any reasonable doubt as to its impartiality;[14]

- The term «court established by law» includes not only the formal existence of the institution, but also compliance with national procedures, in particular with regard to the composition of the court;

- Any violation of the rules governing the composition of the court may call into question the legitimacy of the judges' participation in the case and, therefore, the legitimacy of the trial as a whole.

Thus**,** these criteria serve as a systemic guarantee of a fair trial.

OBSERVATIONS

Independence and impartiality of the court: good practices

- **Ensuring the impartiality of the court.** During the monitoring, there were no signs of bias or biased behaviour of the court. The judges acted within their powers, ensured equal treatment of the parties, and did not demonstrate favouritism or pressure.

For example, in proceedings No. 766/18628/24 (Kherson City Court of Kherson oblast), the presiding judge of the panel recused himself on the grounds of personal circumstances – during his service in the Armed Forces of Ukraine, he served together with the victim's son.

- **Proactive position of the court in establishing the location of the accused and ensuring their procedural rights.** In a number of proceedings, the courts demonstrated proactivity in taking measures to establish the whereabouts of the accused and to properly notify them of the trial.

In particular, in case No. 367/8744/23 (Irpin City Court of Kyiv oblast), after the defence counsel informed the court of the possible death of the accused, the court requested the Security Service of Ukraine and the cyber police to verify this information.

In proceedings No. 753/20268/24 (Darnytskyi District Court of Kyiv), the court sent the summons to the accused via Viber messenger in PDF format and confirmed its delivery and the recipient's being active online. In addition, the court initiated communication with the defence counsel to establish contact with the accused. Such a proactive approach helps to ensure compliance with procedural guarantees and ensure effective proceedings.

- **Proactiveness of the court in ensuring procedural balance and efficiency of the process.** In a number of proceedings, the court demonstrated proper procedural proactiveness to ensure the adversariality and efficiency of the proceedings. Such an approach promotes the right to a fair trial, even in cases of formal or ineffective representation of certain parties.

14 ECtHR judgment in Piersack v. Belgium, 1 October 1982, application№ 8692/79. URL: https://hudoc.echr.coe.int/eng?i=001-57557.

In case No. 367/8696/23 (Irpin City Court of Kyiv oblast), the court properly responded to the defence counsel's comments on the prosecutor's leading and evaluative questions, suggesting that they be reworded.

In case No. 367/7326/23 (Irpin City Court of Kyiv oblast), the presiding judge asked the prosecutor what hypotheses each piece of evidence supported and on what grounds it was admitted, which contributed to the validity of the trial.

In case No. 754/17063/23 (Desnianskyi District Court of Kyiv), the judge showed due procedural care in establishing the circumstances of the case, in particular by asking the victim follow-up questions. This made it possible to get more details of key episodes that the prosecution had not fully disclosed. This court's approach helped clarifying the facts despite the lack of proactiveness on the part of the prosecutor, without violating the principle of adversarial proceedings.

- **Reasoned procedural decisions.** Procedural decisions made during the monitored court hearings were properly motivated and were made in compliance with the principle of adversarial proceedings.[15]

An illustrative example is case No. 367/4183/22 (Irpin City Court of Kyiv oblast), where the court, despite the prosecution's motion for special proceedings, reasonably refused to consider it until significant violations were eliminated (lack of identification documents of the accused, unknown whereabouts). The court ordered the prosecutor to eliminate the deficiencies, called on defence counsels to properly perform their duties, responded to the victim's comments on the improper organisation of the PPO's intervention, and initiated relevant inquiries. Such an approach demonstrates effective procedural guidance, compliance with the requirements of a fair trial, and a proper balance between the parties to the proceedings.

Independence and impartiality of the court: areas for improvement

- **External interference in the administration of justice.** The monitoring revealed cases of external interference in the administration of justice – mining of court premises, which undermines the principles of independence and impartiality of the court. According to the HCJ's established practice, a report of mining of court premises is considered interference with the administration of justice (No. 521/14861/23, Malynovskyi District Court of Odesa).

- **Potential risks to the impartiality of the court.** In criminal proceedings No. 367/8696/23 (Irpin City Court of Kyiv oblast), the court generally observed the proper level of objectivity and impartiality during public hearings. At the same time, there were some episodes that could have raised doubts as to the impartiality of the court from the perspective of an observer After one of the previous hearings, the judge asked the defence counsel appointed under the FLA system in a private conversation: "Counsel, who pays you at all?". Such statements are unacceptable, as they can be perceived as a manifestation of bias against the defence counsel, devaluation of his/her role or doubt in his/her procedural integrity. In addition, in an open session, when the defence counsel insisted on the need to verify information about the possible captivity of the accused, the judge asked the prosecutor a rhetorical question: «Prosecutor, would you have told us if he was in captivity?». Such a way of communication indicates potential trust in the prosecution's position and can be seen as biased.

- **Insufficient control over the relevance of evidence.** In criminal proceedings No. 939/1024/23 (Borodianskyi District Court of Kyiv oblast), the prosecutor provided lists of personnel of the 64th Motorised Rifle Brigade, empty tables and other materials, some of which did not con-

15 Note: the monitoring does not cover a full analysis of all court decisions.

tain any connection with the accused or only fragmentarily mentioned his initials. The prosecutor did not provide any explanation as to the purpose of including such piece of evidence, and the court and defence counsel did not ask any question to clarify its relevance. This raises doubts as to: control over the relevance and admissibility of evidence; active role of the court in ensuring an effective process, and a real adversarial approach to the proceedings. Such actions (or their absence) may affect the quality of the evidence base and, consequently, the fairness of a trial, which is contrary to the principles of due process.

RECOMMENDATIONS

For courts and judges:

- **Procedural neutrality of communication.** Ensure full neutrality and balance in communication with participants to the process – both during and outside the trial. Avoid statements that may be perceived as biased or undermining confidence in the impartiality of the court.

- **Qualitative assessment of evidence.** Ensure a thorough check of the relevance, admissibility, reliability of each piece of evidence individually, as well as the sufficiency and interconnection of the whole of the evidence. In case of insufficient reasoning of the parties, the procedural expediency of the pieces of evidence should be clarified by means of follow-up questions and reasoned decisions, which will contribute to the efficiency of the trial and compliance with the adversarial principle.

- **Counteracting external interference in the administration of justice.** Ensure proper response to reports of court mining as a form of external interference in the administration of justice by timely informing the HCJ, documenting such cases as incidents of pressure on the court, and introducing backup procedures for the uninterrupted administration of justice (in particular through VCCH or in alternative premises).

1.4. The right to participate in the trial and to provide defence: presence of the parties, trial in absentia, right to defence, participation of victims and witnesses

1.4.1 Presence of the parties

INTERNATIONAL STANDARD

The right to participate in court proceedings in person is a fundamental component of a fair trial. It guarantees a real opportunity for a person to be heard, to participate in the proceedings and to defend his or her interests. This right is enshrined in a number of international documents, in particular:

- **Article 6 of the Convention**;[16]

- **Article 14 of the International Covenant**;[17]

16 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

17 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

- **Articles 8 and 10 of the Universal Declaration**;[18]
- **Articles 104-107 of the Geneva Convention**; [19]
- **Article 75 of Protocol Additional I to the Geneva Conventions;**[20]
- **Articles 63, 64, 67 of the Rome Statute;**[21]
- **case law of the ECtHR**.[22]

OBSERVATIONS

Presence of the parties to the proceedings: good practices

- **Participation of the parties in court hearings.** For the most part, participants in criminal proceedings, except for the accused, were present during court hearings, including those using VCCH. The use of VCCH is typical for regions with an excessive workload for the lawyers, who cooperate with the FLA system (Kyiv region), as well as for courts in the Mykolaiv and Kherson regions. This practice demonstrates that the judicial system has adapted to wartime security restrictions (e.g., No. 954/266/23, Novovorontsovskyi District Court of Kherson oblast);

Presence of the parties to the proceedings: areas for improvement

- **Inadequate quality of the parties' participation in the VCCH regime.** There are significant discrepancies in the exercise of the right to participate in court proceedings through VCCH. A number of cases give an example of effective participation, but the vast majority of proceedings demonstrate the formal nature of involvement, the lack of preparation with the participants, and inadequate technical and procedural organisation of VCCH. There are typical cases of formal or passive participation of defence counsels, in particular in unacceptable conditions – while driving, while on the move, in the absence of proper communication (e.g., No. 760/21748/24, Solomianskyi District Court of Kyiv; No. 950/3216/24, Lebedynskyi District Court of Sumy oblast; No. 367/1956/25, Irpin City Court of Kyiv oblast). In a number of cases, the court reasonably emphasised the ineffectiveness of the parties' – including the prosecutor's – participation in the interrogation of a witness via VCCH, which obstructed the full establishment of the factual background of a case. This approach emphasises the importance of the personal presence of the parties' representatives in the courtroom to ensure proper examination of evidence and compliance with the principle of adversarial proceedings (No. 729/861/24, Bobrovytskyi District Court of Chernihiv oblast).

- **Inadequate procedural activity of the prosecutor.** In several recorded proceedings, there was insufficient involvement of a prosecutor in the process and signs of inadequate preparation for court hearings. These cases are sporadic, but deserve attention, as they may indicate both excessive workload and insufficient communication within the prosecution. In particular, in proceedings No. 367/2497/23, the prosecutor did not have information about the summons of one of the victims and the accused, did not initiate clarification of the factual background,

18 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

19 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

20 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

21 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

22 A guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

and actually withdrew from the process, leaving decision-making to the discretion of the court (Irpin City Court of Kyiv oblast). In case No. 754/17063/23, the prosecutor, probably having been involved in the case recently, refrained from actively participation in the interrogation of the victim, despite the discrepancies between his explanations and the indictment. In this regard, the judge asked follow-up questions to clarify factual background of the case (Desnianskyi District Court of Kyiv).

RECOMMENDATIONS

For courts and judges

- **Ensuring proper quality of participation through VCCH.** Parties' participation in the VCCH regime should not only be technically possible, but also substantively and procedurally meaningful. Formal involvement should be avoided, and proper preparation and communication should be ensured. Particular attention should be paid to the participation of defence counsel and prosecutors in key procedural steps. If there are obstacles, personal presence should be preferred.

- **Improving the quality of the prosecutor's participation.** Ensure effective participation of the prosecution by strengthening procedural training of prosecutors, especially in cases with recent involvement. Improve internal coordination and ensure prompt access to case files. Sporadic cases of insufficient participation require attention to prevent them from becoming a systemic problem.

1.4.2. Trial in the absence of the accused (in absentia)

INTERNATIONAL STANDARD

The principle of the personal presence of an accused and his/her proper participation in the trial is a fundamental component of the right to a fair trial. It is explicitly or implicitly enshrined in the following international instruments:

- **Article 6 of the Convention**[23] and **Article 10 of the Universal Declaration**[24] It is not directly enshrined, but follows from their purpose and content and is a key element of the right to a fair trial. At the same time, this right is not absolute and may be limited in case of voluntary waiver of an accused, proven attempts to notify of the proceedings or the possibility of reviewing the verdict;

- **subpara. d, para. 3, Article 14 of the International Covenant**[25] expressly guarantees the right to be tried in the presence of a person;

- **The Geneva Convention** enshrines the mandatory personal participation of the accused in the trial as an essential guarantee of a fair trial. In particular, **Article 99** prohibits confessions without the possibility of defence and assistance of counsel, which implies the physical presence of an accused or his/her defence counsel. **Article 104** obliges the Protecting State and the accused to be informed in advance of the hearing. In the absence of such notification, the hearing is inadmissible, making it impossible to hold a trial *in absentia* without following the procedure;[26]

23 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

24 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

25 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

26 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

- **subpara. (e) para. 4 Article 75 of Protocol Additional I to the Geneva Conventions** Everyone charged with an offence shall be guaranteed the right to be tried in his or her presence**;**[27]

- The **Rome Statute** enshrines the mandatory presence of an accused at the trial as a general rule (**Article 63(1)(a)**, **Article 63(1)(d) of Article 67(1)**, allowing exceptions only with his consent or in case of disorderly conduct (**Article 61(2), Article 63(2))**. Even in the absence of physical presence, the right to participate through a defence counsel and remote control over the process is ensured.[28]

We would like to draw special attention to **the Resolution of the Committee of Ministers of the Council of Europe (75)11 of 21 May 1975 on the criteria governing proceedings conducted in the absence of the accused**:

"The presence of an accused in court is of key importance as it ensures the exercise of his/her right to be heard, contributes to a comprehensive establishment of the facts and, if necessary, to the delivery of a reasoned verdict. Exceptions to this rule are only permitted in exceptional cases and must be duly justified, taking into account the principles of a fair trial.

[The Committee of Ministers] recommends the following minimum rules be applied by the governments of Member States:

1. No one shall be brought to trial without having been effectively served with a summons in advance, within a time limit allowing him to appear in court and prepare a defence, unless it is established that he/she has wilfully attempted to evade justice.

2. The summons shall specify the consequences of the defendant's failure to appear in court.

3. If the court finds that a defendant who fails to appear has received a summons, the court should postpone the hearing if it considers the defendant's personal presence necessary or if there are grounds to believe that the defendant was deprived of the opportunity to appear.

4. The defendant should not be tried *in absentia* if it is possible and appropriate to transfer the proceedings to another state or to request extradition.

5. If the accused is tried *in absentia*, the evidence should be examined in the usual manner and the defence has the right to participate in the trial.

6. A decision taken in the absence of an accused shall be communicated to him/her in accordance with the rules of service of summons, and the appeal period may not begin until the convicted person has actually received notice of the decision, unless it is established that he/she has intentionally evaded justice.

7. Any person convicted *in absentia* shall be able to appeal against the sentence by all the legal remedies that would have been available had he or she been present.

8. A person convicted *in absentia* without proper service of summons should be entitled to a remedy that would allow the decision to be set aside.

9. A person convicted *in absentia* after being duly served with a summons has the right to a retrial in general if he or she proves that his or her absence and inability to notify the court were due to objective reasons beyond his or her control.»[29]

27 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

28 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

29 Council of Europe. (1975). Resolution (75) 11 on the criteria governing proceedings held in the absence of the accused. Adopted by the Committee of Ministers on 21 May 1975 at the 245th meeting of the Ministers' Deputies. URL: https://rm.coe.int/16804f7283.

ECtHR CASE LAW

The ECtHR has consistently emphasised that conviction in absentia is possible only if the guarantees of a fair trial are observed. The key factors are proper notification of the person and a real opportunity to participate in or review the sentence. For a detailed analysis of the relevant ECtHR case law, in particular the judgements Colozza v. Italy (1985)[30] , Sejdovic v. Italy (2006)[31] , Sanader v. Croatia (2015)[32] , Medenica v. Switzerland (2001)[33] and others, is provided in the previous report[34] and in the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb) .[35]

OBSERVATIONS

Form of proceedings. As in previous periods, the vast majority of criminal proceedings for war crimes are considered under the procedure of special court proceedings (*in absentia*). According to the monitoring results, only **in 7 cases the accused were** physically present at court hearings, in particular:

- No. 367/3598/23, No. 367/2115/23, No. 367/7326/23, No. 367/6457/24 – Irpin City Court of Kyiv oblast;
- No. 939/2033/24 – Borodianskyi District Court of Kyiv oblast;
- No. 332/3499/24 – Zavodskyi District Court of Zaporizhzhia;
- No. 588/800/24 – Trostianetskyi District Court of Sumy oblast.

In the **remaining cases, the proceedings were held in the absence of the accused**. This is due to the following factors: i) most of the defendants remain in the temporarily occupied territories or in the territory of the Russian Federation; ii) the whereabouts of the defendants are unknown; iii) in many cases, there is no realistic possibility to ensure their presence in the courtroom.

Trial in the absence of the accused (*in absentia*): good practices

- **Notification of the accused.** In most proceedings, the defendants are notified of the trial by publishing summonses at least three times, in two languages (Ukrainian and Russian), on the official resources: the OPG website and the Uriadovyi Kurier newspaper.
- **Taking additional measures.** In a number of proceedings, the courts and prosecutors took proactive measures to establish the whereabouts of the accused, to duly notify them of court hearings and to verify the effectiveness of such notifications.

In particular, in case No. 201/4513/23 (Pavlohrad City District Court), it was established that the defendant was in the temporarily occupied territory, worked for the FSS of the Russian Federation in the so-called DPR, did not cross the state border and was not active on social media. This was the basis for the case to be considered in absentia.

30 ECtHR judgement in Colozza v. Italy, 12 February 1985, application no.№ 9024/80. URL: https://hudoc.echr.coe.int/eng?i=001-57462.

31 ECtHR judgement in Sejdovic v. Italy, 1 March 2006, application no.№ 56581/00. URL: https://hudoc.echr.coe.int/rus?i=001-72629.

32 ECtHR judgment in Sanader v. Croatia, 12 February 2015, available at№ 66408/12. URL: https://hudoc.echr.coe.int/eng?i=001-151039.

33 ECtHR Judgment in Medenica v. Switzerland, 14 June 2001, available at№ 20491/92. URL: https://hudoc.echr.coe.int/eng?i=001-59518.

34 Report, June 2024, based on the results of the implementation of Phase 2 of the project "Monitoring of War Crimes Trials". URL:https://uba.ua/documents/%D0%9A%D0%BB%D1%8E%D1%87%D0%BE%D0%B2%D1%96%20%D0%B7%D0%B0%D1%85%D0%BE%D0%B4%D0%B8%202024/%D0%9A%D0%B0%D1%82%D0%B5%D1%80%D0%B8%D0%BD%D0%B0%20%D0%9F%D0%B8%D1%89%D0%B8%D0%BA/UKR_Trial%20Monitoring_2024.pdf.

35 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

In some proceedings, notifications were sent to work email addresses, including those of institutions where the defendants continue to work (No. 367/1956/25, Irpin City Court; No. 748/4032/24, Chernihivskyi District Court; No. 754/15727/23, Desnianskyi District Court of Kyiv). In case No. 367/7122/24, screenshots were provided as evidence confirming that the accused had read the message, after which he deleted the correspondence.

The following practices were also recorded in courts: i) initiation of checks on whether the accused was a prisoner of war or was killed; ii) sending subpoenas in PDF format through several communication channels - messengers (Telegram, Viber), personal and work email addresses, including the official address of the so-called "Supreme Court of Crimea" (in case No. 367/8744/23, all letters were delivered, Telegram messages were read, and the accused blocked the sender); iii) initiating interaction between defence counsels and their clients to ensure the exercise of their procedural rights; iv) appealing to the public prosecutor's office to use the email addresses of the accused, obtained through the Main Directorate of Intelligence of the Ministry of Defence of Ukraine, for proper notification, as well as entering this information into the court's databases (No. 753/20268/24, Darnytskyi District Court of Kyiv; No. 367/7122/24, No. 367/1956/25, No. 367/8744/23, Irpin City Court of Kyiv oblast).

Trial in the absence of the accused (in absentia): areas for improvement

- **Formal nature of the notice.** Summons in war crimes criminal proceedings is carried out by publishing subpoenas in the newspaper Uriadovyi Kurier and on the websites of the Office of the Prosecutor General and the relevant court. At the same time, the effectiveness of this method of notification is questionable, as the accused – military of the Russian Federation – probably do not have access to Ukrainian official resources.

- **Language of notification.** In a number of proceedings, there was no translation of notices to the defendants into the Russian language, despite their alleged lack of knowledge of Ukrainian. This creates a risk of inadequate notification of court hearings (No. 766/10206/23, No. 766/9963/24, Kherson City Court of Kherson oblast). Only selected procedural documents are translated: in case No. 760/21748/24 (Solomianskyi District Court of Kyiv), the notice of suspicion was translated, but the indictment was not. The defence counsel did not insist on the translation.

- **Insufficient budgetary support**. In a number of proceedings under the special court procedure, there were cases of absence or delay in the publication of summons in the Uryadovyi Kurier due to unstable budget funding. The absence of summons makes it impossible to properly notify the accused, complicates the observance of reasonable time of trial, and affects the openness and accessibility of the trial, etc.

- **Deficiencies in the notification.** In criminal proceedings No. 367/8696/23 (Irpin City Court of Kyiv oblast), the prosecutor insisted on proper notification of the accused through the publication of summons on official resources. At the same time, the defence counsel pointed out the difficulty of finding the summons: the absence of a publication in Russian; an inacurate search result by name, and a technical error in the text of summons, the contact details of the Office of the Prosecutor General being indicated instead of the defendant's data. The court acknowledged the technical error. The defence insisted that this deprived the defendant of a real opportunity to find out about the hearing, and therefore that was not a proper notification. The case is sporadic.

- **Ignoring the defence's initiatives.** In a number of proceedings, no additional measures were taken to notify the defendants, as requested by the defence (No. 588/800/24, Trostianetskyi District Court of Sumy oblast; No. 939/2192/24, No. 369/6336/23, Borodianskyi District Court of Kyiv oblast; No. 578/264/24, Krasnopilskyi District Court of Sumy oblast).

RECOMMENDATIONS

For Prosecution bodies:

- **Ensuring effective notification of defendants.** Notification of court proceedings should be carried out not only formally, but also taking into account the defendant's actual access to relevant sources of information. It is advisable to expand the practice of using alternative communication channels, such as email addresses, messengers, official resources of the aggressor state, and to initiate interaction between defence counsels and their clients to verify the effectiveness of the notification.

  Ensure that the accuracy of the data in the summonses published on official resources is checked in order to avoid technical errors (incorrect names, addresses, etc.) that may negate the effectiveness of the notice as a procedural guarantee.

- **Ensuring translation of procedural documents.** In order to ensure that the accused have real access to information about the trial, it is necessary to provide for the translation of key procedural documents (in particular, summonses, indictment) into Russian at the systemic level, if there are reasonable grounds to believe that the accused does not speak Ukrainian.

- **Budgetary support for the notification.** Guaranteeig stable funding of expenditures related to notification of defendants in cases *in absentia* (including publications in the print media) as a prerequisite for compliance with procedural deadlines, openness of proceedings and admissibility of proceedings in the absence of the defendant.

1.4.3. Right to defence

INTERNATIONAL STANDARD

Every person facing criminal charges has the right to: i) defend himself or herself personally or with the assistance of a defence counsel of his or her own choosing; ii) in the absence of financial means, to receive free legal aid when the interests of justice so require; iii) have sufficient time and facilities to prepare his or her defence and to communicate with the defence counsel of his or her choice. These guarantees are enshrined in:

- **Article «c» of para. 3 of Article 6 of the Convention**;[36]
- **Article 14 of the International Covenant**;[37]
- **provisions of the Universal Declaration**;[38]
- **Articles 99, 105 of the Geneva Convention;**[39]
- **Article 75 of Protocol Additional I to the Geneva Conventions;**[40]

36 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

37 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

38 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

39 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

40 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

- **subpara. «c» para. 2 Article 55, subpara. «d» para. 1 Article 67 of the Rome Statute**.[41]

ECtHR PRACTICE

According to the ECtHR case law, the right to defence includes not only the formal appointment of a defence counsel, but also guarantees of real, effective and practical legal assistance. The state has a positive obligation to intervene if the defence counsel's actions or omissions clearly undermine the interests of justice, even in the absence of complaints from the defendant. Formalism, technical grounds for denial of defence, conflict of interest or restrictions on access to a lawyer may constitute a violation of Article 6 of the Convention.

For a more detailed analysis of the relevant ECtHR case law, see the previous report[42] , in the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb)[43] , as well as in thematic publications.[44]

OBSERVATIONS

The participation of a defence counsel in criminal proceedings for war crimes is mandatory due to both gravity of the crime and specifics of the proceedings (Article 52(1) and (2) of the CPC).

Right to defence: good practices

- **Mandatory participation of a defence counsel**. The monitoring revealed no violations of the accuseds access to a state-appointed defence counsel. All proceedings are held with the involvement of an FLA lawyer, which ensures compliance with minimum procedural guarantees regardless of the procedural behaviour of the accused or his/her actual presence (the accused are in captivity, on the temporarily occupied territories, on the territory of the Russian Federation, or when their whereabouts are unknown).

- **Exercise of the right to defence in the presence of the accused.** In proceedings where the defendants are physically present at the court hearing, their right o defence is duly ensured. The accused have the opportunity to communicate confidentially with their defence counsels, and the court provides sufficient time for consultations, which allows for quality preparation for the trial. There are no signs of formality or indifference in the actions of defence counsels (No. 332/3499/24, Zavodskyi District Court of Zaporizhzhia).

- **Active procedural position of defence counsels in cases in absentia.** In a number of proceedings under consideration, defence counsels demonstrate proper professional training, a formed legal position; and actively exercise their procedural powers. In particular, they file substantiated motions, participate in the examination of evidence, interrogate victims and witnesses, and draw the court's attention to procedural violations (No. 748/5045/24, Chernihivskyi District Court; No. 335/3484/24, Ordzhonikidzevskyi District Court of Zaporizhzhia; No. 939/1258/24, Borodianskyi District Court of Kyiv oblast; No. 754/18236/23,

41 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

42 Report, June 2024, based on the results of the implementation of Phase 2 of the project "Monitoring of War Crimes Trials". URL: https://uba.ua/documents/%D0%9A%D0%BB%D1%8E%D1%87%D0%BE%D0%B2%D1%96%20%D0%B7%D0%B0%D1%85%D0%BE%D0%B4%D0%B8%202024/%D0%9A%D0%B0%D1%82%D0%B5%D1%80%D0%B8%D0%BD%D0%B0%20%D0%9F%D0%B8%D1%89%D0%B8%D0%BA/UKR_Trial%20Monitoring_2024.pdf.

43 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

44 The right to legal aid [effective, real, practical]: Development of the ECHR case law. Supreme Observer. URL: https://so.supreme.court.gov.ua/authors/161/pravo-na-pravovu-dopomohu-%5Befektyvnu-realnu-praktychnu%5D-rozvytok-praktyky-yespl-/.

Desnianskyi District Court of Kyiv; No. 578/264/24, Krasnopilskyi District Court of Sumy oblast; No. 485/167/25, Snihurivskyi District Court; No. 766/10206/23, Kherson City Court; No. 201/4513/23, Pavlohrad City District Court of Dnipropetrovska oblast; No. 638/8749/23, Shevchenkivskyi District Court of Kharkiv).

In case No. 754/18236/23 (Desnianskyi District Court of Kyiv), the defence counsel: i) initiated the adjournment of the court hearing due to the absence of the victim and the lack of proper evidence of the defendant's identification; ii) filed a motion to view the video materials attached to the written evidence (granted by the court); iii) would take and review notes, was familiar with the content of the case file and prepared for the examination of evidence; iv) identified procedural violations (lack of certified copies of evidence); v) critically analysed the prosecution's evidence, including its origin, authenticity and data on the accused's citizenship.

The defence counsels who demonstrated pro-activity when exercising their powers received specialised training on war crimes (No. 588/800/24, Trostianetskyi District Court of Sumy oblast).

In some cases, defence counsels take additional measures to establish contact with defendants in cases *in absentia*. In particular, attempts are made to communicate through social media and alternative channels of communication (e.g. case No. 754/15727/23, Desnianskyi District Court of Kyiv). Such actions contribute to the real, rather than formal, enforcement of the right to defence.

In proceedings where the defence counsel is replaced, the newly appointed counsels duly ensure the exercise of the right to defence, in particular by filing motions to reschedule the hearing to get familiar with the case file (no. 367/6497/24 – Irpin City Court of Kyiv oblast; no. 363/2563/24 – Vyshhorodskyi District Court of Kyiv oblast).

Right to defence: areas for improvement

- **Inadequate participation of defence counsels.** In a number of proceedings, there were cases of defence counsels' participation that did not meet the standards of effective defence. In particular, participation via VCCH took place in unacceptable conditions (driving, while on the move, with poor communication); there was a lack of familiarity with the case file, refusal to participate in interrogations, and lack of a clearly formulated legal position during court debates. Such cases indicate a formal approach and call into question the actual enforcement of the right to defence (No. 760/21748/24, Solomianskyi District Court of Kyiv; No. 950/3216/24, Lebedynskyi District Court of Sumy oblast; No. 367/1956/25, Irpin City Court of Kyiv oblast; No. 185/3969/23, Pavlohrad City District Court of Dnipropetrovska oblast; No. 939/226/23, Borodianskyi District Court of Kyiv oblast).

Absence of defence counsels and abuse of procedural rights. In a number of criminal proceedings, there were cases of defence counsels failing to appear or being late without valid reasons and without notifying the court (No. 370/1757/23, Makarivskyi District Court of Kyiv oblast; No. 367/11332/24, No. 370/140/24, Irpin City Court of Kyiv oblast; No. 337/6022/24, Khortytskyi District Court of Zaporizhzhia; No. 644/5405/24, Industrialnyi District Court of Kharkiv; No. 363/6664/23, Vyshhorodskyi District Court of Kyiv oblast). For example, in the criminal proceedings№ 370/1757/23 (Makarivskyi District Court of Kyiv oblast), the defence counsel failed to show up at a single court hearing, despite numerous requests to participate in the VCCH regime, which were not granted by the court (see Ruling 1, Ruling 2). The prosecutor and the victims alleged abuses by the defence counsel and appealed to the QDC. The defence counsel was subsequently replaced. Certain cases of abuse of the right were registered, in particular through uncoordinated refusals to participate, statements about territorial restrictions on representation and other actions aimed at delaying the proceedings (No. 367/6700/24, No. 370/1485/23, Irpin City Court of Kyiv oblast).

Insufficient response to violations by defence counsels. In some proceedings, the court and/or the FLA system and self-governing bodies of defence lawyers failed to respond properly to violations committed by defence counsels, including non-appearance, passive participation, or improper perfor-

mance of duties (No. 370/140/24, No. 367/1956/25, Irpin City Court of Kyiv oblast). Such omissions brings about the risk of formal defence and undermines the credibility of the defence tool.

Challenges to the exercise of the right to defence: public pressure and undermining of the professional role of the defence counsel. In a number of proceedings, cases of public pressure and negative attitudes towards defence counsels involved in war crime cases have been registered. In case No. 361/487/24 (Brovary City District Court of Kyiv oblast), the defence counsel drew the court's attention to the criticism in the media, in particular, in a story by a well-known TV channel about the "excessive zeal" of the lawyers, who cooperate with the FLA system, in defending Russian military personnel. In case No. 588/800/24 (Trostianetskyi District Court of Sumy oblast), aggressive behaviour of victims towards defence lawyers was recorded – hostile comments, sarcastic intonations, equation of the lawyer with the accused. Such situations demonstrate the complex ethical context of defence in war crime cases and the vulnerability of lawyers to public condemnation even within the proper performance of their professional duty.

Problem with striking due balance between the right to defence and ethical standards in war crime cases. In criminal proceedings No. 361/1117/24 (Brovary City District Court of Kyiv oblast), the oral argument between parties was accompanied by high emotional tension. The arguments of the defence, in particular: i) justification of the actions of the Russian military personnel with reference to "their own safety"; ii) denial of the circumstances presented by the victims; iii) attempts to classify the accused as combatants, which allegedly exempts them from criminal liability; iv) disparaging assessments of the victim, who was described as a person who allegedly made up a story about the rape and loss of pregnancy in order to obtain compensation, caused a public outcry. The publication of these theses by the victim's representative on Facebook led to a wave of criticism against the defence lawyers. The situation illustrates the difficulty of balancing the exercise of the right to defence and compliance with ethical standards in communication in sensitive cases being in the focus of increased public attention.

RECOMMENDATIONS

For the free legal aid system and self-governance bodies of defence lawyers:

- **Ensuring effective participation of defence counsel.** The right to defence should not be exercised formally, but through the active and professional participation of defence counsel in compliance with quality standards: ensuring proper conditions and stable connection during VCCH; preparing for the case trial, participating in interrogations and court hearings. It is recommended to take into account the logistical capacities of defence counsels and their readiness to participate in the hearings of a particular court to avoid further disruption of the proceedings.

- **Ensuring effective replacement of defence counsels in case of deficiencies.** The court should respond in a timely manner to the systematic absence or omissions of defence counsel, inform the FLA Centre and initiate disciplinary measures. In case of replacement of a defence lawyer, sufficient time should be given for him/her to get familiar with the case file in order to ensure genuine, rather than formal, defence.

- **Strengthening control over the quality of legal aid.** It is necessary to review and strengthen the monitoring and quality control mechanisms of the defence counsel's work on war crimes cases.

- **Developing special approaches to the participation of defence counsels in cases *in absentia*.** The project recommends that the Ukrainian National Bar Association, the UNBA Higher School of Advocacy and the Coordination Centre for the provision of free legal aid: i) provide specialised education and training programmes for lawyers involved in war crime cases; ii) consider the feasibility of introducing specialisation of defence counsels to strengthen their capacity in working with this category of cases.

- **Ensuring institutional support for defence lawyers in war crime cases.** In view of the moral tension, public condemnation and documented cases of aggressive behaviour towards defence counsels, it is recommended to: i) conduct awareness-raising campaigns on the inadmissibility of equating a lawyer with his/her client; ii) ensure access to psychological support for lawyers working in this category of cases; iii) take effective security measures for lawyers, especially in risk areas and high-profile cases.

1.4.4. Participation of victims and witnesses

INTERNATIONAL STANDARD

The right of the parties to call, examine and cross-examine witnesses is an integral part of a fair trial. Every accused person has at least the right to examine or request that prosecution witnesses be examined, and to request that defence witnesses be called and examined on the same terms as prosecution witnesses. This is enshrined in:

- **Article «d» of paragraph 3 of Article 6 of the Convention**;[45]
- **subpara. «e», para. 3, Article 14 of the International Covenant**;[46]
- **Article 105 of the Geneva Convention;**[47]
- **subpara. «g» para. 4 Article 75 of Protocol Additional I to the Geneva Conventions;**[48]
- **subpara. «e», para. 1, Article 67, Article 68 of the Rome Statute.**[49]

ECtHR PRACTICE

The ECtHR gives an autonomous meaning to the concept of «witness», recognising it as "any person whose testimony is used to prove guilt". The ECtHR analyses in detail the right of the accused "to examine or request that prosecution witnesses be examined, and to request that defence witnesses be summoned and examined on the same terms as prosecution witnesses". Special attention is paid to situations where a witness fails to appear in court: the ECtHR takes into account "valid reasons for their non-appearance", "the significance of their testimony for the verdict" and "balancing factors" that may compensate for the restriction of this right. Other restrictions are also considered, including "the use of anonymous witnesses", "witnesses in cases of sexual offences", and "those who refuse to testify in court". The ECtHR emphasises the critical importance of "the right of the defence to call its witnesses", which is a key element of adversarial proceedings, and stresses the need for "a balance between the interests of victims and the rights of the accused to fair questioning". A systematic analysis of the ECHR case-law on the participation of witnesses and victims in criminal proceedings is provided in the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb), in particular, in Section 4 "Examination of Witnesses". [50]

45 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

46 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

47 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

48 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

49 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

50 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

OBSERVATIONS

During this stage of the monitoring, special attention was paid to the participation of victims and witnesses in criminal proceedings for war crimes. For this purpose, questions were added to the Questionnaire concerning the conditions, method and effectiveness of their participation during the trial. Such implementation was the result of discussions with international partners on the adaptation of national practice to the standards set out in the Protocol for Courts on the Treatment of Vulnerable Victims and Witnesses. An important step in this area was the adoption of the relevant Protocol by Decision No. 38 of the Council of Judges of Ukraine dated 11 November 2024.

Participation of victims and witnesses: good practices

- **Proper approach to informing victims and witnesses and providing them with the necessary support.** Individuals were notified in advance, received handouts, their rights and interrogation procedures were explained, and they were provided with practical and psychological support, including from the Coordination Centre for Victims and Witnesses, and a psychologist was present (No. 337/4647/24 Khortytskyi District Court of Zaporizhzhia, No. 521/14861/23 Malynovskyi District Court of Odesa, No. 335/3484/24 Voznesenivskyi District Court of Zaporizhzhia, No. 748/3480/24, Chernihivskyi District Court of Chernihiv oblast, No. 748/1793/24 and No. 485/167/25 Snihurivskyi District Court of Mykolaiv oblast, No. 367/8696/23 and No. 367/2115/23 Irpin City Court of Kyiv oblast, No. 754/12142/22 Desnianskyi District Court of Kyiv).

  It should be noted separately that in one of the criminal proceedings, the witness, a prisoner of war of the Russian Federation, was interrogated in the VCCH mode from the premises of the Zavodskyi District Court of Zaporizhzhia. This format was chosen for security reasons, given his status and the circumstances of the case. The examination was organised in compliance with procedural guarantees: the witness was duly informed about the testimony procedure, his rights and obligations; received practical and psychological support; translation was provided, which allowed him to fully participate in the process (№ 332/3499/24 Zavodskyi District Court of Zaporizhzhia) .

- **Ensuring participation through VCCH and logistical flexibility.** Victims participated from other regions via VCCH, the court took measures to ensure access to the court, and interacted with local courts when necessary (no. 754/12142/22, no. 754/15727/23 Desnianskyi District Court of Kyiv, no. 201/4513/23 Pavlohrad City District Court of Dnipropetrovska oblast).

- **Effective participation of victims and/or their representatives.** Representatives were present, actively participated, filed civil claims, and communicated with the court (No. 2276/23 Irpin City Court of Kyiv oblast,№ 335/3484/24 Voznesenivskyi District Court of Zaporizhzhia).

- **The court's response to the victim's concerns about privacy, explanation of the limits of openness, etc.** For example, in one of the criminal proceedings, during a court hearing, one of the victims asked the court to clarify the purpose of the public presence, whether there would be photo or video recording, and whether materials with the names of the victims would be published. The court responded appropriately, explaining that there were no requests for recording, and therefore, according to the rules of openness of the trial, the audience was allowed to be present, but without taking photos or videos (No. 367/8696/23 Irpin City Court of Kyiv oblast).

Participation of victims and witnesses: areas for improvement

- **Insufficient updating of victims' contact information.** In a number of proceedings, there are cases where victims do not receive summons due to changes in their place of residence or contact details. At the same time, the prosecution and the courts do not take active measures to update information or establish contact. Victims' lawyers, in turn, do not respond to court notices, which makes it difficult to ensure their participation in the process (No. 939/1258/24,

Borodianskyi District Court of Kyiv oblast; No. 363/872/23, No. 363/2983/24, Vyshgorodsky District Court of Kyiv oblast).

- **Insufficient support for vulnerable victims and witnesses.** In a number of proceedings, there was a lack of proper practical, emotional, and psychological support for victims. Ignoring the needs of these persons, including in the context of trauma, indicates a lack of systemic implementation of a support-based approach. This does not comply with the principles of sensitive justice and may negatively affect a person's ability to fully participate in the process.

In criminal proceedings No. 939/226/23 (Borodianskyi District Court of Kyiv oblast), the victim, who was a minor at the time when the crime was committed, showed clear signs of stress during interrogation when recalling the circumstances. According to the information received from the victim, he was offered psychological assistance, but did not take advantage of it in time. The victim currently recognises the need for psychological support. He did not file a civil claim because he was not sufficiently aware of the procedure. At the time of the additional interrogation, there was no contact with the victim's representative.

In case No. 754/17063/23 (Desnianskyi District Court of Kyiv), one of the victims participated in the court hearing via VCCH from another court, but during the interrogation, no accompanying officer was present. This is the second time in this case that the victim's remote participation was not physically supported or assisted by the local court. It was only after the initiative of the court secretary that the Shevchenkivskyi District Court of Dnipro was contacted to summon the courtroom administrator.

In criminal proceedings No. 367/2497/23 (Irpin City Court of Kyiv region), the prosecutor reported that one of the victims explained her absence by her inability to be present due to psychological trauma – recalling the events brings terrible memories and depression.

- **Passive participation of the victim's representative.** In some proceedings, the representative's participation is formal and inactive (No. 754/15727/23, Desnianskyi District Court of Kyiv; No. 367/2115/23, Irpin City Court of Kyiv oblast).

- **Use of video recordings without the possibility of questioning the witness by the defence.** In a number of proceedings, video recordings of witness interrogations conducted at the pre-trial stage without the participation of the defence are admitted as evidence, which deprives the accused of the opportunity to ask questions, (No. 939/2099/23, Borodianskyi District Court of Kyiv oblast). At the same time, in cases where it is objectively impossible to interrogate a witness (for example, exchange of a prisoner of war), video interrogation may be admissible if procedural guarantees, information and support are provided (No. 185/3969/23, Pavlohrad City District Court of Dnipropetrovska oblast).

- **Postponement of proceedings due to the absence of victims and witnesses.** In some proceedings, court hearings were repeatedly postponed due to the absence of victims without any real measures being taken to ensure their participation, even when it comes to a public figure (No. 755/20220/21, Dniprovskyi District Court of Kyiv).

- **Lack of coordinated work** between the prosecutor's office and the courts to establish the whereabouts of victims. The prosecutor was unaware of the court's order to search for a mobilised victim, and no requests were sent to the Ministry of Defence (No. 363/2983/24, Vyshhorodskyi District Court of Kyiv oblast).

- **High level of non-appearance among victims and witnesses.**

In some proceedings, victims file applications for the case to be considered without their participation (No. 485/1015/23, Mykolaiv Court of Appeal; No. 939/2192/24, Borodianskyi District Court of Kyiv oblast; No. 712/3576/24, Sosnivskyi District Court of Cherkasy; No. 760/7344/22, Solomianskyi District Court of Kyiv; No. 644/685/24, Ordzhonikidzevskyi District Court of Kharkiv; No. 367/11498/24, Irpin City Court of Kyiv oblast; No. 490/2519/24, Tsentralnyi District Court of Mykolaiv; No. 485/2543/24, Snihurivskyi District Court of Mykolaiv oblast).

In other cases, the reasons for the victims' failure to appear in court are unknown, and it is not always clear whether the victim deliberately refused to participate or whether it was the result of inadequate communication, misinformation or omission on the part of the parties. Some courts do not record the reasons for non-appearance in the protocols or do not check whether the person was properly informed of their rights, obligations, and consequences of non-participation (No. 766/18628/24, Kherson City Court of Kherson oblast; No. 939/1258/24, Borodianskyi District Court of Kyiv oblast; No. 523/224/23, Odesa Court of Appeal; No. 755/20220/21, Dniprovskyi District Court of Kyiv).

Special attention should be paid to the criminal proceedings where the prosecutor reported that the victim was informed in advance of the date and time of the court hearing, but repeatedly failed to appear without good reason. In this regard, the prosecutor filed a motion to bring the victim to administrative responsibility, which was granted by the court (No. 766/6280/24, Kherson City Court of Kherson oblast). Imposing sanctions on a victim without first finding out the reasons for his/her absence or assessing his/her awareness, or mental state, or possible complications (vulnerability, life circumstances, need for support) indicates a lack of a human-centred approach to the administration of justice.

- **Lack of interest and loss of trust in the judicial process among the victims.**

In criminal proceedings No. 363/872/23 (Vyshhorodskyi District Court of Kyiv oblast), victims systematically fail to appear at court hearings despite being notified by SMS and the Electronic Court system. According to the court and the prosecutor, the connection with the victims has been effectively lost, and the reason for their absence is a lack of interest in the process. One of the victims allegedly does not receive SMS notifications due to a change of number, and the lawyer, although receiving notifications, does not perform his representative function properly.

In another criminal proceeding No. 754/18236/23 (Desnianskyi District Court of Kyiv), the victim, a well-known human rights activist from the Autonomous Republic of Crimea, was notified in advance of the court hearing, but fails to participate in person. Instead, he sends written statements expressing his deep concern about the lengthy consideration of the case, which has been heard since December 2023, and requests that the proceedings be expedited and a copy of the verdict sent to him. At the stage of completion of the pre-trial investigation, the victim refused in writing to familiarise with the case file, which indicated a decrease in trust and involvement. The proceedings concern an illegal deportation committed in 2016, which the victim links to his human rights activities. The case file contains media publications confirming taking him in custody and prolonged unlawful detention by the occupation authorities.

RECOMMENDATIONS

For judges, prosecution bodies, FLA system:

- **Informing and communicating with victims and witnesses.** It is recommended to check the relevance of the victims' contact information upon receipt of the case, to provide participants with a clear memo on their rights, obligations, and forms of participation. In the event of a victim's systematic absence without any statement being submitted, additional communication should be initiated to clarify the reasons for non-participation and explain the alternatives: participation through VCCH, engaging a representative, or submitting a respective statement.

- **Legal aid and representation.** At the pre-trial and trial stages, the victims' awareness of their right to free legal aid must be ensured. In case of prolonged absence of an appointed representative, replacement or additional communication must be initiated through the FLA Center.

- **Psychological support and work with vulnerable persons.** It is recommended to introduce a systematic assessment of the vulnerability of victims and witnesses before interrogating them; andt psychological supportshall be provided with their consent. A unified referral

mechanism (with a clear delineation of roles between prosecutors and courts) should be in place to avoid duplication of powers to summon and interact with victims and witnesses.

- **Ensuring that the victim's refusal to participate in the trial is informed and voluntary**. In case of a respective application being submitted, it is necessary to verify whether such a refusal is free, informed, and voluntary, in particular by explaining the rights, possibilities of participation (including participation through VHHC or through a representative), and the consequences of refusal.

1.5. Equality of arms

INTERNATIONAL STANDARD

The right to a fair trial encompasses the principle of equality of arms, which provides that each party to criminal proceedings should have a realistic opportunity to present its case on equal terms before an independent and impartial tribunal. All persons are equal before the law and the courts, are entitled to equal protection of their rights, and to a public and fair hearing on the basis of full equality. This is enshrined in:

- **Article 6(1) of the Convention**;[51]
- **Article 14 of the International Covenant**;[52]
- **Articles 7, 8 and 10 of the Universal Declaration**;[53]
- **The Geneva Convention** does not formulate the principle of equality of arms as a separate norm, but facilitates its implementation through the requirement to apply the same procedures to prisoners of war as to military personnel of the detaining power (**Article 102**). In addition, **Articles 99-105** provide for fair trial guarantees, including the right to defence, witnesses, and legal counsel, which ensures *de facto* procedural equality with the prosecution;[54]
- **Article 75 of Protocol Additional I to the Geneva Conventions**;[55]
- **subpara. «(e) para. 1 Article 67 of the Rome Statute** provides that the accused has the right to «call witnesses in defence under the same conditions as the prosecution», and Article 64 imposes on the Court the obligation to ensure the adversarial nature of the proceedings and equal procedural opportunities for the defence and the prosecution.[56]

ECtHR PRACTICE

The ECtHR has consistently emphasised that equality of arms is an integral part of a fair trial guaranteed by Article 6(1) of the Convention. This implies that each party must be put in equal conditions to

51 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

52 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

53 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

54 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

55 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

56 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

present its position in the case without being in a worse position than the opponent (Öcalan v. Turkey (2010)[57] , Foucher v. France (1997)).[58] The right to adversarial proceedings provides for the possibility for the parties to know, examine and comment on all evidence and arguments that may affect the court's decision (Brandstetter v. Austria (1991))[59] . In a number of cases, the ECtHR has recognised a violation even in the absence of proven negative consequences if the party was deprived of access to the materials or did not have the opportunity to comment (Bajić v. North Macedonia (2021))[60] . These principles apply in both criminal and civil cases, and the ECtHR often considers them in conjunction with other guarantees, in particular the right to defence enshrined in Article 6(3) of the Convention (Ibrahim and Others v. the United Kingdom (2016)) .[61]

For a more detailed analysis of the ECtHR case-law on equality of arms and adversarial proceedings, see the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb), Section V, paragraph 2: "Equality of arms and adversarial proceedings".[62]

OBSERVATIONS

Based on the Project's findings, no peculiarities of the practical implementation of the right to equality of arms were established in the criminal proceedings under consideration; no fact that would indicate a violation of this principle or a significant imbalance between the prosecution and defence was identified either.

RECOMMENDATIONS

For courts and judges:

- **Ensuring compliance with the principle of equality of arms in criminal proceedings.** Courts should guarantee equal procedural opportunities to both parties – prosecution and defence, – including access to case files, the right to effectively present their position, comment on evidence, and participate in hearings on equal terms. This is an integral part of a fair trial and should be preserved in both regular and sensitive cases, including war crimes.

1.6. Presumption of innocence and burden of proof

INTERNATIONAL STANDARD

The presumption of innocence is one of the fundamental principles of a fair trial, which guarantees that everyone accused of a criminal offence is presumed innocent until proven guilty according to the procedure established by law. This principle is enshrined in a number of international documents:

57 ECtHR judgment in Öcalan v. Turkey, 6 July 2010, available at№ 5980/07. URL: https://hudoc.echr.coe.int/eng?i=001-99978.

58 ECtHR judgment in Foucher v. France, 18 March 1997, available at№ 22209/93. URL: https://hudoc.echr.coe.int/eng?i=001-58017.

59 ECtHR judgment in Brandstetter v. Austria, 28 August 1991, applications№ 11170/84; 12876/87; 13468/87. URL: https://hudoc.echr.coe.int/eng?i=001-57683.

60 ECtHR judgement in Bajić v. North Macedonia, 10 June 2021, application№ 2833/13. URL: https://hudoc.echr.coe.int/eng?i=001-210320.

61 ECtHR judgment in Ibrahim and Others v. the United Kingdom, 13 September 2016, applications№ 50541/08, 50571/08, 50573/08, 40351/09. URL: https://hudoc.echr.coe.int/eng?i=001-166680.

62 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

- **para. 2 of Article 6 of the Convention**: "Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law";[63]

- **para. 2 of Article 14 of the International Covenant**: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law."[64]

- **Article 11 of the Universal Declaration**: « Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence";[65]

- **Article 99 of the Geneva Convention**: "No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel; no moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty";[66]

- **subpara. «d» para. 4 Article 75 Protocol Additional I to the Geneva Conventions:** « anyone charged with an offence is presumed innocent until proved guilty according to law and as a result of a fair trial». This provision also implicitly states that the burden of proof rests with the prosecution and excludes the possibility of pressure, self-incrimination or the use of evidence obtained under duress;[67]

- **para. 1 of Article 66 of the Rome Statute**: "Everyone shall be presumed innocent until proved guilty in accordance with the applicable law». **Paragraph 2 of the same article** places the burden of proof on the Prosecutor, and **paragraph 3** prohibits any negative conclusions before the final judgement is rendered.[68]

ECtHR PRACTICE

In its case law, the European Court of Human Rights has repeatedly emphasised that the presumption of innocence applies not only to court decisions, but also to public statements by officials, authorities or the media that may create the impression of guilt before the verdict is passed. Violation of this principle may occur even before the trial begins (Allenet de Ribemont v. France (1995),[69] Matijašević v. Serbia (2006)).[70]

For a detailed analysis of the ECtHR case law on the presumption of innocence and the burden of proof, see the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb), Section VI. Special guarantees, subsection A. Presumption of innocence (Article 6, paragraph 2).[71]

63 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

64 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

65 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

66 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

67 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

68 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

69 ECtHR judgment in Allenet de Ribemont v. France, 10 February 1995, available at№ 15175/89. URL: https://hudoc.echr.coe.int/eng?i=001-57914.

70 ECtHR Judgment in Matijašević v. Serbia, 19 September 2006, available at№ 23037/04. URL: https://hudoc.echr.coe.int/eng?i=001-76896.

71 Handbook on Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

OBSERVATIONS

Based on the findings of the Project, no peculiarities of the practical implementation of the presumption of innocence were identified in the criminal proceedings under consideration; no fact was established to indicate a violation of this principle or the unlawful shift of the burden of proof to the defence.

RECOMMENDATIONS

For pre-trial investigation bodies, prosecution bodies and courts:

- **Ensuring that the presumption of innocence is respected and that the burden of proof is properly allocated.** The pre-trial investigation bodies, prosecutors and courts should strictly adhere to the principle of presumption of innocence, refrain from making public statements that prematurely give an impression of guilt, and ensure that the burden of proof remains solely with the prosecution.

1.7. Right to remain silent and not to incriminate oneself

INTERNATIONAL STANDARD

The right not to incriminate oneself and to remain silent is an integral part of the right to a fair trial and is enshrined in a number of key international instruments:

- **Article 6 of the Convention** guarantees everyone the right to a fair trial, which includes the right of the accused not to incriminate himself;[72]
- **subpara. «g" of para. 3 of Article 14 of the International Covenant** expressly states that everyone has the right "not to be compelled to testify against himself or herself or to confess guilt»;[73]
- **Article 11 of the Universal Declaration** establishes that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence;[74]
- The **Geneva Convention** does not explicitly state the right to remain silent or the right not to incriminate oneself, but **Article 99** prohibits any physical or moral pressure on a prisoner of war to compel him to confess to an offence. This provision implicitly recognises that a person is not obliged to testify against himself or herself, and that confessions obtained under pressure are inadmissible as evidence;[75]
- **subpara. «f" of para. 4 Article 75 of Protocol Additional I to the Geneva Conventions** explicitly states that no person shall be compelled to testify against himself or herself or to confess guilt;[76]

72 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

73 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

74 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

75 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

76 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

- **subpara. «g" para. 1 Article 67 of the Rome Statute** provides that the accused shall be guaranteed not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence.[77]

ECtHR PRACTICE

For a detailed analysis of the ECtHR case law on the right not to incriminate oneself and the right to remain silent, see the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb).[78]

OBSERVATIONS

Based on the findings of the Project, no peculiarities of the exercise of the right not to incriminate oneself and the right to remain silent were identified in the criminal proceedings under consideration, no fact was established to indicate a violation of these guarantees or coercion to testify against oneself.

It should be noted that the absolute majority of criminal proceedings on war crimes are considered under the procedure of special court proceedings (in absentia), in the absence of the accused. In only 6 cases, the accused were physically present during the court hearings. In such circumstances, the possibilities for identifying problems with the exercise of the right to remain silent or the prevention of self-incrimination are limited.

RECOMMENDATIONS

For pre-trial investigation bodies, prosecution bodies and courts:

- **Ensuring that the right not to incriminate oneself and to remain silent is respected.** Pre-trial investigation bodies, prosecutors and courts should strictly respect the right of the accused not to be compelled to testify against himself or herself or to confess guilt. In cases where the accused are present in person, it should be ensured that the exercise of the right to remain silent is not a consideration in the determination of guilt and does not affect the court's evaluation of evidence.

1.8. Reasonable time and efficiency

INTERNATIONAL STANDARD

The right to a trial within a reasonable time is part of the right to a fair trial. Everyone has the right to ... a hearing within a reasonable time ... by a(n) tribunal... . This right is enshrined in:

- **para. 1 of Article 6 of the Convention**;[79]

77 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

78 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

79 The Convention for the Protection of Human Rights and Fundamental Freedoms as of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

- **Article 14 of the International Covenant**;[80]

- **Article 103 of the Geneva Convention**, which stipulates that judicial investigations of prisoners of war should be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. Confinement shall not exceed three months, unless justified in the interests of national security. Any period in confinement shall be deducted from the sentence;[81]

- **Article 75 of Protocol Additional I to the Geneva Conventions** does not contain any specific provision on reasonable time, but requires that all prosecuted individuals shall enjoy the fundamental judicial guarantees recognised by international law. These guarantees include the hearing of a case without undue delay;[82]

- **subpara. «c" of Article 67(1) of the Rome Statute** enshrines the right of the accused to a fair trial without undue delay.[83]

ECtHR PRACTICE

For a detailed analysis of the ECHR case law on the observance of a reasonable time limit for a trial, see the Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Criminal Limb**).** It consecutively considers the stages of determining the duration of proceedings – in particular, from when the time limit shall be counted (for example, from the first official notification of suspicion to a person) and how to determin when it ends (for example, the delivery of a final judgment). To assess the reasonableness of the time limit, the ECtHR applies a comprehensive approach, taking into account general principles, such as the state's obligation to ensure effective proceedings, as well as specific criteria: the complexity of the case, the behaviour of the applicant and the authorities, and the importance of the case for the applicant. The Guide provides examples of both exceeding and not exceeding the reasonable time limit, which allows to have an idea of the permissible limits of delay depending on the context of the case. [84]

OBSERVATIONS

Official statistics from open sources do not allow us to trace the actual duration of trial of each particular case in courts. Therefore, in order to assess the duration of war crimes proceedings, the Project determined the average duration of the proceedings monitored within the third phase and decided by the courts of first instance and appellate courts within the reporting period.

The time period was determined from the moment a person was served with a notice of suspicion until the date of issuance of a relevant court decision.

- **Criminal proceedings completed by the court of first instance:**

  No. 748/2174/24 [17.08.2023 - 28.11.2024 (1 year, 3 months, 14 days; 469 days)]

  No. 748/3438/24 [03.07.2024 - 26.12.2024 (5 months, 26 days; 176 days)].

80 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

81 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

82 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

83 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

84 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

No. 185/10275/22 [12.05.2022 - 16.01.2025 (2 years, 8 months, 10 days; 980 days)].

No. 485/742/24 [18.01.2024 - 03.02.2025 (1 year, 17 days; 382 days)].

No. 743/262/24 [30.03.2022 - 03.02.2025 (2 years, 10 months, 11 days; 1041 days)].

No. 748/3480/24 [04.04.2022 - 17.02.2025 (2 years, 10 months, 20 days; 1050 days)].

No. 743/908/24 [12.02.2024 - 17.02.2025 (1 year, 6 days; 371 days)].

No. 748/4732/24 [08.04.2024 - 24.02.2025 (20 months, 22 days; 322 days)]

No. 729/861/24 [19.04.2023 - 24.02.2025 (1 year, 10 months, 12 days; 677 days)].

No. 333/5566/24 [20.10.2023 - 26.02.2025 (1 year, 4 months, 10 days; 495 days)].

No. 754/18236/23 [06.09.2023 - 18.03.2025 (1 year, 6 months, 14 days; 599 days)].

No. 954/266/23 [21.03.2022 - 19.03.2025 (2 years, 12 months, 4 days; 1094 days)].

No. 761/28971/22 [19.04.2022 - 24.03.2025 (2 years, 11 months, 10 days; 1070 days)].

No. 761/7615/23 [08.10.2021 - 27.03.2025 (3 years, 5 months, 21 days; 1266 days)].

No. 485/167/25 [10.08.2024 - 07.04.2025 (8 months; 240 days)].

No. 766/12885/23 [06.11.2023 - 07.04.2025 (1 year, 5 months, 3 days; 518 days)].

No. 485/2098/24 [16.09.2024 - 08.04.2025 (6 months, 24 days; 204 days)].

No. 748/4032/24 [18.01.2024 - 11.04.2025 (1 year, 2 months, 24 days; 449 days)].

No. 361/1117/24 [22.02.2023 - 08.04.2025 (2 years, 1 month, 16 days; 776 days)].

No. 485/2061/23 [28.02.2023 - 28.04.2025 (2 years, 2 months, 790 days)].

No. 760/21748/24 [11.01.2024 - 09.05.2025 (1 year, 3 months, 29 days; 484 days)].

No. 363/2119/24 [10.04.2024 - 15.05.2025 (1 year, 1 month, 5 days); 400 days)].

No. 638/8749/23 [05.10.2022 - 15.05.2025 (2 years, 7 months, 13 days; 953 days)].

No. 337/4647/24 [08.08.2024 - 19.05.2025 (9 months, 14 days; 284 days)]

No. 748/2577/24 [12.04.2022 - 22.05.2025 (3 years, 1 month, 11 days; 1136 days)].

No. 733/37/24 [27.03.2022 - 23.05.2025 (3 years, 1 month, 28 days; 1153 days)].

No. 370/2058/22 [31.03.2022 - 23.05.2025 (3 years, 1 month, 24 days; 1149 days)].

No. 748/5045/24 [31.01.2024 - 27.05.2025 (1 year, 3 months, 27 days; 482 days)].

No. 754/15727/23 [03.04.2023 - 10.06.2025 (2 years, 2 months, 9 days; 799 days)].

No. 650/3777/24 [12.05.2023 - 11.06.2025 (2 years, 1 month, 1 day; 761 days)].

The arithmetic mean of the duration of criminal proceedings from the moment a person is served with a notice of suspicion to the verdict of a first instance court is **1 year, 10 months and 19 days**. For reference: at the previous stage, the average duration was 1 year, 6 months and 14 days.

- **Criminal proceedings that were subject to review in the courts of appeal:**

  No. 127/15500/23 [07.09.2022 - 28.03.2025 (2 years, 6 months, 23 days; 933 days)]

  No. 748/2095/23 [01.04.2022 - 11.10.2024 (2 years, 6 months, 14 days; 924 days)].

  No. 638/11302/23 [16.01.2023 - 03.10.2024 (1 year, 8 months, 21 days; 626 days)].

  No. 939/1435/22 [03.10.2022 - 08.05.2025 (2 years, 7 months, 8 days; 948 days)].

  No. 638/1305/24 [11.01.2023 - 11.03.2025 (2 years, 2 months, 790 days)].

  No. 950/3703/23 [22.11.2023 - 24.03.2025 (1 year, 4 months, 3 days; 488 days)].

  No. 739/772/24 [10.03.2022 - 07.04.2025 (3 years, 29 days; 1124 days)].

  No. 748/3480/24 [04.04.2022 - 24.04.2025 (3 years, 21 days; 1116 days)].

The arithmetic mean of the duration of criminal proceedings from the moment a person is served with a notice of suspicion until the appellate court delivers a decision is **2 years, 4 months and 18 days**. For reference: at the previous stage, the average duration was 1 year, 7 months, and 11 days.

The duration of criminal proceedings under the same articles of the Criminal Code of Ukraine is not consistent and uniform, given the complexity of a case, the amount of evidence to be examined by the court, the need to examine witnesses and ensure their participation to testify in court, etc.

Reasonable time and efficiency: good practices

- Courts generally **facilitate a reasonable duration of** consideration of relevant criminal proceedings and take measures to **ensure an efficient** trial.

- According to the monitors**, the presence of an independent observer has a positive impact** on the observance of reasonable time limits for consideration of relevant proceedings and ensuring the efficiency of a trial (No. 754/18236/23 Desnianskyi District Court of Kyiv).

- The court showed a proactive stance on procedural economy: at the request of the defence, the court asked the prosecutor to focus only on evidence relevant to the merits of the case (№ 367/8696/23 Irpin City Court of Kyiv oblast).

Reasonable time limits and efficiency: areas for improvement

- **Regular rescheduling and adjournments of court hearings** affect the observance of reasonable time limits. The reasons for the rescheduling vary, but their recurrence indicates the vulnerability of the judicial process to both internal and external factors.

The main groups of reasons are as follows:

i) non-appearance of trial participants (defendants, defence counsels, victims), sometimes systematic or without warning, is the most common reason for rescheduling, which causes numerous delays;

ii) lack of electricity supply and technical failures of VCCH impede online sessions, especially in conditions of blackouts or limited access to generators;

iii) air raids, shelling, mining of courts are the external security threats that force rescheduling of hearings in frontline and targeted regions;

iv) judge's being busy or absent (in the deliberation room, on vacation, on sick leave, being

recused, etc.) results in proceedings being postponed or not scheduled for consideration at all for a long time;

v) requests for adjournment by parties, which may be related to personal or procedural circumstances, overlaps, or the need to replace defence counsel;

vi) problems with summoning defendants, in particular, due to tlhe ack of funding for publications in official sources or insufficient notifications, which makes it impossible to ensure attendance.

The combination of these factors indicates the need to systematically improve the organisational mechanisms of war crimes trials.[85]

- In a number of proceedings, the principle of an effective trial was not observed due to **a formal approach to time planning**. Judges appointed hearings lasting 10 to 20 minutes, which makes it impossible to have a full-fledge consideration of the case. Such an approach not only indicates the risk of formal proceedings, but also violates the rights of victims to reasonable time and effective consideration of the case (No. 760/7344/22 Solomianskyi District Court of Kyiv, No. 361/3366/23 Brovary City District Court of Kyiv oblast, No. 650/3777/24 Velykooleksandrivskyi District Court of Kherson oblast).

- In some proceedings, there **were difficulties in establishing contact with the parties to the proceedings**, which led to significant delays in the proceedings. For example, in one case, the pre-trial investigation lasted three years due to difficulties in establishing the personal data of the defendants and contacting the victims. In another case, the court was unable to question the victim for a year due to the lack of contact with him; the victim himself was unable to explain the reason, citing memory problems. Such examples demonstrate the need for more active measures to be taken to establish and maintain contact with the parties to the proceedings in a timely manner (No. 753/20268/24 Darnytskyi District Court of Kyiv and No. 754/12142/22 Desnianskyi District Court of Kyiv).

RECOMMENDATIONS

- **Rationally plan the consideration of cases and the time of hearings.** Courts should avoid a formal approach to the duration of hearings.

- **Improving the organisation of summoning and participation of litigants.** It is recommended to improve the mechanisms of communication with defendants, victims, witnesses, and defence counsels, in particular by confirming receipt of notifications, ensuring access to psychological and procedural support and timely replacement of defence counsels in case of their absence or passive attitude.

- **Developing tools for procedural economy.** Actively apply the principle of procedural economy to promote focusing on relevant evidence, avoid re-examination of already established circumstances, and encourage the parties to take concerted action within a reasonable time.

- **Prioritising protracted cases.** In proceedings where court hearing have been rescheduled at least 3 times for the same reasons, an internal audit or management intervention should be initiated to prevent violations of the right to a trial within a reasonable time.

85 For references to specific examples, see the section above "Physical accessibility: areas for improvement".

1.9. The right to translation

INTERNATIONAL STANDARD

Every accused person has the right to be informed promptly and in detail, in a language he or she understands, of the nature and grounds of the charge against him or her, and to have the free assistance of an interpreter if he or she does not understand or speak the language of the court. This right is enshrined in:

- **Article 5 and subpara. «a», «f», para. 3, Article 6 of the Convention**;[86]
- **subpara. «a", para. 3, Article 14 of the International Covenant**;[87]
- **Article 105 of the Geneva Convention**, it provides that a prisoner of war shall be entitled to the services of a competent interpreter if this is necessary for the effective defence. In addition, according to **Article 107**, if the sentence is not pronounced in the presence of a prisoner of war, its translation must be sent in a language that he understands;[88]
- **para. 3 of Article 75 of Protocol Additional I to the Geneva Conventions** provides that any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken;[89]
- **para. "f" para. 1 Article 67 of the Rome Statute** stipulates that the accused has the right to receive a translation of any documents and statements necessary for his or her defence, as well as to benefit from interpretation during the trial if he or she does not understand or speak the language used in court.[90]

ECtHR CASE LAW

The ECtHR has consistently emphasised that if it is proved or if there are grounds to believe that the accused does not know sufficiently the language in which the relevant information is passed to him or her, the authorities shall provide him or her with translation. [91][92] Although paragraph 3 (a) of Article 6 of the Convention does not specify that the relevant information must be provided or translated in writing to an accused who is a foreigner, in practice an accused person who does not speak the language used by the court may be disadvantaged if he or she is not also provided with a written translation of the indictment in a language that he or she understands. [93][94] Paragraph 3 (a) of Article 6 of the Convention does not entitle the accused to a full translation of all case files.[95] The costs incurred for the translation of prosecution materials should be borne by the State, in accordance with subparagraph (e) of paragraph 3 of Article 6 of the Convention, which guarantees the right to free assistance of an interpreter.[96]

86 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

87 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

88 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

89 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

90 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

91 ECtHR judgement in Brozicek v. Italy, 19 December 1989, application № 10964/84. URL: https://hudoc.echr.coe.int/eng?i=001-57612.

92 ECtHR judgment in Tabaï v. France, 17 February 2004, application № 73805/01. URL: https://hudoc.echr.coe.int/eng?i=001-44775 (judgment).

93 ECtHR judgment in Hermi v. Italy, 18 October 2006, application no. 18114/02, application № URL: https://hudoc.echr.coe.int/eng?i=001-77543.

94 ECtHR judgment in Kamasinski v. Austria, 19 December 1989, application № 9783/82. URL: https://hudoc.echr.coe.int/eng?i=001-57614.

95 Decision of the European Commission of Human Rights in X. v. Austria, 29 May 1975, application № 6185/73. URL: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-70000&filename=X.%20v.%20AUSTRIA.pdf.

96 ECtHR judgement in Luedicke, Belkacem and Koç v. Germany, 28 November 1978, application № 6210/73; 6877/75; 7132/75. URL: https://hudoc.echr.coe.int/eng?i=001-57530.

A detailed analysis of the right to translation is provided in the Guide on Article 6 of the European Convention on Human Rights. In particular, the Guide covers the key aspects of this right, namely: i) situations when the accused does not understand or speak the language of the proceedings; ii) guaranteed elements of criminal proceedings related to the right to translation; iii) interpretation of the concept of "free assistance"; v) conditions for translation during the proceedings; iv) the obligation of the State to determine the need for translation and ensure its proper quality, etc. [97]

OBSERVATIONS

Right to translation: good practices

- **Engaging a professional interpreter during court proceedings**. Criminal proceedings involving the accused were fully interpreted from Ukrainian into Russian, the language spoken by the accused. The translation was carried out by a qualified interpreter, which ensured the effective participation of the defendants in the proceedings and the exercise of their right to defence (No. 332/3499/24, Zavodskyi District Court of Zaporizhzhia; № 367/2115/23 and No. 367/7326/23 Irpin City Court of Kyiv oblast).

- **Translation of procedural documents.** The translation of notices of suspicion, summonses, court rulings, and indictments into Russian, which the accused understands, was stated (No. 332/3499/24, Zavodskyi District Court of Zaporizhzhia; No. 939/2099/23, Borodianskyi District Court of Kyiv oblast).

- **Publication of summonses in two languages.** As a rule, summonses are published in Ukrainian and Russian, which ensures accessibility of information for the accused (No. 367/11492/24, Irpin City Court of Kyiv oblast).

Right to translation: areas for improvement

- **Lack of translation of procedural documents.** In some criminal proceedings, some documents were not translated, despite the fact that the accused probably does not speak the state language (No. 766/10206/23, No. 766/9963/24, Kherson City Court of Kherson oblast).

- **Selective translation.** In case No. 760/21748/24 (Solomianskyi District Court of Kyiv), only the notice of suspicion was translated, while the indictment untranslated.

RECOMMENDATIONS

For courts and prosecution bodies:

- **Ensuring full translation of procedural documents.** Ensuring that all key documents (notice of suspicion, indictment, court decisions, summonses) are translated into a language that the accused actually understands**.**

- **Involving an interpreter at all stages of the process.** Facilitating the participation of a professional interpreter at all stages of the trial if the accused does not speak the state language, regardless of whether the defence counsel speaks the language of the accused.

97 Guide to Article 6 of the European Convention on Human Rights. The right to a fair trial (criminal limb). Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_ukr.

- **Publication of information in two languages.** Making sure that information about court hearings is published in Ukrainian and in the language spoken by the accused (Russian), in particular in proceedings *in absentia*.

1.10 Freedom and personal integrity

INTERNATIONAL STANDARD

Everyone has the right to liberty and person integrity. No one shall be deprived of his liberty save in accordance with a procedure established by law. Everyone who is arrested shall be promptly informed of the reasons for his or her arrest, brought before a court without delay and released in the event of unlawful arrest. A person detained in violation of the law has the right to compensation. This right is enshrined in:

- **Article 5 of the Convention;**[98]
- **Article 9 of the International Covenant**;[99]
- **Article 9 of the Universal Declaration**;[100]
- **Article 103 of the Geneva Convention relative to the Treatment of Prisoners of War** provides for the speedy trial and release of a person if the detention is unjustified. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months;[101]
- **Para. 3 of Article 75 of Protocol Additional I to the Geneva Conventions** provides that any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist;[102]
- **Article «d" para. 1 Article 55, Article 58, 59, 91, 92 of the Rome Statute** stipulate that a person shall not be subject to arbitrary arrest or detention, shall be brought promptly before a court, and shall enjoy all guarantees of a lawful arrest and review of the preventive measure, etc.[103]

ECtHR PRACTICE

An analysis of the ECtHR case law on the right to liberty and person integrity is provided in detail in the Guide on Article 5 of the European Convention on Human Rights. Right to Liberty and Personal Integrity, prepared as part of the ECtHR's series of practical guides.[104]

98 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

99 International Covenant on Civil and Political Rights of 16 December 1966. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

100 Universal Declaration of Human Rights of 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text.

101 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: https://zakon.rada.gov.ua/laws/show/995_153#Text.

102 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text.

103 Rome Statute of the International Criminal Court of 17 July 1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

104 Guide to Article 5 of the European Convention on Human Rights. The right to liberty and security of person. Last update: 31.08.2024. URL: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_ukr.

OBSERVATIONS

Liberty and personal integrity: good practices

- **Substantiation and reasoning of court decisions.** In many rulings, the court provides detailed justification for the need for detention, taking into account: i) the gravity of the crime; ii) the risk of impact on witnesses and victims; iii) the possibility of escape, in particular to the TOT or in the framework of further exchange (No. 367/2115/23, Irpin City Court of Kyiv oblast; № 333/116/25, Komunarskyi District Court of Zaporizhzhia).

- **Consistent approach of the court.** A restrictive measure is chosen at the stage of pre-trial investigation with subsequent regular review and reasonable extension (No. 367/2115/23, Irpin City Court of Kyiv oblast,№ 939/2192/24, Borodianskyi District Court of Kyiv oblast).

- **Consideration of alternative measures.** The rulings explicitly state why other (less restrictive) preventive measures would not ensure proper procedural behaviour (No. 367/7122/24, Irpin City Court of Kyiv oblast; No. 939/1258/24, Borodianskyi District Court of Kyiv oblast).

- **Consideration of the individual characteristics of the accused.** Courts assess the age, state of health, social ties, etc. when justifying detention (No. 367/2115/23, Irpin City Court of Kyiv oblast).

- **Availability of judicial control**. Even in cases tried *in absentia*, the decision to impose or prolong detention is made in compliance with procedural rules (No. 367/1734/23, Irpin City Court of Kyiv oblast, No. 337/4647/24, Khortytskyi District Court of Zaporizhzhia).

Liberty and personal security: areas for improvement

- **Insufficient personalisation of risks.** In some decisions, patterned arguments were used without specifying the risks in relation to a particular defendant (No. 367/1734/23, Irpin City Court of Kyiv oblast).

- **Lack of a term of preventive measures and the possibility of choosing alternatives**. Some rulings do not specify the duration of the detention or do not provide for the possibility of bail (No. 367/1734/23, Irpin City Court of Kyiv oblast; No. 370/1757/23, Makarivskyi District Court of Kyiv oblast).

- **Formal approach to defence arguments**. In some cases, the court does not analyse the defence position in detail or rejects it in a simplistic manner, without taking into account the evidence presented.

RECOMMENDATIONS

For courts and judges:

- **Avoiding patterns when substantiating.** Promoting a tailored approach in each case: the court should clearly substantiate the existence of risks (escape, influence on witnesses, etc.) and assess the defence arguments**.**

- **Assessing the applicability of alternative measures.** Before applying custody, the court should consider other preventive measures (bail, home arrest, etc.) and justify the refusal to apply them.

SECTION 2. ANALYSIS OF COURT DECISIONS

2.1. General analysis of court decisions

2.1.1. General description (regions, instances, number, trends in number)

During Phase III of the monitoring of court proceedings in war crime cases, 55 verdicts of first instance courts delivered under Article 438 of the CCU of Ukraine have been analysed.

Information on four verdicts is prohibited to be disclosed under paragraph four of part one of Article 7 of the Law of Ukraine "On Access to Court Decisions".

Nine court rulings of the courts of appeal were analysed. Two of them were appealed to the Criminal Cassation Court of the Supreme Court.

The cassation court did not deliver any ruling in criminal proceedings under Article 438 of the CCU within the analysed period.

When searching for verdicts in the USRCD, the team of experts encountered a problem that was not highlighted in the reports on the previous stages of court proceedings monitoring, namely the lack of possibility to find all the decisions delivered under Article 438 of the CCU using the search criteria offered by the USRCD system. The team of experts had to search for individual court decisions "manually", using various keywords and designations from the wording of Article 438 of the CCU. Thus, as a result of such manual search , the following verdicts were included in the catalogue of court decisions in criminal proceedings on war crimes:

- *Judgement of the Vinnytsia City Court of Vinnytsia oblast of 20.03.2024 in case No. 127/15500/23*[105] *(this verdict was appealed to the court of appeal and the cassation court. At the time the report was drafted, the cassation review of the criminal proceedings was ongoing)*.

- *Judgement of the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23*[106] (the verdict has entered into force).

- *Judgement of the Khersonskyi District Court of Kherson region of 07.04.2025 in case No. 766/12885/23*[107].

105 https://reyestr.court.gov.ua/Review/117947422
106 https://reyestr.court.gov.ua/Review/126919967#
107 https://reyestr.court.gov.ua/Review/126490833

- *Judgement of the Velykooleksandrivskyi District Court of Kherson oblast of 02.05.2025 in case No. 650/1189/24*[108] (the verdict has entered into force).

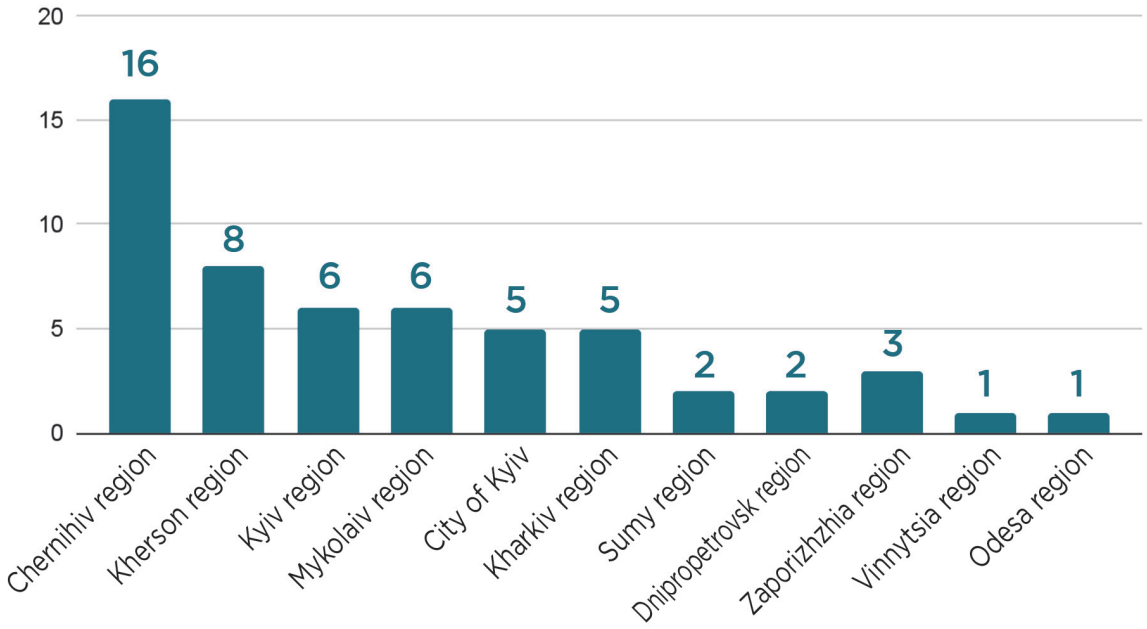
- *Ruling of the Vinnytsia Court of Appeal of 28.03.2025 in case No. 127/15500/23*[109] (appealed to the court of cassation).

- *Judgement of the Tsentralnyi District Court of Mykolaiv of 02.06.2025 in case No. 490/9491/23*[110].

In all of these decisions, the actions of the accused were qualified as a combination of a war crime and other criminal offences (usually crimes against the foundations of national security of Ukraine).

During phase III of the monitoring, two court decisions of a first instance court and a court of appeal within one criminal proceeding, which were adopted during the previous phases of the monitoring, were identified and analysed.

Verdicts under Article 438 of CCU of Ukraine, by regions



As during the first two phases of the monitoring, the largest number of verdicts were delivered by the courts of Chernihiv region and Chernihiv city. The vast majority of verdicts were delivered by the Chernihivskyi District Court of Chernihiv oblast.

54 verdicts contained guilty verdicts.

By the verdict *of the Centranyil District Court of Mykolaiv of 02.06.2025 in case No. 490/9491/23*, a citizen of Ukraine was acquitted of committing a war crime and found guilty of treason (part 2 of Article 111 of the Criminal Code).

10 verdicts under Article 438 of the CCU were appealed to appellate courts. At the time of preparation of the report, there were nine court decisions in criminal proceedings under Article 438 of the CCU registered in the USRCD.

108 https://reyestr.court.gov.ua/Review/127124241
109 https://reyestr.court.gov.ua/Review/126197446
110 https://reyestr.court.gov.ua/Review/127796477#

In two criminal proceedings, a cassation appeal was filed against the verdict of the court of first instance and the ruling of the court of appeal (verdict *of the Vinnytsia City Court of Vinnytsia oblast of 20.03.2024 and ruling of the Vinnytsia Court of Appeal of 28.03.2025 in case No. 127/15500/23;* verdict *of the Industrialnyi District Court of Kharkiv of 16.04.2025 and* ruling of the Kharkiv Court of Appeal of 16.06.2025 in case No. 638/11148/23).

Access to four more verdicts under Article 438 of the CCU is restricted. Information on the verdicts shall not be disclosed in accordance with paragraph four of part one of Article 7 of the Law of Ukraine "On Access to Court Decisions".

In one criminal proceeding, access to the verdict under Article 438 of the CCU was restricted (the verdict of the Menskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 739/772/24), but the ruling of the court of appeal was openly accessible (the ruling of the Chernihiv Court of Appeal of 07.04.2025 in case No. 739/772/24).

Between January and June 2025, 36 verdicts have been delivered by the first instance courts, which is 28% more than in the same period in 2024 (26 verdicts were delivered in January-May 2024).

2.1.2. Profiles of the convicts

The analysed verdicts under Article 438 of the CCU **sentenced 75 persons, the vast majority of whom are citizens of the Russian Federation (53 persons or 72%). 21 convicted persons (or 28%) are Ukrainian citizens**. One person, convicted under Article 438 *of* the CCU is a former Ukrainian citizen whose Ukrainian citizenship was terminated by a Presidential Decree, was a citizen of the Russian Federation according to his passport (*verdict of the Vinnytsia City Court of Vinnytsia oblast of 20.03.2024 in case No. 127/15500/23, upheld by the Vinnytsia Court of Appeal of 28.03.2025*) .[111]

As for the Russian citizens convicted by Ukrainian courts under Article 438 of the CC, almost all of them are combatants under IHL.

In two verdicts**, the convicted Russian citizens did not have the status of a combatant** (*verdict of the Vinnytsia City Court of Vinnytsia region of 20 March 2024 in case No. 127/15500/23, upheld by the decision of the Vinnytsia Court of Appeal of 28 March 2025*[112] *, the verdict of the Shevchenkivskyi District Court of Kyiv of 24 March 2025 in case No. 761/28971/22*). The *verdict* of the Vinnytsia City Court of Vinnytsia oblast of 20 March 2024 in case No. 127/15500/23, upheld by the decision of the Vinnytsia Court of Appeal of 28 March 2025, sentenced the former Minister of Education and Science of Ukraine, whose Ukrainian citizenship was terminated by a Presidential Decree, a citizen of the Russian Federation since 19 December 2016. *The verdict of the Shevchenkivskyi District Court of Kyiv of 24.03.2025 in case No. 761/28971/22* sentenced the wife of a serviceman of the Russian armed forces , who, during telephone conversations with her husband, urged him to rape Ukrainian women.

Thirteen persons of the convicted Russian citizens (or 25% of the convicted Russian citizens) were military commanders, holding various military positions. For example, *the verdict of the Borodianskyi District Court of Kyiv oblast of 12.09.2024 in case No. 939/1435/22*, upheld *by the decision of the Kyiv Court of Appeal of 08.05.2025 in case No. 939/1435/22*, convicted the Deputy Head of the Department of the Federal Service of the National Guard Troops of the Russian Federation in the Chechen Republic; *the verdict of the same court of 13.03.2025 in case No. 939/226/23*, sentenced the commander of 'Akhmat', mobile special purpose detachment (OMON) of the Department of the Federal Service of the National Guard Troops of the Russian Federation in the Chechen Republic.

In some cases**, both Ukrainian and Russian citizens who jointly committed war crimes were convicted** under Article 438 *of the* CCU *(verdicts of the Vinnytsia City Court of Vinnytsia oblast of 20.03.2024 in*

111 The verdict of the court of first instance and the ruling of the court of appeal were appealed to the CCU; cassation review is ongoing

112 The verdict of the court of first instance and the ruling of the court of appeal have been appealed to the CCU; cassation review is ongoing

case No. 127/15500/23, upheld by the decision of the Vinnytsia Court of Appeal of 28.03.2025[113]*, of the Kherson City Court of Kherson oblast of 05.08.2024 in case No. 766/1560/24, of the Ripkynskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 743/908/24*).

Five of the convicts **were previously convicted of other criminal offences**. There is both general and special recidivism.

- *by verdict of the Chernihivskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 748/4732/24*, a citizen of Ukraine, previously convicted on 25.03.2024 by the Chernihivskyi District Court of Chernihiv oblast under part 1 of Article 438 of the Criminal Code, was sentenced to 12 years of imprisonment[114] (special recidivism);

- *by verdict of the Novovorontsovskyi District Court of Kherson region of 19.03.2025 in case No. 954/266/23*, sentenced the person, who had been sentenced by verdict of the Suvorovskyi District Court of Odesa of 27.03.2024 for committing criminal offences under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code to imprisonment for a term of 12 years[115] (special recidivism);

- person convicted *by verdict of the Desnianskyi District Court of Kyiv of 18.03.2025 in case No. 754/18236/23*, had previously been sentenced on 02.09.2024 by the Desnianskyi District Court of Kyiv under part 1 of Article 111 of the CCU to 12 years of imprisonment with confiscation of all property (general recidivism);

- *by verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24*, four citizens of Ukraine were sentenced under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code; two of them had previously been convicted, namely one of the accused was previously sentenced, on 09.01.2024 by the Khortytskyi District Court of Zaporizhzhia under part 7 of Article 111-1; part 1 of Article 111-2 of the Criminal Code, to 14 years of imprisonment with the deprivation of the right to hold any positions in state authorities, local self-government, law enforcement agencies, or in bodies providing public services for a period of 15 years, with confiscation of all property[116] ; the second of the accused was previously convicted on 20.03.2024: the Khortytskyi District Court of Zaporizhzhia sentenced him under part 7 of Article 111-1; part 1 of Article 111-2 of the Criminal Code to 14 years of imprisonment with the deprivation of the right to hold any positions in law enforcement agencies, public authorities, public administrations, and local self-government for a period of 15 years, with con-

113 The verdict of the court of first instance and the decision of the court of appeal were appealed to the CCU; cassation review is ongoing

114 *By the verdict of the Chernihiv District Court of Chernihiv oblast of 25.03.2024№* 748/4122/23. https://reyestr.court.gov.ua/Review/117864445 a serviceman of the Russian Federation Armed Forces was convicted under part 1 of Article 438 of the Criminal Code for the illegal detention of civilians, combined with cruel treatment, which was expressed in the detention of victims in conditions incompatible with respect for human dignity, thus violating the laws and customs of war provided for by international treaties ratified by the Verkhovna Rada of Ukraine.

115 *By the verdict of the Suvorov District Court of Odesa of 27.03.2024 in case№* 523/224/23. https://reyestr.court.gov.ua/Review/117988682, a serviceman of the Russian Armed Forces was convicted of ordering other violations of the laws and customs of war committed by a group of persons by prior conspiracy.

116 *By the verdict of the Khortytskyi District Court of Zaporizhzhia of 09.01.2024 in the case№ 337/2373/23* https://reyestr.court.gov.ua/Review/116160885 under Part 7 of Art. 111-1, Part 1 of Art. 111-2 The Criminal Code convicted a citizen of Ukraine who took up the position of a duty officer of a temporary detention centre in an illegal law enforcement agency - "Tokmak District Department of the Main Directorate of the Ministry of Internal Affairs in Zaporizhzhia oblast" (part 7 of Article 111-1 of the Criminal Code) and, while in this position, illegally detained 11 people, citizens of Ukraine, who were illegally transferred from the temporarily occupied territory of Tokmak to the line of contact. Tokmak to the line of demarcation of hostilities (conduct of hostilities) on the outskirts of the village of Kamianske, Vasyliv district, Zaporizhzhia region and with danger to their life and health forcibly and publicly expelled to the territory controlled by the Ukrainian authorities with the use of video recording devices (part 1 of Article 111-2 of the Criminal Code). This verdict sentenced the citizen of Ukraine to 14 years' imprisonment with disqualification to hold any positions in state authorities, local self-government, law enforcement agencies and public service providers for 15 years, with confiscation of all his property; under Art. 1 of Art. 111-2 of the Criminal Code in the form of 12 years' imprisonment with disqualification to hold any positions in state authorities, local self-government, law enforcement agencies and public service bodies for a period of 15 years, with confiscation of all property belonging to him. Pursuant to Article 70 of the Criminal Code, by absorbing a lesser sentence into a more severe one, the citizen of Ukraine was sentenced to 14 years' imprisonment with disqualification to hold any positions in state authorities, local self-government, law enforcement agencies and public service bodies for a period of 15 years, with confiscation of all his property

fiscation of all property and deprivation of the special rank of Senior Police Warrant Officer ,[117]

2.1.3. Impact of war crimes on the resolution of criminal law issues in other proceedings

A manual search for judgements in the USRCD revealed certain judgements passed in other criminal proceedings in which the conviction of a person under Article 438 of the CCU or recognition of him/her as a victim of a war crime influenced the resolution of certain criminal law issues.

When deciding on the *sentencing* of a person found guilty of committing crimes under part 1 of Article 249 and part 1 of Article 369 of the CCU by *verdict of the Ordzhonikidzevskyi (Voznesenivskyi) District Court of Zaporizhzhia dated 01.04.2025 in case No. 335/8749/24*, the court took into account that the accused had been a victim in criminal proceedings under part 1 of Article 438 of the Criminal Code since 20.01.2025 due to injuries sustained after an FPV drone hit him, namely: mine-blast trauma, acubarotrauma, amputation of four phalanges of the left hand, thermal burns of both legs .[118]

In the verdict *of the Novozavodskyi District Court of Chernihiv of 15 February 2023 in case No. 751/4708/22*, by which the accused was found guilty of committing crimes under part 4 of Article 185, part 4 of Article 186 of the Criminal Code, the mitigating circumstance was, in particular, the commission of a criminal offence due to a combination of circumstances that led to the commission of the crime, namely during martial law and active hostilities in the city of Chernihiv, damage was inflicted to the house, in particular its slate roof, where the accused had been dwelling with his mother, who was a victim in the criminal proceedings under part 2 of Article 438 of the Criminal Code . [119]

As stated in the *verdict of the Irpin City Court of Kyiv oblast of 10.02.2024 in case No. 367/3601/19*, where the person was accused of committing a crime under part 1 of Article 121 of the CC, the court could not examine the material evidence in this criminal proceeding, as it was not provided to the court by the prosecution, due to the fact that the material evidence had been destroyed when the premises of the police station No. 2 of the Bucha Police Department in Kyiv oblast were damaged between 05.03.2022 to 01.04.2022, during the full-scale military invasion of Ukraine by the Russian Federation. Members of the armed forces and other paramilitary formations of the Russian Federation, contrary to the laws and customs of war, the provisions of which are enshrined in international treaties ratified by the Verkhovna Rada of Ukraine, shelled the civilian infrastructure using military weapons. The relevant details was entered into the URPUSRPTI under No. 12022111040000420 on 03.06.2022 suggesting possible criminal offence under part 1 of Article 438 of the Criminal Code . [120]

Thus, the fact of a person being recognized as a victim in criminal proceedings under Article 438 of the CCU may be taken into account by the court, when imposing a sentence in other criminal proceedings, as a mitigating circumstance, while the destruction or substantial damage to evidence in criminal proceedings, which has been properly documented, makes it possible to take it into account for the purpose of convicting a person without such evidence being examined first-hand by the court.

117 *By the verdict of the Khortytskyi District Court of Zaporizhzhia of 20.03.2024 in the case№* 337/2340/23 https://reyestr.court.gov.ua/Review/117772569 under part 7 of Art. 111-1, part 1 of Art. 111-2 The Criminal Code convicted a category 2 controller of the 2nd division of the 7th security platoon of the 2nd security unit of the territorial administration of the Judicial Protection Service in Zaporizhzhia region, a senior police warrant officer who voluntarily and proactively took up the position of senior police officer (convoy) of the department of protection and escort of suspects and accused in the temporary detention centre of the illegal law enforcement agency - "Tokmak Main Department of the Main Directorate of the Ministry of Internal Affairs in Zaporizhzhia region", who, while in this position, illegally detained 11 people, citizens of Ukraine, who were According to this verdict, the citizen of Ukraine was sentenced under Part 7 of Article 111-1 of the Criminal Code to 14 years' imprisonment with disqualification to hold positions in law enforcement agencies, state authorities, public administration and local self-government for 15 years, with confiscation of all property belonging to him; under Part 1 of Article 111-2 of the Criminal Code to 12 years' imprisonment with disqualification to hold positions in law enforcement agencies, state authorities, public administration and local self-government for 15 years, with confiscation of all property belonging to him. On the basis of Part 1 of Article 70 of the Criminal Code, for the totality of criminal offences, by absorbing a lesser punishment by a more severe one, the citizen of Ukraine was finally sentenced to 14 years' imprisonment with deprivation of the right to hold positions in law enforcement agencies, state authorities, public administration and local self-government for a period of 15 years, with confiscation of all his property and deprivation of the special rank of "senior police ensign".

118 Verdict of the Ordzhonikidze District Court of Zaporizhzhia of 01.04.2025 in case№ 335/8749/24. https://reyestr.court.gov.ua/Review/126252754

119 Verdict *of the Novozavodskyi District Court of Chernihiv of 15.02.2023 in case№ 751/4708/22.* https://reyestr.court.gov.ua/Review/109041350

120 The verdict of the Irpin City Court of Kyiv oblast of 10.02.2024 in case№ 367/3601/19. https://reyestr.court.gov.ua/Review/123924554

2.2. Qualification under Article 438 of the CC

2.2.1. Qualification under parts 1 or 2 of Article 438 of the CC

In most of the verdicts analysed during the third phase of the monitoring, the actions of the accused were qualified under part 1 of Article 438 of the CCU. That is, violation of the laws and customs of war that did not result in the death of a person.

Part 2 of Article 438 of the CCU applied for the qualification of the actions of the convicts in verdicts of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24, the Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24, the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24, the Ichnianskyi District Court of Chernihiv oblast of 23.05.2025 in case No. 733/37/24.

These verdicts stated the combination of a war crime with willful killing.

In practice, there is no problem in determining which part of Article 438 of the CCU shall apply to qualify the actions of the accused. At the same time, let us bring into view the law-making problem.

According to the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in connection with the ratification of the Rome Statute of the International Criminal Court and amendments thereto" of 09.10.2024 No. 4012-IX, part 2 of Article 438 of the CCU was restated, namely "The same acts if they caused the death of a person» (in the previous version, this part contained the following wording: «The same acts combined with willful killing»).

The wording of part 2 of Article 438 of the CCU in the current version contains the following shortcomings:

- It does not take into account the fact that the intentional killing of civilians and prisoners of war is a serious violation of the laws and customs of war and is an independent form of war crimes. Thus, the Geneva Conventions I-IV of 1949 provide, in particular, for such a serious violation of the rules and customs of warfare as willful killing (Article 50 of Geneva Convention I, Article 51 of Geneva Convention II, Article 130 of Geneva Convention III, Article 147 of Geneva Convention IV). Willful killing is classified as an independent form of war crimes in the Rome Statute (Article 8, part 2, subpara. «i"). Willful killing of prisoners of war and civilians has traditionally been included in the list of crimes committed as part of an attack under the statutes of international criminal tribunals[121] . The wording of part 2 of Article 438 of the CCU indicates that any form of war crime under part 1 of this Article that caused the death of an individual shall be established. In other words, when qualifying under Article 438 of the CC, it is necessary to establish the relationship between the acts provided for in part 1 of Article 438 of the CCU and the death of the victim.

- It transformed the criminal offence envisaged in part 2 of Article 438 of the CCU into a compound offence, in which it is necessary to establish, as *mens rea*, the intent in terms of committing a socially dangerous act constituting a war crime, and the intent regarding the main (direct, immediate) consequence (for example, resulting from ill-treatment in the form of bodily harm), alongside negligence in terms of the additional (derivative, remote) consequence in the form of death.

These problems in the construction of the qualifying elements of a war crime are contrary to the IHL provisions providing that willful killing is an independent form of war crimes, the most dangerous form of cruel treatment of prisoners of war or civilians and has nothing to do with any other form of violation of the laws and customs of war. Moreover, the legislator has effectively eliminated the possibility,

121 Statute of the International Criminal Tribunal for the former Yugoslavia of 25.05.1993. URL: https://zakononline.com.ua/documents/show/141926___529259

since the entry into force of the implementing law No. 3909-IX, to qualify the actions of the accused, who committed the willful killing of civilians or prisoners of war, under part 2 of Article 438 of the CCU. In this case, there is a collision between the understanding of the killing of civilians or prisoners of war as a war crime in the sources of IHL and in the case law of international tribunals, and the need to establish the reckless form of guilt causing the victim's death (part 2 of Article 438 of the CC).

From the moment the implementing law No. 3909-IX enters into force, willful killing of civilians or prisoners of war will be qualified under Article 438(1) of the CCU as cruel treatment of such victims. Part 2 of this Article will be applicable only if the commission of a war crime in any form other than cruel treatment of a prisoner of war or civilian population will result in reckless causing of death.

We consider it appropriate to amend the CCU to taking into account the above statements.

2.2.2. Qualification based on the form and type of complicity

During the third phase of monitoring, as well as during the previous phases, we note a different approach applied in the verdicts in terms of the qualification of the actions of the convicts, in particular, in terms of referring or not to Article 28 of the CCU.

Thus, in 36 verdicts (65%), when qualifying the actions of the convicts**, there is a reference to Article 28 of the CCU when qualifying under Article 438 of the CCU.**

However, this aspect is treated differently depending on a court. Thus, in most verdicts, the courts refer to part 2 of Article 28 of the CCU when qualifying the convicted persons, charging them with committing a war crime by prior conspiracy by a group of persons (for example, *verdicts of the Kherson City Court of Kherson oblast of 31.03.2025 in the case of№ 766/9711/23, the Vyshhorodskyi District Court of Kyiv oblast of 15.05.2025 in the case of 363/2119/24, the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in the case of 337/4647/24*). A total of 30 verdicts (83%).

At the same time, in 5 verdicts (17%**), the courts referred to part 1 of Article 28 of the CCU**, charging the convicts with committing a war crime by a group of persons (verdicts *of the Ichnianskyi District Court of Chernihiv oblast of 23.05.2025 in case No. 733/37/24, the Makarivskyi District Court of Kyiv oblast of 23.05.2025 in case No. 370/2058/22, the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24, the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23*).

At the same time, in 17 verdicts (33%), the courts qualified the actions of the accused **only under part 1 or 2 of Article 438 of the CCU** (for example, the verdicts of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the Borodianskyi District Court of Kyiv oblast of 12.09.2024 in case No. 939/1435/22, the Snihurivskyi District Court of Mykolaiv oblast of 03.02.2025 in case No. 485/742/24, the Velykooleksandrivskyi District Court of Kherson oblast of 11.06.2025 in case No. 490/9491/23).

When qualifying the actions of convicts, the courts prefer criminal law assessment of specific actions of individuals , considering their behaviour separately from the general criminal activity of the Russian armed forces, their military units, Russian leadership, etc.

It remains unclear in which cases the courts refer to the relevant part of Article 28 of the CCU and in which cases they do not.

For example, *verdict of the Snihurivskyi District Court of Mykolaiv oblast of 03.02.2025 in case No. 485/742/24* qualified the actions of a serviceman of the Russian armed forces, commander of a special task force, under part 1 of Article 438 *of* the CCU. According to the verdict, the convict ordered unidentified persons from among the servicemen of the Russian armed forces to commit cruel treatment of civilians. In this case, the war crime was committed by the accused in complicity, rather than individually.

During the third phase of the monitoring, 2 verdicts were identified in which the **courts referred to both relevant part of Article 28 and relevant part of Article 27 of the CCU** when qualifying actions under Article 438:

- *by verdict of the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23*, the actions of a Ukrainian citizen were qualified under part 5 of Article 27, part 2 of Article 28 – part 1 of Article 438 *of* the CCU. According to the verdict, a local resident of a temporarily occupied village in Mykolaiv region voluntarily established personal contact with the Russian armed forces servicemen who occupied the village during the occupation. The convict helped these servicemen to find local residents who dismantled and hid a water pump, thereby creating a problem with the water supply of the Russian armed forces occupying the village, and together with them imprisoned the victims, taking them to a designated place where the victims were tortured by the Russian armed forces to obtain information in favour of the occupation forces. Given that the convict directly contributed to *actus reus* of the war crime, his actions being qualified as aiding and abetting under part 5 of Article 27 of the Criminal Code raise doubts;

- *by verdict of the Tsentralnyi District Court of Mykolaiv of 02.06.2025 in case No. 490/9491/23*, a Ukrainian citizen was acquitted of a count of committing a crime under part 2 of Article 15, part 5 of Article 27, part 2 of Article 28 - part 1 of Article 438 *of* the CC. This verdict will be discussed below.

2.2.3. Qualification of war crimes committed in the same region

This problem arose from the study of final court decisions under Article 438 of the CCU passed during the three phases of the monitoring and associating them with the region where they werecommitted.

An example is the commission of war crimes on the territory of Ivankivska territorial community in Chernihiv region. This community includes the village of Yahidne, where one of the most massive war crimes was committed, as established by a court verdict.

By verdict of the Chernihivskyi District Court of Chernihiv oblast of 11.03.2023, No. 748/1278/23, upheld *by the decision of the Chernihiv Court of Appeal of 28.05.2024*, under part 1 of Article 438 of the Criminal Code, 15 servicemen of the Russian armed forces were convicted for unlawful detention (imprisonment) of civilians in the basement of a school; threatening to kill them, and ill-treating them by torturing; unlawful detention of 368 victims for a long time in inhumane conditions and using the victims as human shields in the basement of the Yahidnianska school, i.e. committed other violations of the laws and customs of war under Articles 3, 27, 28, 31, 32, 34, 147 of Geneva Convention IV and Articles 51, 75 of Protocol Additional I. Each of the convicts was sentenced to 12 years in prison.

During the third phase of the monitoring, several verdicts were passed convicting members of the Russian armed forces who committed war crimes in the villages of Yahidne, Lukashivka, Sloboda, Zolotynka, and Ivanivka, which are part of the Ivankivska territorial community. The courts qualified the actions of the convicts differently, coming up with different terms of imprisonment:

- *verdict of the Chernihivskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 748/3480/24, upheld by the decision of the Chernihiv Court of Appeal of 24.04.2025*, convicted a serviceman of the Russian armed forces who, acting in complicity with an unidentified serviceman *of the* Russian armed forces, committed illegal (unlawful) detention) *of civilians* on the territory of Zolotynka village, *Chernihiv oblast*. The said individuals were held together with other victims in the basement of the Yahidnianska school (the place of unlawful detention of 386 victims according to the verdict *of the Chernihivskyi District Court of Chernihiv oblast of 11.03.2023, , no. 748/1278/23*, upheld *by the decision of the Chernihiv Court of Appeal of 28.05.2024).* The Russian armed forces serviceman was sentenced to 12 years in prison;

- *the Chernihivskyi District Court of Chernihiv oblast, case No. 748/5045/24 of 27 May 2025*, convicted 3 servicemen of the Russian armed forces, who committed illegal (unlawful) detention of a civilian, threats of willful killing, torture, inhuman treatment, sexual violence, and rape of the victim in the village of Yahidne. The victim was held in the basement of the Yahidnianska school. The convicted servicemen of the Russian armed forces were previously sentenced by the Chernihivskyi District Court of Chernihiv oblast on 12 January 2023 in case No. 748/1773/22 under part 1 of Article 438 of the CCU to 12 years in prison for the cruel treatment of civilians in Yahidne village;

- *by verdict of the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24*, the convicts were sentenced to 12 years of imprisonment for committing war crimes; the final acummulative sentence being 15 years of imprisonment;

- by verdict of the Chernihivskyi District Court of Chernihiv oblast on 24 February 2025 in case No. 748/4732/24, a serviceman of the Russian armed forces who committed cruel treatment of civilians, namely torture of a civilian and a threat of death, as well as violations of the laws and customs of war, namely looting, was sentenced under part 1 of Article 438 of the Criminal Code to 11 years in prison.

The list of such examples is long.

We recommend that courts, investigators, and prosecutors pay attention to these circumstances and avoid discrepancies in the qualification of similar actions of the Russian servicemen committed in the same region.

We recommend that the OPG focus on this issue in the standards of pre-trial investigation in war crime cases.

2.2.4. Qualification of war crimes in the aggregate with other criminal offences

During Phase III of the monitoring, some verdicts qualified the actions of the convicts in the aggregate with Article 438 of the CCU (7 verdicts – 14%).

In addition to Article 438 of the CCU, the defendants were charged with committing crimes under

- **Article 110 "Encroachment on the territorial integrity and inviolability of Ukraine**" of the CCU (*verdict of the Pavlohradskyi District Court of Dnipro oblast of 16 January 2025 in case No. 185/10275/22)*;

- **Article 111 "High treason" of the Criminal Code** (*verdicts of the Vinnytsia City Court of Vinnytsia region of 20.03.2024 in case No. 127/15500/23,* upheld by the Vinnytsia Court of Appeal of 28.03.2025[122] *, Khersonskyi District Court of Kherson region of 07.04.2025 in case No. 766/12885/23, Tsentralnyi District Court of Mykolaiv of 02.06.2025 in case No. 490/9491/23)*

- **Article 111-1 "Collaboration" of the CCU** (verdict *of the Velykooleksandrivskyi District Court of Kherson region of 02.05.2025 in case No. 650/1189/24);*

- **Article 111-2 "Aiding and abetting the aggressor state" 111-2** *of* **the CCU** (*verdict of the Vinnytsia City Court of Vinnytsia region of 20.03.2024 in case No. 127/15500/23);*

- **Article 258-3 "Creation of a terrorist group or a terrorist organisation"** of **the CCU** (verdict *of the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23);*

122 The verdict of the court of first instance and the ruling of the court of appeal were appealed to the CCU of the SC; cassation review is ongoing

- **Article 260 "Creation of unlawful paramilitary or armed groups" of the CCU** (*verdict of the Pavlohradskyi District Court of Dnipropetrovska oblast of 16.01.2025 in case no. 185/10275/22)*;

- **Article 436-2 "Justification, recognising as lawful, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants" of the CCU** (verdict *of the Solomianskyi District Court of Kyiv of 09.05.2025 in case No. 760/21748/24).*

The qualification in the aggregate took place because the convicts mostly committed actions that are not similar to war crimes, which, given the principle of completeness of qualification, are subject to qualification in the aggregate.

The courts **did not take into account** in some of their verdicts **that the convicts had committed other criminal offences in addition to war crimes**.

For example, by *verdict of the Chervonozavodskyi (Osnovyanskyi) District Court of Kharkiv of 16.10.2024 in case No. 646/4862/23*, a citizen of Ukraine was convicted under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code for committing a war crime together with the military personnel of the Russian armed forces, being appointed to the position of "Head of the Department of Internal Affairs of the Kharkiv oblast". In other words, the court did not take into account that the accused had also committed collaboration in the form of voluntarily holding a position in an illegal law enforcement agency established in the temporarily occupied territory (part 7 of Article 111-1 of the Criminal Code).

By verdict of the Novovorontsovskyi District Court of Kherson region of 19.03.2025 in case No. 954/266/2, a citizen of Ukraine was convicted under part 1 of Article 438 of the Criminal Code, who, being appointed by the occupation authorities as head of the unlawfully created Novokakhovska Military-Civilian Administration, ordered the subordinated servicemen of the Russian armed forces to commit a war crime. The relevant unlawful behaviour should be qualified as one of the crimes against the foundations of Ukraine's national security .[123]

Similar approach can be traced in the *verdict of the Desnianskyi District Court of Kyiv of 10.06.2025 in case No. 754/15727/23*.

According to certain verdicts**, the previous criminal behaviour of the convicted citizen of Ukraine under Article 438 of the CCU, which consisted of voluntarily taking a position in an illegal law enforcement agency established on the TOT, has already been assessed in verdicts in other proceedings**.

By verdict of the Desnianskyi District Court of Kyiv of 18.03.2025 in case No. 754/18236/23, the actions of a citizen of Ukraine who has a criminal record under the verdict of the Desnianskyi District Court of Kyiv of 02.09.2024, by which he was convicted under part 1 of Article 111 of the CCU to 12 years of imprisonment with confiscation of all property belonging to him by right of ownership, were qualified under part 1 of Article 438 of the CCU. After being appointed a 'judge' in the TOT of the ARC, a citizen of Ukraine decided to expel (deport) a citizen of Ukraine from Crimea.

The appointment of a citizen of Ukraine as a 'judge' in the TOT of the ARC and the administration of 'general justice' by him was qualified by a court verdict as high treason (Article 111(1) of the CC). The "specific" behaviour of this "judge", in the form of a court decision which constituted a war crime, namely the unlawful deportation of a Ukrainian citizen from the territory of the ARC (Article 147 of Convention IV), is qualified under part 1 of Article 438 of the Criminal Code.

We recommend that courts, investigators, and prosecutors, when qualifying under Article 438 of the CCU, pay attention to the commission of another criminal offence by the accused.

123 There are different approaches to the qualification of such actions in court practice and in the theory of criminal law. Their clarification is beyond the scope of this monitoring. For more information, see: Zahynei-Zabolotenko Z.A., Antoniuk N.O. On the Spotlight: Qualification under the Combined Article 111 "High Treason" and parts 2, 5 or 7 of Article 111-1 "Collaboration" of the Criminal Code of Ukraine. Speech of the National School of Judges of Ukraine. 2023. № 3 (44). C. 6-22.

If another criminal offence is established, the actions of the accused are subject to qualification in the aggregate.

The establishment of another criminal offences in the actions of the accused under Article 438 of the CCU should be reflected in the indictment.

Compliance with the principle of completeness of qualification should be the focus of investigators and prosecutors, in the first place.

2.2.5. Qualification of war crimes based on the stage of their commission

In one verdict, the actions of the accused were classified as preparation of a war crime.

By verdict of the Shevchenkivskyi District Court of Kyiv of 24.03.2025 in case No. 761/28971/22 under part 1 of Article 14 – part 1 of Article 438 of the Criminal Code, the wife of a serviceman of the Russian armed forces was convicted of creating conditions for committing a war crime, for which she started looking for accomplices and reaching a conspiracy with them to commit a crime. In a telephone conversation with her husband, serviceman of the Russian armed forces, the accused made a suggestive statement in the form of an imperative, affirmative construction: "You go ahead and rape Ukrainian chicks there...», she addressed the latter with a direct incitement to commit sexual violence (rape) against Ukrainian women.

We believe such this qualification to be erroneous. The convict did not create the conditions for further war crimes, but persuaded her husband, a serviceman, to commit a war crime.

If such incitement was successful, the actions of the accused should be qualified under part 5 of Article 27 – part 1 of Article 438 of the CCU.

If the incitement was unsuccessful, then depending on the stage at which the criminal activity of the accused was "interrupted", the actions of the accused can be qualified under Article 14(1), Article 27(5)(1), Article 438 of the CCU or Article 15(2) or (3)(1) of the CCU.

2.2.6 Analysis of the judgement of acquittal as to the war crime element

The verdict of the Tsentralnyi District Court of Mykolaiv of 02.06.2025 in case No. 490/9491/23 acquitted a citizen of Ukraine of an episode classified under part 2 of Article 15, part 5 of Article 27, part 2 of Article 28 – part 1 of Article 438 of the CCU.

The pre-trial investigation body established that a citizen of Ukraine, while carrying out the tasks given by a representative of the Russian Federation, sent to the latter information about the location of servicemen of the Armed Forces of Ukraine with the possibility of their identification on the ground via the Telegram messenger. The transmitted coordinates indicated a residential apartment building, which has never been used as a military facility. As a result, the unidentified servicemen of the Armed Forces of the Russian Federation, in violation of paragraphs a.2 and a.3 of Article 57 (Precautionary measures in the event of an attack) of Protocol Additional I, could have failed to verify whether the said coordinates were those of a civilian facility, and could have failed to take all practically possible precautions when choosing means and methods of attack in order to avoid accidental casualties among the civilian population, injuries to civilians and damage to civilian facilities, or at least to minimise them. As a result, a decision was made to launch a missile attack using a munition that is in the arsenal of the aggressor state and is intended to hit ground targets.The acquittal of the citizen of Ukraine is reasoned by the following:

- provisions of the accessory theory of criminal liability of accomplices, which is enshrined in Article 27 of the Criminal Code of Ukraine, according to which the qualification of the actions

of the one aiding and abetting, organizing, or instigating depends directly on the qualification of the actions of a perpetrator;

- neither proven fact that a Ukrainian citizen sent a message to a representative of the Russian Federation nor confirmation that a multi-storey building is located at the coordinates transmitted, are sufficient evidence to find a person guilty of attempted aiding and abetting in the commission of a crime by another person.
- message stating that the subscriber to whom the sensitive military information was transmitted resides in St. Petersburg and may pass it on to the military was not verified by the pre-trial investigation body and was not confirmed by other admissible evidence in the aggregate;

- violation of the laws and customs of war consists in the commission of a specific act, its consequences and intent, and in this case, the shelling of the building (as a civilian object) did not take place, civilian objects were not damaged, and no death or serious injury among the civilian population were recorded.

We consider this approach to be correct, given the lack of appropriate, sufficient and admissible evidence in the criminal proceedings to confirm the commission of a war crime by a citizen of Ukraine, as well as other circumstances. [124]

2.3. Forms of war crimes

An important component of court verdicts, namely their reasoning, is the wording of the charges, which is recognised by the court as proven, indicating the place, time, method of commission and consequences of the criminal offence, the form of guilt and motives of the criminal offence (Article 374(3)(2) of the CCU). The wording of the charge must include, in particular, a clear indication of the form of violation of the laws and customs of war that occurred in the actions of the accused.

The main trends in determining the form of war crimes charged in the wording of the indictment are the following:

- a detailed description of this form using the wording of the disposition of part 1 of Article 438 of the CCU, as well as with reference to the source of IHL. This is how the majority of the verdicts look like;

- lack of individualisation of the accused's behaviour, limited to a generalised indication of violations of the laws and customs of war (for example, *verdict of the Pavlohradskyi District Court of Dnipropetrovska oblast of 16.01.2025 in case No. 185/10275/22*).

The second wording is typical for those verdicts that convicted persons not only under Article 438 of the CCU, but also under other articles of the Special Part of this Code.

Some courts also made this mistake in verdicts that qualified the actions of the accused only under Article 438 of the CCU, without specifying what form of violation of the laws and customs of war occurred (*verdict of the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24*). However, this error is not systematic.

The following forms of war crimes were recorded in the analysed decisions.

124 Expert opinion. Is the acquittal of a person under Article 438 of the Criminal Code of Ukraine a verdict to the judicial system of Ukraine? https://uba.ua/ukr/news/chi-vipravdannja-osobi-za-st-438-kk-ukraini-virokom-sudovjj-sistem-ukraini?fbclid=IwY2xjawLbPU5leHRuA2FlbQIxMQBicmlkETFHSTBBdDZBZnlDam9XRE81AR6S610wzE6vMiU1kbAYw81QyM1q-66yfa45QGxzbJgrIgxVWl4ottLHaqkJQg_aem_1wCy5AWtvNDnPnxNPJKDxg

Cruel treatment of civilians or prisoners of war

Cruel treatment of civilians or prisoners of war (the only form of war crimes) in the analysed judgements was qualified as

- inhumane treatment (detention in a cell, that is not adapted for a long stay, of persons in poor sanitary conditions, deprivation of food and water), infliction of severe physical (beatings and bodily injuries) and psychological suffering (putting a bag over one's head to disorientate) – verdict of Balakliyskyi District Court of Kharkiv oblast as of 07.08.2025 in case No. 610/2754/24;

- hitting different parts of the victim's body, hanging them from the ceiling by the twisted arms, handcuffing, which caused severe physical pain and mental suffering (*verdict of the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23*)

- intentional infliction of severe suffering on the victim (*verdict of the Chernihivskyi District Court of Chernihiv oblast of 11.04.2025 in case No. 748/4032/24*)

- infliction of physical and psychological violence, illegal detention (unlawful deprivation of liberty), torture, and torment (*verdict of the Vyshgorodskyi District Court of Kyiv oblast of 15.05.2025 in case No. 363/2119/24*);

- Inhuman treatment of the victim, which caused mental suffering in the form of emotional and physical pain (very unpleasant emotions, anxiety, fear, humiliation, intense physical suffering) and degraded his human dignity (*sentence of the Makarivskyi District Court of Kyiv region of 23.05.2025 in case No. 370/2058/22*)

Other violations of the laws or customs of war

The disposition of part 1 of Article 438 of the CCU is set out as a blanket one and provides for a non-exhaustive list of forms of war crimes. The disposition of part 1 of Article 438 CCU refers to other violations of the laws and customs of war. In view of the above, court verdicts should clearly establish that, taking into account the specific circumstances of the criminal proceedings, the victim's behaviour, as expressed in the relevant actions, falls under other violations of the laws and customs of war. The absence of such a determination indicates the inaccuracy of the criminal legal qualification and the lack of specificity of the charges brought against the person.

In the analysed verdicts, the following was recognised as other violations of the laws and customs of war

- organisation/direct open seizure of agricultural machinery, business documents and seals of enterprises; organisation/direct export of stolen machinery to the TOT of the ARC (*verdict of the Vinnytsia City Court of Vinnytsia region of 20.03.2024 in case No. 127/15500/23*);

- robbery of a civilian protected by the Geneva Convention IV; misappropriation of property of a civilian protected by the Geneva Convention IV, not justified by military necessity and carried out unlawfully and wantonly (*verdict of the Mena District Court of Chernihiv oblast of 03.02.2025*)

- theft of property belonging to civilians, unjustified by military necessity (*verdicts of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13 August 2024 in case No. 638/11302/23, Lebedynskyi District Court of Sumy oblast of 18 November 2024 in case No. 950/3703/23, Vyshhorodskyi District Court of Kyiv region of 15.05.2025 in case No. 363/2119/24*), unlawful open theft of property belonging to civilians, unjustified by military necessity (*verdict of Bobrovytskyi District Court of Chernihiv region of 02.09.2024 in case No. 729/1125/23*)

- Torture of civilians (verdict *of the Snihurivskyi District Court of Mykolaiv region of 28.04.2025 in case No. 485/2061/23*)

Issuing an order / orders to violate the laws or customs of war:

Giving of an order / orders to commit a war crime / crimes is an independent form of action, and therefore, if it is established that the relevant order was given, regardless of whether it was executed by the persons to whom it was addressed, the verdict should clearly state that this is **the** form of war crime which has been committed.

The verdicts analysed concerned giving an order / orders on:

- unlawful detention (illegal imprisonment), physical violence and torture of two victims as protected civilians (*verdict of the Bilaiiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23*);

- attack on a civilian object and looting and damage to property located on the territory of a rural (farm) enterprise (*verdict of the Chernihivskyi District Court of Chernihiv oblast of 29 November 2024 in case No. 748/2174/24*);

- unlawful detention (illegal imprisonment) of the victim as a protected civilian (*verdicts of the Novovorontsovskyi District Court of Kherson oblast of 19.03.2025 in case No. 954/266/2, Kherson City Court of Kherson oblast of 31.03.2025 in case No. 766/9711/23).* The *verdict of the Kherson City Court of the Kherson oblast of 31 March 2025 in case No. 766/9711/23* states that in this case, there is an order to commit another violation of the laws and customs of war.

In most cases, war crimes are charged in several forms

- ***Ill-treatment of civilians and other violations of the laws and customs of war*** (*verdicts of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, Kherson City Court of Kherson oblast of 05.08.2024 in case No. 766/1560/24, Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24, Chervonozavodskyi (Osnovyanskyi) District Court of Kharkiv of 16.10.2024 in case No. 646/4862/23, Brovary City District Court of Kyiv oblast of 08.04.2025 in case No. 361/1117/24*), ***aiding and abetting in the commission of these two forms of war crimes*** (*verdict of Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, Snihurivskyi District Court of Mykolaiv oblast of 07.04.2025 in case No. 485/167/25*).

For example, in the *verdict of the Ivankivskyi District Court of Kyiv oblast of 30 April 2024 in case No. 366/2305/23*, ill-treatment of civilians took place in connection with an attempt to use sexual violence against a civilian victim, as well as a threat of violence against civilians; another violation of the laws and customs of war was identified as the appropriation of housing until the temporarily occupied settlement was liberated.

By the verdict of the Kherson City Court of Kherson region of 05.08.2024 in case No. 766/1560/24 identified the torture of a civilian victim (inhumane treatment (detention in a cell unsuitable for long-term stay, persons in unsanitary conditions, deprivation of food and water), illegal detention of the victim) as cruel treatment of civilians, and the illegal detention of a protected civilian as another violation of the laws and customs of war.

- ***Cruel treatment of the civilian population, as well as giving orders to commit cruel treatment of the civilian population and orders to commit other violations of the laws and customs of war*** (*verdict of the Borodianskyi District Court of Kyiv region of 12.09.2024 in case No. 939/1435/22*).

In the *verdict of the Borodianskyi District Court of Kyiv oblast of 12.09.2024 in case No. 939/1435/22*, the order to drive patients of a psychoneurological dispensary to one place by threatening them was identified as an order to commit cruel treatment of civilians; the order to use patients of a psychoneurological dispensary as an order to otherwise violate the laws and customs of war - as an order to use patients of a psychoneurological dispensary as a «human shield»; as cruel treatment of civilians -

threats directly applied to the head of the psychoneurological dispensary in order to make him record a video message of gratitude to the military of the Russian armed forces .

- ***Ill-treatment of civilians and ordering other violations of the laws and customs of war*** (*verdicts of the Snihurivskyi District Court of Mykolaiv oblast of 03.02.2025 in case No. 485/742/24, Velykooleksandrivskyi District Court of Kherson oblast of 26.02.2025 in case No. 650/1462/24*);

The *verdict of the Snihurivskyi District Court of Mykolaiv region of 03.02.2025 in case No. 485/742/24* qualified as cruel treatment of civilians the actions of the accused who committed torture of civilians (illegal detention with the infliction of physical (beatings and bodily injuries) and psychological suffering (death threats) to the victim. At the same time, the verdict does not clearly indicate what other violations of the laws and customs of war were committed.

- ***Ill-ttreatment of the civilian population, intentional killing of a person belonging to the civilian population or of a prisoner of war, and other violations of the laws and customs of war*** (*verdicts of the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24, Ichnianskyi District Court of Chernihiv oblast of 23.05.2025 in case No. 733/37/24*).

In the *verdict of the Chernihivskyi District Court of Chernihiv oblast of 16 September 2024 in case No. 748/259/24*, the attack on six civilians who did not take part in hostilities and were under protection was classified as cruel treatment of civilians; the death of two of the victims was classified as willful killing, while the damage to the car was classified as another violation of the laws or customs of war.

- ***Ill-treatment of civilians and ordering cruel treatment of civilians*** (*verdict of the Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24*).

We would like to highlight the good wording of the charge in the verdict *of the Chernihivskyi District Court of Chernihiv oblast of 03 February 2025 in case No. 743/262/24.* As stated in the verdict, the person committed ill-treatment in the form of infliction of bodily harm – causing serious injuries to the body and health of the victims, physical torture, while also ordering the illegal detention and killing of the victims, which violated the requirements of Articles 27, 31, 32, 147 of Geneva Convention IV and Article 51, parts 1, 2 of Article 75 of Protocol Additional I.

Misidentification of the actions as a form of war crime under Article 438(1) of the CCU and failure to identify the actions as another violation of the laws and customs of war.

By the verdict of the Trostianetskyi District Court of Sumy region of 03.06.2024 in case No. 588/156/24, the person was accused of cruel treatment of civilians, while the actual circumstances of the case show that the accused gave orders to commit ill-treatment of civilians. It should be recalled that giving orders to commit a war crime in any form is an independent form of violation of the laws and customs of war.

In some verdicts, when convicting a person under Article 438 of the CCU, courts pointed to a general violation of the laws and customs of war, ignoring the non-exhaustive list of forms of war crimes in part 1 of Article 438 of the CCU and the reference to the generalised wording “other violation of the laws and customs of war”.

In cases where the act does not fall under any of the acts listed in the disposition of part 1 of Article 438 of the CCU, it is advisable for the courts to indicate that the person committed “another violation of the laws and customs of war”.

The verdict of the Kommunarskyi District Court of Zaporizhzhia of 26.02.2025 in case No. 333/5566/24 qualified the actions of the accused, who carried out the forced deportation of a Ukrainian citizen from the territory of an occupied city in Zaporizka oblast, as violation of the laws and customs of war . This decision fails to state, apparently by mistake, that there was *another* violation of the laws and customs of war. The issue was similarly resolved and the charges were similarly formulated in the *verdict of the Desnianskyi District Court of Kyiv of 18.03.2025 in case No. 754/18236/23.*

The verdict of the Pavlohradskyi District Court of Dnipropetrovska oblast of 16.01.2025 in case No. 185/10275/22 accuses the person of violating IHL, alongside the constitutional rights and freedoms of Ukrainian citizens, without specifying any specific form of war crime that was committed by the accused.

Failure to indicate a specific form of violation of the laws and customs of war or the presence of such an indication without specifying which actions of the accused fall under the form determined by the verdict

In some of the verdicts analysed, there is no indication of a specific form of violation of the laws or customs of war:

For example, the *verdict of the Borodianskyi District Court of Kyiv oblast of 13.03.2025 in case No. 939/226/23* found a serviceman of the Russian armed forces guilty of holding ab unjustified search, a threat of killing, illegal deprivation of liberty and unlawful interrogation of a minor, in violation of Articles 31, 32, 147 of Geneva Convention IV, but did not specify the specific form of the war crime committed.

By the verdict of the Solomianskyi District Court of Kyiv of 09.05.2025 in case No. 760/21748/24, the accused was sentenced under part 1 of Article 438 of the Criminal Code, who, while holding the position of director of the Krympatriot Centre, carried out propaganda among protected persons aimed at ensuring voluntary enlistment in military service, which is a violation of the laws and customs of war. However, this verdict does not indicate any specific form of violation of the laws or customs of war charged against the accused.

The identified shortcomings were not of a systematic nature.

2.4. Establishment of contextual circumstances

Contextual circumstances are a mandatory element of war crimes and are subject to mandatory proof and establishment in every criminal proceeding under Article 438 of the CCU.

Establishing contextual circumstances, as it follows, in particular, from Elements of Crimes ,[125] is extremely important both for qualification and for distinguishing between different types of international crimes under the ICC. Contextual elements are of particular importance for qualification of war crimes, which can be committed exclusively in international or non-international armed conflicts (Article 8 of the Rome Statute of the ICC).

A criminal offence can be recognised as a war crime only if the unlawful acts are committed during and in connection with an international or non-international character armed conflict. That is, to qualify under Article 438 of the CC, it is necessary to establish a link between the crime committed and such a conflict, which requires the establishment of both objective and subjective complimentary aspects.

Unlike the first two phases of monitoring war crimes trials, the verdicts analysed during the third phase of monitoring establish the existence of contextual circumstances in a more clear and concise manner, with an emphasis on the beginning of the current armed conflict on the territory of Ukraine and its existence at the time of the war crime was commited.

125 Elements of Crimes. URL: https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf

There are **two problems with the establishment of contextual elements** in some verdicts:

- excessive details in the description of circumstances that in no way relate to the existence of an international armed conflict on the territory of Ukraine, in which the courts mention various events, starting with the establishment of the UN (for example, verdicts *of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, Pavlohradskyi District Court of Dnipro oblast of 16.01.2025, case No. 185/10275/22*). However, such verdicts are few in number compared to the previous stages of monitoring, and the relevant shortcoming is not systematic;

- no mention, and thus proof or establishment of contextual elements (in particular, verdicts *of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23, the Novovorontsovskyi District Court of Kherson oblast of 19.03.2025 in case No. 954/266/2, the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23, the Khersonskyi District Court of Kherson oblast of 07.04.2025 in case No. 766/12885/23*).

In the first case, the text of the verdict is cluttered, distracting from the description of the war crime committed, and in the second case, there is a question whether the qualification under Article 438 of the CC is correct, complete, and accurate.

In the verdicts establishing the contextual elements of war crimes, the courts point to the following

1. ***the beginning of the international armed conflict on the territory of Ukraine:***

- For the most part, the courts refer to 19 February 2014 as the beginning of the international armed conflict, namely the beginning of the annexation of the territory of the ARC by the Russian Federation (for example, verdicts *of the Chernihivskyi District Court of Chernihiv oblast of 31 May2024 in case No. 748/1469/24, Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23*);

- *the verdict of the Chervonozavodskyi (Osnovyanskyi) District Court of Kharkiv of 16.10.2024 in case No. 646/4862/23* states that the beginning of the international armed conflict on the territory of Ukraine is 20.02.2014;

- the *judgement of the Ripkynskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 743/908/24, the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24, the Snihurivskyi District Court of Mykolaiv oblast of 08.04.2025 in case No. 485/2098/24* and others state that the international armed conflict on the territory of Ukraine began in February 2014;

- according to *the verdict of the Brovary City District Court of Kyiv oblast of 08.04.2025* in case No. 361/1117/24, the highest military and political leadership of the Russian Federation started an international armed conflict on the territory of Ukraine on 27.02.2014;

- in some verdicts, the contextual circumstances of a particular war crime date back to 24 February 2022 (verdicts *of the Borodianskyi District Court of Kyiv oblast of 12 September 2024 in case No. 939/1435/22, Borodianskyi District Court of Kyiv oblast of 13 March 2025 in case No. 939/226/23);*

2. ***the duration of the international armed conflict on the territory of Ukraine.*** As a continuation of the international armed conflict on the territory of Ukraine, which arose on 19 February 2014, the courts point to the beginning of the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022 (*verdicts of the Chernihivskyi District Court of Chernihiv oblast of 31 May 2024 in case No. 748/1469/24, Vyshhorodskyi District Court of Kyiv oblast of 15 May 2025 in case No. 363/2119/24, Chernihivskyi District Court of Chernihiv oblast of 03 February 2025 in case No. 743/262/24*, and others);

3. ***the fact of the existence of an international armed conflict on the territory of Ukraine is confirmed, in particular, by reference to the following acts:***

- *international documents*:

- UN General Assembly resolutions 71/205 of 19.12.2016, 72/190 of 19.12.2017, 73/263 of 22.12.2018, 74/168 of 18.12.2019, 75/192 of 16.12.2020 on the human rights situation in the ARC and Sevastopol, resolutions 73/194 of 17.12.2018, 74/17 of 09.12.2019 on the problem of militarisation of the ARC and Sevastopol, as well as the districts of Black Sea and the Sea of Azov (*verdicts of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, Velykooleksandrivskyi District Court of Kherson oblast of 26.02.2025 in case No. 650/1462/24, Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24*);

- Order of the International Court of Justice of 16.03.2022 on the application for provisional measures in the case of 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia and others) (verdicts of the Chernihivskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 748/3480/24, Velykooleksandrivskyi District Court of Kherson oblast of 26.02.2025 in case No. 650/1462/24 and others)

- *ECtHR judgments*:

- the judgement of the Grand Chamber of the ECHR in case *Ukraine v. Russian Federation* of 16.12.2020, applications No. 20958/14, 38334/18), which established that since 27.02.2014 the Russian Federation has exercised effective control over the ARC (paragraph 335) (*verdict of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23*)

- *case law of military tribunals*:

- the decision of the Appeals Chamber of the ICTY in *Dusko Tadic* case of 02.10.1995 (judgements *of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, Chernihivskyi District Court of Chernihiv oblast of 29.11.2024 in case No. 748/2174/24, Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24, Komunarskyi District Court of Zaporizhzhia of 26.02.2025 in case No. 333/5566/24, Chernihivskyi District Court of Chernihiv oblast of 11.04.2025 in case No. 748/4032/24 and others*)

- the ICTY judgement in the of *The Prosecutor v. Kunarac, Kovac and Vukovic* case (*judgements of the Chernihivskyi District Court of Chernihiv oblast of 29.11.2024 in case No. 748/2174/24, Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24, Chernihivskyi District Court of Chernihiv oblast of 11.04.2025 in case No. 748/4032/24* and others)

- regulatory legal acts of Ukraine:

- Decree of the President of Ukraine No. 64/2022 of 24 February 2022 "On the Introduction of Martial Law in Ukraine", which introduced martial law in Ukraine (*judgements of the Chernihivskyi District Court of Chernihiv oblast of 31 May 2024 in case No. 748/1469/24, Kherson City Court of Kherson oblast of 31 March 2025 in case No. 766/9711/23, Chernihivskyi District Court of Chernihiv oblast of 11 April 2025 in case No. 748/4032/24* others);

- The Law of Ukraine «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (*judgements of Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24, Velykooleksandrivskyi District Court of Kherson oblast of 26.02.2025 in case No. 650/1462/24, the Kherson City Court of Kherson oblast of 31.03.2025 in case No. 766/9711/23* and others);

- The list of territories where hostilities are being (were) conducted or which are temporarily occupied by the Russian Federation, approved by the Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine of 22.12.2022 No. 309, registered with the Ministry of Justice of Ukraine on 23.12.2022 under No. 1668/39004 (*verdict of the Ripkynskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 743/908/24*)

4. **the specific time of temporary occupation of the respective settlement of Ukraine on the territory of which the war crime was committed** (*judgements of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, Kherson City Court of Kherson oblast of 05.08.2024 in case No. 766/1560/24, Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13.08.2024 in case No. 638/11302/23, Chervonozavodskyi (Osnovyanskyi) District Court of Kharkiv of 16.10.2024 in case No. 646/4862/23, Pavlohrad City District Court of Dnipropetrovska oblast of 11.11.2024 in case No. 185/12535/23, Menskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 739/772/24, Snihurivskyi District Court of Mykolaiv oblast of 03.02.2025 in case No. 485/742/24, Chernihivskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 748/3480/24* and others).

The verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24 established that a significant part of the territory of Chernihiv oblast, including the village of Desnianka, Chernihiv District, Chernihiv oblast, from 24.02.2022 to 30.03.2022 was temporarily occupied by units of the Armed Forces and other military formations of the Russian Federation, which carried out a criminal order of the Russian military leadership to seize the territory of Ukraine, in particular, to advance towards the city of Chernihiv. It was established that the territory of Desnianka village, Chernihiv district, Chernihiv region, occupied as a result of hostilities during the above-mentioned period of time, i.e. in the context of an international armed conflict, was under the control of representatives of the Russian armed forces, including the formation in which the accused served.

The verdict of the Kherson City Court of the Kherson oblast of 05.08.2024 in case No. 766/1560/24 established that in the context of the international armed conflict, a significant part of the Kherson region, starting from 24.02.2022, including the city of Kherson from 01.03.2024 to 11.11.2024, was under the control of regular formations and units of the armed forces and other military formations of the Russian Federation, subordinate and directed by their military advisers and instructors, occupation administrations of the Russian Federation, in particular with the involvement of the Russian National Guard.

Some verdicts contain an indication only of the fact of temporary occupation of a particular settlement on the territory of which the relevant war crime was committed. For example, the *verdict of the Lebedynskyi District Court of Sumy oblast of 18.11.2024 in case No. 950/3703/23* established that from 07.03.2022 to 10.03.2022, the village of Vorozhba of the Lebedynska territorial community of the Sumy district of the Sumy region, together with the local civilian population, was under the temporary occupation of the Russian Federation. This puts an accent on the local aspect of the temporary occupation of the territory of Ukraine.

The fact of occupation of part of the territory of Ukraine shall not be subject to proof in a particular criminal proceeding, as this fact is of common knowledge.

Thus, we believe that the following wording of the contextual circumstances of war crimes in the *verdict of the Desnianskyi District Court of Kyiv of 18.03.2025 in case No. 754/18236/23* is more correct. It states that this court has recognised as a well-known fact that does not require proof in this criminal proceeding that the temporary occupation by the Russian Federation of part of the territory of Ukraine – the Autonomous Republic of Crimea, which began with an armed conflict caused by Russian military aggression, starting on 20 February 2014, as well as the annexation of this part of the territory of Ukraine by the Russian Federation are well-known facts, which, according to the sequence of events a) are stated by regulatory, although condemned from the point of view of international law, acts of the Russian Federation, as well as «normative acts» of self-proclaimed entities on the territory of Ukraine in the ARC, the legality of which is not recognised by the Ukrainian State, but which are taken into account by the court in this case, since the issue of responsibility for committing crimes, as

a result of which such acts were adopted, is being resolved; b) are established by national regulatory acts that are binding on the territory of Ukraine; c) are condemned by joint international acts. Accordingly, this verdict establishes that the accused committed the offence charged against him/her during an international armed conflict and that the offence is directly related to such a conflict.

The wording in the verdict *of the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24: "the court recognised as well-known and not requiring proof within the framework of this criminal proceeding that the temporary occupation by the Russian Federation of part of the territory of Ukraine (in particular, part of the Chernihiv region), which began with armed aggression on 20.02.2014 and the full-scale invasion of the Russian armed forces into the territory of Ukraine on 24.02.2022, as well as the annexation by the Russian Federation of part of the territory of Ukraine, are well-known facts that do not require separate proving in court"*.

Problematic issues of establishing contextual circumstances:

1) no mention of contextual circumstances, which calls into question the legitimacy, completeness, specificity and accuracy of the qualification;

2) detailed description of the contextual circumstances by pointing to those circumstances that are not relevant to the case;

3) failure to take into account the fact that the existence of an international armed conflict on the territory of Ukraine is a well-known fact and does not require proof in a particular criminal proceeding.

2.5. References to IHL when stating charges

Article 438 of the CCU contains a blanket disposition. When qualifying under this article, verdicts shall specify which IHL norms were violated by the accused.

Reference shall be made to a specific article, paragraph and subparagraph the IHL source that was violated.

This requirement is generally met in the verdicts.

For example, the *verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24* states that the accused violated Articles 4, 27, 29, 31, 32, 147 of Geneva Convention IV and Articles 51, 52, 75 of Protocol Additional I. *The verdict of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23*, a serviceman of the Russian armed forces was found guilty of ordering the unlawful detention (illegal imprisonment), use of physical violence and torture of two victims as protected civilians, in violation of Articles 3, 31, 32, 147 of Geneva Convention IV and Articles 51, 75 of Protocol Additional I. *The verdict of the Kherson City Court of the Kherson region of 05.08.2024 in case No. 766/1560/24* stated violations of Articles 3, 27, 31, 32, 147 of the Geneva Convention IV, Part 2 of Article 51, Article 75 of Protocol Additional I.

In the *verdicts of the Borodianskyi District Court of Kyiv oblast of 12.09.2024 in case No. 939/1435/22, the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24* and others, the text of the verdict contains an analysis of Geneva Convention IV, Protocol Additional I, but there is no holistic reference to the violated IHL norms in the wording of the charges.

Some of the analysed verdicts do not refer to IHL norms. For example, the verdicts *of the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23, and the Khersonskyi District Court of Kherson oblast of 07.04.2025 in case No. 766/12885/23*.

None of the verdicts refers to the violation of the relevant provisions of the Rome Statute of the ICC by the accused.

The identified shortcomings are not of a systemic nature.

2.6 Mens rea in war crimes

A mandatory element of war crimes is *mens rea* – subjective element of guilt. War crimes are committed exclusively with direct intent, and therefore, when qualifying under Article 438 of the CCU, it is necessary to establish that the accused was aware of the socially dangerous nature of his/her act and wanted to commit it.

In the verdicts analysed during the third phase of monitoring, the courts pay attention to establishing the form of guilt in the actions of the accused and determine the intellectual and volitional elements of direct intent.

Thus, in the verdicts, the courts describe what the accused was aware of (intellectual element of direct intent):

- the fact of the existence of an international armed conflict and the commission of a crime against protected persons – civilians (for example, the *verdict of the Lebedynskyi District Court of Sumy oblast of 18.11.2024 in case No. 950/3703/23, the Chernihivskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 748/4732/24, the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24*);

- the fact of an armed conflict caused by Russian military aggression, the introduction of martial law on the territory of Ukraine from 24.02.2022, and the commission of an act in connection with this conflict (*verdict of the Kherson City Court of Kherson oblast of 31.03.2025 in case No. 766/9711/23)*. When establishing the ability of the accused to be aware of the socially dangerous nature of their unlawful behaviour, courts often refer to the fact that they had a sufficient level of education, special knowledge and life experience to understand the above circumstances (*verdict of the Kherson City Court of Kherson oblast of 31.03.2025 in case No. 766/9711/23), profession (professional judge), perfect knowledge of the current Ukrainian legislation, part of which are international treaties ratified by the Verkhovna Rada of Ukraine (judgement of the Desnianskyi District Court of Kyiv of 10.06.2025 in case No. 754/15727/23*);

- the fact that the stolen property cannot be used for military purposes (verdict *of the Vyshhorodskyi District Court of Kyiv oblast of 15.05.2025 in case No. 363/2119/24);*

- the fact of unlawful detention of civilians in inhumane conditions (verdict *of the Ripkynskyi District Court of Chernihiv region of 17.02.2025 in case No. 743/908/24*);

- nullity of the Federal Laws of the Russian Federation (in particular, the Federal Constitutional Law of the Russian Federation "On the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Subjects within the Russian Federation – the Republic of Crimea and the City of Federal Significance Sevastopol" of 21.03.2014), Decrees of the President of the Russian Federation (in particular, "On Amendments to the Decree of the President of the Russian Federation of 20.09.2010 No. 1144 "On the Military-Administrative Division of the Russian Federation" of 02.04.2014 No. 199 and Decrees of the "Head of the Republic of Crimea" (*verdict of the Solomianskyi District Court of Kyiv of 09.05.2025 in case No. 760/21748/24).*

The *verdict of the Desnianskyi District Court of Kyiv of 10.06.2025 in case No. 754/15727/23* states that the fact that the accused was aware of her actions is the very fact that court decisions were made on the unlawful deportation of the civilian population of the occupied territory of the ARC, which is aimed at implementing the military and political plan and strategy of the state in the military conflict. At the same time, the court believes that the degree of the accused's awareness of the details of the military and political planning of the occupying power is not relevant for proving. In determining the connection, one of the Nuremberg Principles (a general principle of international law) is to be applied, namely: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him".

According to *the verdict of the Desnianskyi District Court of Kyiv dated 10.06.2025 in case No. 754/15727/23*, the awareness of the participants in the military conflict of the requirements of the Conventions and other international instruments governing the laws and customs of war is an established fact by virtue of the general presumption of awareness, as well as in accordance with the dissemination obligations under international law (Article 87(1), 87(2) of Protocol I).

In the case of a war crime in the form of causing the death of a victim, some courts describe in detail the signs of direct intent of the accused. For example, in the verdict *of the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24*, it is stated that the accused, being aware of the presence, in front of him, of a Ukrainian citizen who, at the time of the incident was not a member of the Armed Forces or other armed formations of Ukraine, did not carry any weapons or participate in hostilities, and was not preparing for committing such actions, was dressed in civilian clothes, i.e. could be categorized as a civilian, feeling impunity due to the full control of the Russian armed forces over the occupied territory of the settlement, realising the socially dangerous nature of his actions, foreseeing socially dangerous consequences in the form of causing mental suffering to a civilian as a result of imitating the actual infliction of bodily harm, and then the death of that person as a result of execution, and wishing for their occurrence, ordered the servicemen of the Russian armed forces , unidentified during the pre-trial investigation, to shoot him in the knees.

In some verdicts, the establishment of *mens rea* of a war crime is formal, as the courts are limited to indicating only the statutory signs of direct intent (for example, the verdicts *of the Snihurivskyi District Court of Mykolaiv oblast of 03.02.2025 in case No. 485/742/24, the Makarivskyi District Court of Kyiv oblast of 23.05.2025 in case No. 370/2058/22, the Kherson City Court of Kherson oblast of 05.08.2024 in case No. 766/1560/24*).

Problematic issues of describing *mens rea* of war crimes in the verdicts:

1. Formal mention of the statutory signs of direct intent without specifying them in the verdict in accordance with the actual circumstances of the case;

2. Lack of analysis of whether the accused was aware that he was attacking a civilian target, as well as the distinction between a civilian and a military target in accordance with the actual circumstances of the case;

3. Absence of a description of what exactly out of the factual circumstances of the case, which were recognised as proven, should have made the accused to realise the socially dangerous nature of his/her behaviour.

Although the identified shortcomings in establishing *mens rea* of the war crime were not systemic, it is advisable for courts to pay more attention to the description of the signs of direct intent, taking into account the subjective attitude of the accused to the elements of contextual circumstances.

2.7. Sentencing under Article 438 of the CCU

2.7.1. Sentencing (excluding cases of sentencing for a combination of offences or under a combination of verdicts)

All those convicted under Article 438(2) of the CCU were sentenced to life imprisonment (verdicts of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24, the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24, the Ichnianskyi District Court of Chernihiv oblast of 23.05.2025 in case No. 733/37/24, the Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24).

Under Article 438(1) of the CC, the convicts were sentenced to the following punishment :[126]

- 5 years in prison (2% of convicts);
- 9 years of imprisonment (4% of the convicts);
- 10 years of imprisonment (20% of the convicts);
- 11 years in prison (20% of convicts);
- 12 years of imprisonment (55% of the convicts).

Thus, **under Article 438(1) of the CCU, the term of imprisonment is usually chosen closer to the upper threshold** (starting from the median sentence of 10 years of imprisonment and ending with the maximum of 12 years) (95% of convicts).

This choice of custodial sentence applies to all forms of violation of the laws and customs of war.

The courts mostly tend to sentence the convicts to maximum term of imprisonment stipulated by Article 438(1) of the CCU (12 years of imprisonment) – 55% of the convicts.

5-year imprisonment was imposed on a Russian citizen who was a wife of a serviceman of the Russian armed forces; she was convicted under Article 14(1) - Article 438(1) of the CCU to this penalty *by the verdict of the Shevchenkivskyi District Court of Kyiv of 24.03.2025 in case No. 761/28971/22*. When choosing 5 years of imprisonment, the court was guided by the provisions of Article 68(2) of the CC, according to which the term or scope of punishment for committing a crime shall not exceed half of the maximum term or scope of the most severe punishment provided for by the sanction of an article (sanction of a particular part of an article) of the Special Part of this Code. As noted above, the imposition of such a term of imprisonment is due to the erroneous qualification of the actions committed by the convicted person as preparation for a war crime.

2.7.2. Imposition of punishment for a combination of offences (Article 70(1) of the CCU)

The final punishment was determined by the totality of the crimes *in the verdicts of the Vinnytsia City Court of Vinnytsia region of 20.03.2024 in case No. 127/15500/23, the Pavlohradskyi District Court of Dnipro region of 16.01.2025 in case No. 185/10275/22, the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23, the Khersonskyi District Court of Kherson oblast of 07.04.2025 in*

126 This part takes into account those verdicts that sentenced the convicted person/s exclusively for a war crime, as well as verdicts that sentenced the convicted person/s under part 1 of Art. 438 of the CCU and added the unspent part of the sentence under a previous court verdict that entered into force

case No. 7626/12885/23, the Velykooleksandrivskyi District Court of Kherson oblast of 02.05.2025 in case No. 650/1189/24, the Solomianskyi District Court of Kyiv of 09.05.2025 in case No. 760/21748/24.

According to individual verdicts, the sentence for war crimes was less severe than for other types of crimes including the aggregated ones.

By the verdict of the Vinnytsia City Court of Vinnytsia region of 20.03.2024 in case No. 127/15500/23, the individual was found guilty *of committing the crimes under part 2 of Article 111, part 1 of Article 111-2, part 2 of Article 28, part 1 of Article 438 of the CCU and sentenced:*

- under part 2 of Article 111 of the Criminal Code – to 15 years of imprisonment with confiscation of all property;
- under part 1 of Article 111-2 of the Criminal Code – to 11 years of imprisonment, with the deprivation of the right to hold positions in state and local government bodies related to the performance of organisational, administrative and economic functions for a period of 15 years and confiscation of all property;
- under part 2 of Article 28 – part 1 of Article 438 of the CCU – to 12 years of imprisonment.

Based on part 1 of Article 70 of the Criminal Code, the convict *was sentenced to 15-year imprisonment for the totality of the crimes by way of absorption of a lesser punishment by a more severe one, with the deprivation of the right to hold positions in state and local government bodies related to the performance of organisational, administrative and economic functions for a period of 15 years and confiscation of all property.*

High treason (Article 111(2) of the Criminal Code), which is a *corpus delicti* offence, is punishable by a definite sentence of 15 years ofimprisonment. In doing so, the court chose the principle of determining the final punishment as the absorption of a less severe punishment by a more severe one.

In other verdicts, on the contrary, the sentence imposed for war crimes was more severe than the sentence imposed for other crimes that were tried together in a particular criminal proceeding.

By the verdict of the Pavlohradskyi District Court of Dnipropetrovs'k region of 16.01.2025 in case No. 185/10275/22, the person was found guilty under part 2 of Article 110; part 2 of Article 260; part 2 of Article 28 – part 1 of Article 438 of the Criminal Code and sentenced to punishment:

- under Article 110(2) of the Criminal Code – to 8 years of imprisonment with confiscation of all property
- under part 2 of Article 260 of the CCU – to 7 years of imprisonment without confiscation of property;
- under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code – to 11 years of imprisonment.

Based on part 1 of Article 70 of the Criminal Code, the convicted person was finally sentenced to 11 years of imprisonment with confiscation of all property owned by way of absorption of a less severe punishment by a more severe one.

Another principle of determining the final punishment was used in the *verdict of the Khersonskyi District Court of Kherson oblast of 07.04.2025 in case No. 766/12885/23* under the rules provided for in Article 70(1) of the Criminal Code, namely the principle of partial combination of punishments. By this verdict, the person was found guilty of committing the crimes stipulated *by Article 111(1), Article 28(2) – Article 438(1) of the Criminal Code and sentenced:*

- under part 1 of Article 111 of the CCU – to 13 years of imprisonment with deprivation of the military rank of Major in accordance with Article 54 of the CCU

- under part 2 of Article 28 – part 1 of Article 438 of the CCU – to 11 years of imprisonment.

Pursuant to Article 70(1) of the CCU, by way of partial concurrence of sentences, the final sentence of 15 years of imprisonment with deprivation of the military rank of Major was imposed on the convicted person.

2.7.3. Imposition of final punishment for a combination of offences (Article 70(4) of the CCU)

Pursuant to Article 70(4) of the CCU, according to the rules stipulated in parts one to three of this Article, a sentence is imposed if, after the verdict is passed, it is established that the convicted person is also guilty of another criminal offence committed before the previous sentence was passed.

According to the rules of part 4 of Article 70 of the Criminal Code, the final punishment was imposed in the verdicts *of the Chernihivskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 748/4732/24, the Desnianskyi District Court of Kyiv of 18.03.2025 in case No. 754/18236/23, the Novovorontsovskyi District Court of Kherson oblast of 19.03.2025 in case No. 954/266/2, the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24*.

Thus, *by the verdict of the Chernihivskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 748/4732/24* under part 1 of Article 438 of the Criminal Code, a serviceman of the Russian armed forces, previously convicted on 25.03.2024 by the Chernihivskyi District Court of Chernihiv oblast under part 1 of Article 438 of the Criminal Code of Ukraine to 12 years of imprisonment, was convicted to a term of 11 years of imprisonment. Based on part 4 of Article 70 of the Criminal Code, by absorbing the less severe punishment under this verdict with a more severe punishment under the verdict of the Chernihivskyi District Court of Chernihiv oblast of 25.03.2024, the convict was finally sentenced to 12 years of imprisonment in the aggregate.

By the verdict of the Desnianskyi District Court of Kyiv dated 18.03.2025 in case No. 754/18236/23, the person was sentenced under part 1 of Article 438 of the Criminal Code to 11 years of imprisonment. Based on Article 70(4) of the Criminal Code, for the combination of crimes, this sentence and the sentence of the Desnianskyi District Court of Kyiv of 02.09.2024, by which the person was sentenced under Article 111(1) of the Criminal Code to 12 years of imprisonment with confiscation of all property by way of absorption of a milder sentence by a more severe one, the final sentence of 12 years of imprisonment with confiscation of all of his property was determined.

In the *verdict of the Novovorontsovskyi District Court of Kherson oblast of 19.03.2025 in case No. 954/266/2*, when determining the final sentence under the rules provided for in part 4 of Article 70 of the Criminal Code, the court used a different principle, namely the principle of partial combination of punishments. *By the verdict of the Novovorontsovskyi District Court of Kherson region of 19.03.2025 in case No. 954/266/2, the individual was sentenced under part* 1 of Article 438 of the CCU to imprisonment for a term of 12 years. Pursuant to Article 70(4) of the CCU, for the totality of criminal offences, by partial addition of the sentences imposed by the sentence of the Suvorovskyi (Peresypskyi) District Court of Odesa of 27.03.2024 for committing criminal offences under Article 28(2) – Article 438(1) of the CCU and this sentence, the final sentence of imprisonment for a term of 15 years was imposed on the convicted person.

2.7.4. Imposition of punishment under a combination of sentences (Article 71 of the CC)

This was the case in the verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24. In this verdict, the rules set out in Article 71 of the Criminal Code were used to determine the final sentence for two out of the four convicts. The two convicts were found guilty of committing a criminal offence under Article 28(2)(a) – Article 438(1) of the CCU and sentenced to 11 years

of imprisonment with deprivation of the special rank of Sergeant of Internal Service' and the military rank of Sergeant (convict No. 1) and 11 years of imprisonment with deprivation of the special rank of Sergeant of the Court Security Service (convict No. 2).

Pursuant to Article 71 of the CC, taking into account the totality of the sentences, the unserved part of the main sentence under the sentences of the Khortytskyi District Court of Zaporizhzhia of 09.01.2024 and 23.03.2024, additional sentences were partially attached to the sentence imposed under this sentence, and the following sentences were imposed

- the first convicted person was sentenced to imprisonment for a term of 20 years, with deprivation of the special rank of Sergeant of Internal Service and the military rank of Sergeant, with deprivation of the right to hold any positions in state authorities, local self-government, law enforcement agencies and bodies providing public services for a term of 15 years and confiscation of all property;

- the second convict was sentenced to imprisonment for a term of 20 years, with deprivation of the special ranks of Senior Police Warrant Officer and Sergeant of the Court Security Service, with deprivation of the right to hold any positions in law enforcement, state authorities, public administration and local self-government for 15 years, and confiscation of all property.

2.7.5. Imposition of additional penalties

For war crimes, some verdicts imposed an additional penalty of deprivation of military rank (Article 54 of the CCU), as well as an additional penaltyof deprivation of the right to hold certain positions or engage in certain activities (Article 55 of the CCU).

By the verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24 under part 2 of Article 28 – part 1 of Article 438 of the CCU, four defendants were sentenced to additional penalties that are not provided for by the sanctions of Article 438 of the CCU, namely

- the first defendant was sentenced to additional punishment in the form of deprivation of the special rank of Police Major and deprivation of the right to hold any positions in state authorities, local self-government bodies, as well as positions related to the provision of public services, the performance of organisational, administrative, and economic functions for a period of 3 years

- the second defendant – to the deprivation of the special rank of Senior Lieutenant of Police and deprivation of the right to hold any positions in state authorities, local self-government, as well as positions related to the provision of public services, the performance of organisational, administrative, and economic functions for a period of 3 years;

- the third defendant was deprived of the special rank of Sergeant of Internal Service and the military rank of Sergeant;

- the fourth defendant was deprived of the special rank of Sergeant of the Court Security Service.

In relation to the first two convicts, the court of first instance, when sentencing them to deprivation of their special ranks, stated that, according to the criminal proceedings, the convicts had been awarded the special ranks of Police Major / Police Senior Lieutenant'. Due to the fact that the defendants, having the special ranks of Police Major / Police Senior Lieutenant, voluntarily and proactively took a position in an illegal law enforcement agency, and the circumstances of the criminal offence indicate that the defendants took advantage of their positions when committing the offence, it comes to especially grave crime, and the court considers it necessary to impose an additional punishment in the form of deprivation of the special rank of Police Major / Police Senior Lieutenant.

In this verdict, the court, referring to the provisions of parts 1, 2 of Article 55 of the Criminal Code, according to which, in particular, deprivation of the right to hold certain positions or engage in certain activities as an additional punishment may be imposed in cases where it is not provided for in the sanction of the article (sanction of a particular part of the article) of the Special Part of this Code, provided that, taking into account the nature of the criminal offence committed while in office or in connection with being engaged in certain activity, the personality of the convicted person and other circumstances of the case, the court finds it impossible to preserve the right to hold the position or engage in certain activities.

The third defendant convicted *by the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24*, as noted above (Defendants' profiles), had a criminal record under the *Khortytskyi District Court of Zaporizhzhia of 09.01.2024 in case No. 337/2373/23* under part 7 of Article 111-1, part 1 of Article 111-2 of the Criminal Code and sentenced him to a final sentence of 14 years of imprisonment with the deprivation of the right to hold any positions in state authorities, local self-government, law enforcement agencies, and public service providers for a period of 15 years, with confiscation of all property. In other words, the additional punishment of deprivation of the special rank of Sergeant Of Internal Service and the military rank of Sergeant was not imposed on the accused under this verdict. Accordingly, *by the verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24*, the third defendant was sentenced, under part 2 of Article 28 – part 1 of Article 438 of the CCU, to an additional penalty of deprivation of the special rank of Sergeant of Internal Service and the military rank of Sergeant.

The fourth defendant convicted *by the verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24*, as noted above (Defendants' profiles), had a criminal record under *the verdict of the Khortytskyi District Court of Zaporizhzhia of 20.03.2024 in case No.* 337/2340/23 under Article 111-1(7), Article 111-2(1) of the CCU. According to this verdict, the citizen of Ukraine was sentenced to 14 years of imprisonment with deprivation of the right to hold positions in law enforcement agencies, state authorities, public administration and local self-government for a period of 15 years, confiscation of all property, and deprivation of the special rank of Senior Police Warrant Officer. As established by the court of first instance, the convict also held the special rank of Sergeant of the Court Security Service, which was awarded to him as part of his re-attestation. Accordingly, *by the verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24*, the fourth defendant was sentenced, under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code, to an additional penalty of deprivation of the special rank of Sergeant of the Court Security Service.

The verdict of the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23, by which the three defendants were found guilty and sentenced under part 1 of Article 258-3; part 1 of Article 28 – part 1 of Article 438 of the CCU, in its reasoning part, states that the court considers it appropriate to deprive the three convicts of special military ranks in accordance with Article 54 of the CCU, but the resolutive part of the verdict does not provide for such an additional penalty.

2.7.8. Consideration of mitigating and aggravating circumstances

When imposing punishment under Article 438 of the CCU, the courts mostly took into account the aggravating circumstances. The following circumstances were recognised as aggravating the punishment

- **Committing a war crime by a group of persons by prior conspiracy** (Article 67(1)(2) of the CCU) (22 verdicts) (for example, the verdicts *of the Kherson City Court of Kherson oblast of 05.08.2024 in case No. 766/1560/24, the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23, the Ripkynskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 743/908/24*);

- **Committing a war crime taking advantage of the conditions of martial law** (Article 67 (1) (11) of the CC) (9 verdicts) (for example, the verdicts *of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, the Chervonozavodskyi (Osnovyanskyi) Dis-*

trict Court of Kharkiv of 16.10.2024 in case No. 646/4862/23, the Khersonskyi District Court of Kherson oblast of 07.04.2025 in case No. 766/12885/23);

- **Committing a war crime repeatedly** (Article 67(1)(1) of the CCU) (2 verdicts) (*verdicts of the Chernihivskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 748/4732/24, Novovorontsovskyi District Court of Kherson oblast of 19.03.2025 in case No. 954/266/2*);

- **Committing an atrocity war crime** (Article 67(1)(10) of the CC) (1 sentence) (*sentence of the Vyshhorodskyi District Court of Kyiv oblast of 15.05.2025 in case No. 363/2119/24*);

- **Committing a war crime against an elderly person** (Article 67(1)(6) of the CC) (1 sentence) (*sentence of the Novovorontsovskyi District Court of Kherson region of 19.03.2025 in case No. 954/266/2*), **committing a war crime against the elderly persons, persons with disabilities, persons suffering from mental disorders** (Article 67(1)(6) of the CC) (1 sentence) (*verdict of the Borodianskyi District Court of Kyiv region of 12.09.2024 in case No. 939/1435/22*);

- **Committing a war crime against a woman who was pregnant, the perpetrator being aware of her pregnancy** (Article 67(1)(7) of the CCU) (1 sentence) (verdict *of the Brovary City District Court of Kyiv oblast of 08.04.2025 in case No. 361/1117/24*);

- **Committing a war crime that caused grave consequences** (Article 67(1)(5) of the CCU) (1 sentence) (*verdict of the Makarivskyi District Court of Kyiv region of 23.05.2025 in case No. 370/2058/22*).

In one verdict, namely the *verdict of the Snihurivskyi District Court of Mykolaiv region of 05.07.2024 in case No. 485/1015/23*, by which a person was found guilty of committing a crime under part 5 of Article 27 – part 2 of Article 28 – part 1 of Article 438 of the Criminal Code and sentenced to 9 years of imprisonment, the sentence took into account the mitigating circumstance **of the defendant's cooperation with the pre-trial investigation body in identifying the servicemen of the Russian armed forces involved in the commission of a war crime** within the framework of a separate criminal proceeding, the indictment against them is pending in court. At the same time, that verdict also took into account the aggravating circumstance when sentencing the defendant. As stated in this verdict, the circumstance that aggravates the punishment of the accused under Article 67 of the CC, and which, in accordance with Article 91(1)(4) and Article 92(1) of the CPC, shall be proved by the prosecutor, the court, in accordance with Article 337 of the CPC, within the framework of the charges, according to the indictment, included the commission of a criminal offence by a group of persons by prior conspiracy (Article 28(2)), as stated in the indictment. By virtue of Article 91(1)(4), Article 92(1), and Article 337 of the CPC, the court was deprived of the opportunity to establish and take into account other aggravating circumstances that were not specified in the indictment and that were not proved by the prosecutor during the trial.

In some verdicts, the court would not take into account the circumstances mitigating or aggravating the punishment, as explained in the court's verdicts.

In *the verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24*, when sentencing under part 1 of Article 438 of the Criminal Code, the court did not take into account the commission of a crime taking advantage of martial law as an aggravating circumstance. As stated in that verdict, taking advantage of martial law as an aggravating circumstance means that the perpetrator takes profits from the most unfavourable time for society, the difficult circumstances and conditions the society finds itself in to facilitate the commission of a criminal offence. The court took into account that the direct object of the criminal offence under part 1 of Article 438 of the CCU is peace and international law and order in the field of war and armed conflicts, violation of the laws and customs of war. Therefore, the offence itself is committed in the context of war, and therefore, in the court's opinion, it is unnecessary to recognise the commission of the offence taking advantage of martial law as an aggravating circumstance.

The verdict of the Desnianskyi District Court of Chernihiv dated 13.06.2024 in case No. 748/2095/23, when sentencing the accused under part 2 of Article 28 – part 2 of Article 438 of the Criminal Code,

did not take into account such aggravating circumstances as the commission of a crime by a group of persons by prior conspiracy and taking advantage of martial law. This verdict states that since the actions of the accused are qualified under part 2 of Article 28 – part 2 of Article 438 of the Criminal Code, the court does not see in his actions an aggravating circumstance – the commission of a criminal offence by a group of persons by prior conspiracy, and the commission of a criminal offence by the accused in the context of an armed conflict is in fact similar to the commission of a crime taking advantage of martial law and is a qualifying circumstance, and therefore there are no grounds for considering it as an aggravating circumstance.

The verdict of the Kherson City Court of the Kherson oblast of 31.03.2025 in case No. 766/9711/23, by which a serviceman of the Russian armed forces was convicted under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code, the aggravating circumstance was not taken into account as the commission of the crime by prior conspiracy by a group of persons, since giving an order and its execution is not a form of complicity, since the order is based on the hierarchically determined duty of a subordinate to execute the order, and not on the common will of the accomplices to commit crime.

An aggravating or mitigating circumstance may be taken into account by the court when imposing a sentence under Article 438 of the CCU only if it is indicated in the indictment.

This is emphasised by some courts of first instance. For example, in the *verdict of the Pavlohrad City District Court of the Dnipro oblast of 11.11.2024 in case No. 185/12535/23*, when sentencing under part 2 of Article 28 - Part 1 of Article 438 of the CC, the court took into account only such an aggravating circumstance as the commission of a criminal offence by prior conspiracy by a group of persons. At the same time, this verdict states the following. The fact that the prosecutor mentioned in his speech an aggravating circumstance, namely the commission of a criminal offence taking advantage of the conditions of martial law, cannot be taken into account by the court based on the following. The prosecutor did not mention this circumstance in the indictment against the defendant, which was submitted to the court. In accordance with the requirements of Article 337 of the CPC, the court considers criminal proceedings within the framework of the indictment. During the trial, the prosecutor may change the charges. In order to make a fair judgement and protect human rights and fundamental freedoms, the court has the right to go beyond the charges set out in the indictment only in terms of changing the legal qualification of the criminal offence, if this improves the situation of the person subject to criminal proceedings. Given that the circumstance aggravating the punishment of the defendant, mentioned during the speech in court debates, worsens the situation of the accused, while the prosecutor did not change the charges during the trial, the court cannot go beyond the charges and take into account such a aggravating circumstance as the commission b y the defendantof a criminal offence taking advantage of martial law. A similar decision was made by *the verdict of the Snihurivskyi District Court of Mykolaiv oblast dated 08.04.2025 in case No. 485/2098/24*.

In its verdict of 03.02.2025 in case No. 485/742/24, the Snihurivskyi District Court of Mykolaiv oblast, when sentencing under part 1 of Article 438 of the Criminal Code, did not take into account the circumstance requested by the defendant's defence counsel, such as the commission of a criminal offence under coercion. As the court noted in the verdict, an act is considered voluntary if it is committed when there is a possibility to choose several options for behaviour, taking into account the totality of circumstances that may exclude criminal unlawfulness under Articles 39 and 40 of the CCU, which was not established in this criminal proceeding. The defence did not provide any specific circumstances that would indicate the presence of coercion in the actions of the defendant.

Problematic issues regarding sentencing for war crimes:

1. The lack of consideration of the role of an accomplice in the commission of war crimes using the regulatory provisions of part 5 of Article 68 of the CCU, according to which, when sentencing accomplices to a criminal offence, the court, guided by the provisions of Articles 65-67 of this Code, shall take into account the nature and degree of participation of each of them in the commission of the criminal offence. In analysed verdicts, the punishments (basic and additional) imposed on accomplices were mostly the same in type and scope;

2. absence of a unified approach to taking into account the aggravating circumstance of committing a crime by prior conspiracy by a group of persons (Article 67(1)(2) of the CCU) when imposing a sentence under Article 438 of the CCU in cases where the courts refer to the relevant part of Article 28 of the CCU;

3. absence of a unified approach to taking into account the aggravating circumstance of committing a crime under martial law when imposing a sentence under Article 438 of the CCU (Article 67(1)(11) of the CC);

4. absence of a unified approach to taking into account the aggravating circumstance of causing grave consequences (Article 67(1)(5) of the CCU) when imposing a sentence under Article 438 of the CCU in cases where the courts refer to the relevant part of Article 28 of the CCU;

5. failure to take into account the commission of a war crime in a manner posing general threat as an aggravating circumstance when imposing punishment under Article 438 of the CCU (Article 67(1)(12) of the CCU) in cases where the defendant used objects that could cause harm to more than one person in the course of performing the objective part of a war crime;

6. Failure to take into account repeated offences as an aggravating circumstance when imposing punishment under Article 438 of the CCU (Article 67(1)(1) of the CCU) in cases where, according to the actual circumstances of the case, the accused committed at least two war crimes in any combination that were not united by a single intent;

7. failure to take into account, in certain verdicts, where Ukrainian citizens get convicted under Article 438 of the CCU, that in cases determined by law, an additional penalty, that is not provided for by the sanctions of either part 1 or part 2 of Article 438 of the CCU, may be imposed on them, namely deprivation of either military or special title or rank, or grade, or qualification class (Article 54 of the CCU), deprivation of a state award of Ukraine (Article 54-1 of the CCU), deprivation of the right to hold certain positions or engage in certain activities (part 2 of Article 55 of the CC);

8. proper reasoning for imposing an additional penalty under Article 54 of the CCU in the reasoning part, but no mention, in the resolutive part of the verdict, of the imposition of an additional penalty on the defendant in the form of deprivation of military, special title, rank, grade, or qualification class.

2.8. Examination and evaluation by the court of evidence of war crimes

The range of evidence used to prove the guilt of a person convicted of a war crime depends on the specifics of the objective aspect of the crime.

The classic evidence in war crimes criminal proceedings is the ***testimony of victims and witnesses***. Such evidence was assessed by the courts in the verdicts *of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23 and others).*

According to *the verdict of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23*, the victims' testimony was read in court in accordance with Article 615 *of* the CPC.

In some cases, victims testified in court in the presence of a psychologist. For example, as stated in the *verdict of the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24*,

the victim suffered psychological trauma after the Russian armed forces committed sexual violence and illegal detention (imprisonment) against her, and she was undergoing treatment and was being counselled by a psychologist.

Most victims and witnesses testified during the trial. However, in some cases, the courts limited themselves to examining the protocols of interrogation of witnesses during the pre-trial investigation in accordance with Article 317 of the CPC and taking into account the requirements of of Article 615 (1) (11)of this Code. For example, the *verdict of the Makarivskyi District Court of Kyiv oblast of 23.05.2025 in case No. 370/2058/22* states that it was not possible to interrogate two witnesses in court, as one witness, the victim's sister, was in Prague, and the whereabouts of the second witness were unknown, and it was not possible to summon him because he was not present at his place of residence and would not answer phone calls.

During the trial, the courts of first instance in some cases assessed the reliability of the victims' testimony (*verdict of the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23)*. As stated in that verdict, the defendant claimed, during the court hearing, that the victims' testimonies were false. The court noted that all the victims had been warned of criminal liability for knowingly giving false testimony under oath. The testimonies given by the victims during the stages of criminal proceedings are consistent in terms of content and do not contradict other evidence in the criminal proceedings. Minor inaccuracies in the testimony of victims may be due to the peculiarities of the perception and reproduction of certain information by a person, the time elapsed between the day the crime was committed and the examination in court took place, as well as to the fact that each victim saw certain stages of the crime, rather than the entire situation from the beginning to an end.

In the *verdict of the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23*, the evidence was the ***testimony of the accused*** (in this criminal proceeding, the trial was held in the presence of the accused).

Almost every verdict states that the courts examined and evaluated ***electronic evidence***, such as

- social media pages belonging to the accused servicemen of the Russian armed forces and/or their close relatives, which helped to identify the accused and obtain other information about him (in particular, mobile phone number, location at the time of the trial) (Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, *Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23);*

- the Myrotvorets website (for example, the *verdict of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23*);

- the Wikipedia website (*judgement of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23*);

- official websites of law enforcement agencies of the Russian Federation, other institutions and organisations of the Russian Federation, including religious organisations (*verdict of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23*);

- publications on Russian websites (for example, the *verdict of the Pavlohrad City District Court of Dnipropetrovska oblast of 11.11.2024 in case No. 185/12535/23*).

During the trial, the first instance courts directly examined and evaluated ***the protocols of investigative actions***. In most of the verdicts, the protocols were cited as evidence. Some verdicts contain a more correct description of the evidence in the criminal proceedings, namely the factual data contained in the relevant protocols (verdicts *of the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24) .* [127]

127 In the future, the correct wording will be used "factual data contained in the protocol", rather than just "protocol"

The courts directly examined and evaluated the factual data contained in such protocols of investigative actions:

- *presentation of a person for identification from photographs and certificates to the said protocols*, according to which the victim, witness identified the accused by the relevant physical parameters as a serviceman of the Russian armed forces who committed a war crime (verdicts of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23, the *Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23 and others*);

- *conducting crime re-enactment with participants in criminal proceedings*, in particular with victims and witnesses (verdicts of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, the verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23, *the Snihurivsky District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23*, and others);

- exhumation of the corpse of (verdict *of the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24)*

- *examination:*

- of the corpse related to the exhumation (verdicts of the Trostianetskyi District Court of Sumy region of 03.06.2024 in case No. 588/156/24, and of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23)

- of the scene of the crime (verdicts of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, *Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13.08.2024 in case No. 638/11302/23, Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24, Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24 and others*);

- of the area (verdict *of the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23 and others);*

- of the belongings (*verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24*);

- of the Internet profiles in social networks and messengers belonging to the accused (*verdicts of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23, the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24* and others).

In criminal proceedings under Article 438 of the Criminal Code***, the factual data contained in expert opinions*** in the vast majority of cases are a source of evidence, and the opinions themselves are subject to direct examination during the trial of the relevant criminal proceedings. Thus, the courts directly examined and evaluated the conclusions of such examinations:

- examination of weapons (verdicts of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23, *the* Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, *the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24*, and others);

- forensic psychiatric examination of the victim (*verdicts of the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, the Makarivskyi District Court of Kyiv oblast of 23.05.2025 in case No. 370/2058/22* and others);

- forensic psychological examination of the victim (verdict *of the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24*).

- forensic medical examinations:

- on the severity of the bodily injuries and the causes of their occurrence (verdicts of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the *Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, the Pavlohrad City District Court of Dnipro oblast of 11.11.2024 in case No. 185/12535/23* and others);

- on the cause of death of the victim(s) (verdicts of the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24, e Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, the *Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24*)

- *forensic portrait examination* (verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24);

- forensic commodity examination, according to which the amount of material damage caused to the victim as a result of the theft of his property by the Russian armed forces is calculated (verdicts *of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13.08.2024 in case No. 638/11302/23, the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23, the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24, the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24, the Chervonozavodskyi (Osnovyanskyi) District Court of Kharkiv of 16.10.2024 in case No. 646/4862/23, the Pavlohrad City District Court of Dnipropetrovska oblast of 11.11.2024 in case No. 185/12535/23*, and others*).*

To confirm the fact of bodily injury, the courts examined *certificates from medical institutions* on the victims' treatment in such institutions with the relevant diagnosis (verdict *of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24*), as well as copies of extracts from the medical records of an outpatient (verdict *of the Pavlohrad City District Court of Dnipropetrovska oblast of 11.11.2024 in case No. 185/12535/23*).

The Kherson City Court of Kherson oblast in its verdict of 13.06.2025 in case no.2025 in case No. 766/10206/23, the court examined *the explanation of the expert of the Association of Reintegration of Crimea,* according to which the forced transfer by the military of the Russian Federation and other armed formations controlled by the Russian Federation of persons who were convicted by Ukrainian courts and served their sentences in penitentiary institutions of the Kherson region to similar institutions of the Russian Federation is a serious violation of international humanitarian law and, depending on the context, is a crime against humanity or a war crime.

The evidence in the criminal proceedings under Article 438 of the CCU was ***factual data contained in documents with operational information*** on

- the presence of the military unit in which the defendant, a serviceman of the Russian armed forces, was serving in a particular settlement during its temporary occupation, on the territory of which the defendant committed a war crime (*verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24,* the *Desnianskyi District Court of Chernihiv of 13.06.06.2024 in case No. 748/2095/23,* the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23, the *Snihurivsky District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23, the Bobrovitskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23, the Chernihivskyi District Court of Chernihiv oblast*

of 16.09.2024 in case No. 748/259/24, the Pavlohrad City District Court of Dnipropetrovs'k oblast of 11.11.2024 in case No. 185/12535/23 and others);

- the defendant was not held in captivity (verdicts *of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, Pavlohradskyi District Court of Dnipropetrovs'k oblast of 16.01.2025 in case No. 185/10275/22 and others*);

- lack of information about the death of the defendant, a serviceman of the Russian armed forces (*verdicts of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24, the Pavlohradskyi District Court of Dnipro oblast of 16.01.2025 in case No. 185/10275/22 and others*);

- crossing by the military unit in which the defendant, a serviceman of the Russian armed forces served within the relevant section of the border detachment and staying in the relevant settlement until leaving it (*verdict of the Trostianetskyi District Court of Sumy region of 03.06.2024 in case No. 588/156/24, the Pavlohradskyi District Court of Dnipro region of 16.01.2025 in case No. 185/10275/22 and others*);

- the presence of special or military ranks of the accused servicemen of the Russian armed forces and about the position they held in the relevant military unit (*verdict of the Trostianetskyi District Court of Sumy region of 03.06.2024 in case No. 588/156/24*);

- registering connections from a mobile phone number belonging to the accused on the territory of the temporarily occupied settlement of Ukraine, on the territory of which the war crime was committed (verdicts *of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23, the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23, the Chernihivskyi District Court of Chernihiv oblast of 16.09.2024 in case No. 748/259/24, the Lebedynskyi District Court of Sumy oblast of 18.11.2024 in case No. 950/3703/23*).

The courts directly examined in court ***the factual data on identifying information about the accused obtained through intelligence***. In particular:

- data on the defendant's individual tax number obtained from the Russian Federal Tax Service (verdict of the Chernihivskyi District Court of Chernihiv oblast of 31 May 2024 in case No. 748/1469/24)

- the defendant's passport data obtained from such information source as the Russian Passport Automated System (verdicts of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23, *Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24)*;

- dossiers on the accused (verdict of *the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24)*;

- data from the defendant's military ID card (*verdict of the Lebedynskyi District Court of Sumy region of 18.11.2024 in case No. 950/3703/23*);

- data on the defendant's military service in a Ukrainian law enforcement agency of Ukraine before defecting to the enemy, on the military or special ranks assigned to him (*verdict of the Velykooleksandrivskyi District Court of Kherson oblast of 26.02.2025 in case No. 650/1462/24*);

- data of the passport of a citizen of Ukraine, assigned tax payer's register number (*verdict of the Velykooleksandrivskyi District Court of Kherson region of 26.02.2025 in case No. 650/1462/24*);

- analytical profiles of the defendant, which contain data on the defendant, his relatives and confirm the fact of his military service (*verdicts of the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24, the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24*)

Some courts **did not take into account the evidence provided by the prosecution**.

In its verdict of 05.07.2024 in case No. 485/1015/23, the Snihurivskyi District Court of Mykolaiv oblast did not take into account the following evidence: the factual data contained in separate protocols of identification of a person from photographs, as the victims did not clearly identify the person as the perpetrator of a war crime. In addition, the court is critical of the defence testimony given during the court hearings, as, as stated in this verdict, the defence witnesses were not eyewitnesses to the criminal offence, and they knew the circumstances from their fellow villagers. The court stated that, taking into account the totality of other evidence, the testimony of the defence witnesses failed to refute the proof of the defendant's guilt, nor did it provide any factual evidence of the defendant's not being involved in the criminal offence. The court of first instance also found the defendant's explanations that the Russian armed forces threatened him and forced him to act to be dubious. Such explanations are refuted by both the testimony of the victims and the testimony of a witness who, during his interrogation, did not mention that he had seen anyone threaten the defendant. As the court noted in its verdict, the defendant's perjury was related to the defence position chosen by him to avoid responsibility for the crime.

In some verdicts**, the evidence was found to be inadequate.**

In its verdict of 28.04.2025 in case№ 485/2061/23, the Snihurivskyi District Court of Mykolaiv oblast did not take into account the copy of the protocol of identification from photographs, according to which the witness identified a serviceman of the Russian armed forces who in July 2022 took part in the detention of local villagers and subsequently fired a shot at his feet with an assault rifle, who turned out to be the defendant, and a copy of the protocol of identification from photographs as inadmissible in accordance with the provisions of paragraph 1 of part 3 of Article 87 of the CPC, as they were obtained from the testimony of a witness who was later found guilty in this criminal proceeding.

In most of the verdicts delivered in criminal proceedings under Article 438 of the CCU, the courts took into account as evidence various procedural documents, such as an extract from the Unified Register of Pre-trial Investigations on the entry of information about a war crime (*verdict of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23)***,** a report by a senior police lieutenant on information obtained about persons who may be involved in criminal offences (verdict *of the Ivankivskyi District Court of Kyiv oblast of 30.04.2024 in case No. 366/2305/23*), and others.

At the same time, in the *verdict of the Vyshgorodskyi District Court of Kyiv oblast of 15.05.2025 in case No. 363/2119/24*, the court did not rely on the evidence of guilt to justify this verdict: an extract from the URPTI, a resolution on the recognition of things (objects) as material evidence pieces, joining them to the criminal case file, and recognition of the place of storage of material evidence pieces, the report of the Investigation Department No. 1 of the Iziumskyi District Police Department in Kharkiv region, a statement by the victim regarding the commission of a criminal offence against him, a statement on his involvement in the proceedings as a victim, a resolution on recognition as a victim, and other procedural documents. The court noted that only evidence, i.e. factual data on the basis of which the presence or absence of facts and circumstances important for making a decision is established, can be assessed in terms of admissibility. Procedural decisions, such as resolutions and orders issued during the pre-trial investigation, court decisions, extracts from the URPTI, as well as adversarial documents (motions, applications, complaints, etc.) cannot be assessed in terms of admissibility, as they are not evidence within the meaning of Article 84 of the CPC, but only certify that certain investigative and procedural actions were carried out in accordance with the requirements of the law and by the proper individuals.

The issue was addressed similarly in the *verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 Case No. 337/4647/24*.

Thus, as can be seen from the analysis of the evidence used by the court to establish the guilt of those accused of committing war crimes, their quantitative and qualitative properties depend on the specifics of the particular forms of war crimes in the relevant case, the collection of such evidence was carried out in accordance with the procedure provided for by the CPC, and during the trial, the courts assessed the totality of such evidence and, on their basis, decided on the guilt of the person in committing the crime under Article 438 of the CCU.

2.9. Special procedure of criminal proceedings (special pre-trial investigation and special trial (in absentia)

It was applied in almost all criminal proceedings under Article 438 of the CCU (according to the verdicts delivered by the courts during the third phase of monitoring of war crimes trials.

According to a single verdict, namely *the verdict of the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23*, the pre-trial investigation and trial were conducted in the presence of the defendant.

As can be seen from the analysis of the verdicts, the special procedure of criminal proceedings (*in absentia*) was carried out in accordance with the rules provided for this procedure. A specific procedure for notifying the defendants of criminal proceedings under Article 438 of the CCU was usually not applied to them. In some verdicts, specific measures were taken to notify them.

For example, the *verdict of the Pavlohradskyi District Court of Dnipropetrovs'k oblast of 16 January 2025 in case No. 185/10275/22* states that the prosecutor sent subpoenas to the email address of the institution "FEDERAL GOVERNMENT AGENCY "MILITARY COMMISSARIATE OF THE LUHANSK PEOPLE'S REPUBLIC" to summon the defendant to the preparatory court hearing on 18 April 2024 and 24 May 2024. Those subpoenas were received by the addressee. This verdict also states that the court's ruling of 22.03.2024 instructed the pre-trial investigation body to send a notice to the defendant to the established contacts on the Internet and telephone numbers of the institution « FEDERAL GOVERNMENT AGENCY "MILITARY COMMISSARIATE OF THE LUHANSK PEOPLE'S REPUBLIC» about the trial of the criminal proceedings on the charges against the accused and about the possibility of participating in the trial remotely, through the "Electronic Court."

According to the *verdict of the* Vinnytsia *City Court of Vinnytsia oblast dated 20.03.2024 in case No. 127/15500/23,* in addition to the special procedure of criminal proceedings (*in absentia*) regulated by the CPC, specific measures were taken during the pre-trial investigation to notify the defendant of procedural actions against him within this procedure.

Thus, this verdict states that the defendant, in accordance with the requirements of part 8 of Article 135, part 1 of Article 278 of the CPC, were notified of suspicion of committing the incriminated crimes by publishing on the OPG official website, the notices of suspicion and subpoenas to appear as suspects at the SSU investigative department in Vinnytsia region to be interrogated as suspects, but the latter failed appear before the investigator without valid reasons.

In addition, the newspaper of the Cabinet of Ministers of Ukraine, Uriadovyi Kurier, published a subpoena to three suspects to summon them to the SSU investigative department in Vinnytsia region to be interrogated as suspects, as well as for participating in other investigative and procedural activities in the status of suspects in that criminal proceeding, but the latter did not appear before the investigative department without valid reasons.

The notice of suspicion, the memo on procedural rights and obligations, and the subpoena were additionally sent via the Telegram messenger registered to the mobile number of one of the suspects and were received by the latter, as evidenced by a screenshot of the screen contained in the criminal proceedings.

The notice of suspicion / change of previously notified suspicion and the new suspicion were also served on the defendants' counsel, as evidenced by the receipts in the criminal proceedings.

Thus, as can be seen from the analysed verdicts, the pre-trial investigation body, the PPO, and the court usually apply the procedure of the special procedure of criminal proceedings (in absentia) regulated by the CPC.

2.10. Resolution of civil claims

In criminal proceedings under Article 438 of the CCU, civil claims for compensation for moral and/or material damage to the victim were filed.

Thus, civil claims were satisfied in the verdicts *of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13.08.2024 in case No. 638/11302/23, the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24, the Chernihivskyi District Court of Chernihiv oblast of 29.11.2024 in case No. 748/2174/24, the Chernihivskyi District Court of Chernihiv oblast of 27.12.2024 in case No. 748/3438/24, the Snihurivskyi District Court of Mykolaiv oblast of 08.04.2025 in case No. 485/2098/24, the Brovary City District Court of Kyiv oblast of 08.04.2025 in case No. 361/1117/24, Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24.*

Ways in which courts resolve civil claims:

1. **leaving the claims without consideration**. *By the verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv dated 13.08.2024 in case No. 638/11302/23*, the civil claim of the individual entrepreneur, who was a victim, against the defendants for compensation for material damage caused by the criminal offence was left without consideration. The court reasoned that the victim had not been duly notified of the court hearings scheduled after the case was referred to the judge, failed to appeared at any of them, or provide the court with a reason for his absence, or submitte any applications for consideration of the civil claim in his absence with reference to supporting or refuting of the claim. It is not possible to consider a civil claim for compensation for material damage on the merits without the victim's participation. The civil claim filed by the victim's representative, who is the head of the farm, for compensation for material damage to the defendants, which this representative subsequently requested to be left without consideration, was also left without consideration by the *verdict of the Chernihivskyi District Court of Chernihiv oblast of 29.11.2024 in case No. 748/2174/24*.

2. ***satisfied the civil claims in full.*** *By the verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv dated 11.10.2024 in case No. 638/1305/24*, the civil claim of the victim against the defendant for compensation for non-pecuniary damage caused by the criminal offence was satisfied and the amount of non-pecuniary damage caused to him by the criminal offence was recovered from the defendant in favour of the victim in the amount of UAH 1,000,000 (one million).

   The verdict *of the Brovary City District Court of Kyiv oblast of 08.04.2025 in case No. 361/1117/24* fully satisfied the victim's civil claim for compensation in her favour from the two defendants of UAH 1,000,000 (each) in connection with the moral damage caused by their criminal acts, in particular, in connection with the loss of pregnancy as a result of sexual assault.

   The verdict of the Chernihivskyi District Court of Chernihiv oblast dated 27.05.2025 in case No. 748/5045/24 fully satisfied the victim's civil claim for the recovery of UAH 1,000,000 jointly from the three defendants in favour of the victim as compensation for non-pecuniary damage caused by the criminal offence.

3. ***partially satisfied civil claims***. *The verdict of the Chernihivskyi District Court of Chernihiv oblast dated 27.12.2024 in case No. 748/3438/24* partially satisfied the civil claim of the victim, a representative of the LLC. The court noted that the defendant should be held liable for UAH 402,955.07 in favour of the LLC for property damage, which was established by an expert opinion, which is proper and admissible evidence. Separately, the court determines that the amount of compensation for a civil claim in criminal proceedings does not necessarily have to coincide with the scope of damage caused by the crime specified in the indictment, which the court found to be proven. The damage caused by a criminal offence as a circumstance that affects its qualification and the resolution of other issues related to bringing a person to criminal liability, and compensation for damages as a way to protect a violated civil

right and a compensation mechanism have different legal nature, differ in terms of the criteria for determining and legal consequences.

The verdict *of the Snihurivskyi District Court of Mykolaiv oblast dated 08.04.2025 in case No. 485/2098/24* partially satisfied the civil claim of one victim and dismissed the civil claim of the other victim. Thus, this verdict partially satisfied the claim filed by the representative of the first victim for compensation for non-pecuniary damage, which the civil plaintiff estimated at UAH 3,000,000. The court agreed with the victim's arguments that the defendant's commission of a particularly serious war crime caused her deep emotional distress. The victim experienced extreme emotional stress, significant physical and moral shock, and deep mental suffering. The stress, including due to the actions of the defendant, caused her to suffer a serious illness that requires constant checks and treatment. The court resolved the civil claim of the first victim based on the nature of the act committed by the defendant, the specific circumstances of the case, taking into account the principles of reasonableness and fairness, and decided to compensate the victim for non-pecuniary damage in the amount of UAH 500,000. At the same time, the court dismissed the civil claim of the second victim, who claimed for the compensation for non-pecuniary damage in the amount of UAH 1,000,000, which was motivated by the victim's mental state due to the defendant's unlawful actions against her parents.

2.11. Appeals against first instance court verdicts

During the third phase of the monitoring, 9 rulings of the appellate courts reviewing the verdicts of the first instance courts under Article 438 of the CCU were analysed, of which 7 had entered into force at the time of processing and 2 had been appealed to the cassation court.

In all cases, the appeal against the decision of the first instance court was filed by the defendants' defence counsels.

The appellate courts mostly decided to dismiss the appeals and upheld the verdicts of the first instance courts (see details in the annex to the Report).

ANNEXES

Questionnaire for monitoring court proceedings in criminal war crime cases (Article 438 of the CCU)

I. General information:

(please answer all questions)

Full name of the monitor	
Name of the court	
Date and time of the court hearing (scheduled and actual) If the actual time differs from the scheduled time, please indicate the reasons.	
Single unique case number	
Full name of the accused person(s)	
Is the case heard in the presence of the accused or *in absentia*?	
Full name of the public prosecutor	
Full name of the defence counsel (selected personally / appointed through the FLA)	
Indictment articles	
Is the court schedule available? **Please specify where it was available (e.g. on the notice board in the courtroom, on the Judiciary website, etc.)**	
Is the trial open to the public? If not, please indicate the reasons for the closed trial. Was an appropriate explanation of the reason provided?	

Has the trial taken place? If the trial was postponed, please indicate the following: • whether the issue of adjournment was resolved in court or whether the trial was adjourned without a court hearing; • the reasons for the postponement of the trial; • the period of postponement.	

II. The right to a public hearing

(please provide open answers to the questions)

№	Question	Answer
1.	Were members of the public admitted to the court hearing? Was anyone denied access (if known)?	
2.	Were there any restrictions on public admission to the courtroom after the start of the court hearing? If so, what were the restrictions? Were these reasonable?	
3.	Were media representatives allowed in the courtroom? If so, did the judge place any restrictions on what information they were allowed to report (names, details, description of appearance, photographs or sketches of the parties)? If no, were the reasons for the denial of access to the courtroom explained?	
4.	Was the size of the courtroom sufficient for the expected public interest? Did the court provide reasons for the inability to allocate a larger courtroom if the courtroom was too small?	
5.	Indicate if the trial took place in the judge's chambers or other part of the court building (basement, shelter, etc.). If so, was the size of the judge's office or other room sufficient, technically equipped and adapted for court hearings?	

III. The right to an independent and impartial court

(please provide open answers to the questions)

6.	Did the court seem objective and impartial when considering the criminal case? If not, how did it manifest (e.g., favouring either party, exerting pressure on the parties, etc.)	
7.	Did anyone (political actors, parties to the proceedings, etc.) make threatening statements against the judiciary in relation to the outcome of the case?	
8.	Did anyone make any allegations of corruption or undue influence on the judges in the case during the hearing?	
9.	Did the court reject the arguments/proposals/evidence of the defence or prosecution without providing a reasonable justification?	

IV. The right to participate in a hearing and the right to defence

(please provide open answers to the questions)

10.	Was the prosecution present at the court hearing?	
11.	Was the defence present at the court hearing?	
12.	Was the victim present at the court hearing?	
13.	Was the witness present at the court hearing?	
14.	Was the prosecution notified in advance of the time and place of the court hearing? Please provide all the details you know.	

15.	Was the defence notified in advance of the time and place of the trial? Please provide all the details you know.	
16.	Was the victim notified in advance of the time and place of the court hearing? Please provide all the details you know.	
17.	Was the witness notified in advance of the time and place of the court hearing? Please provide all the details you know.	
18.	Were witnesses/victims properly informed in advance of the testimony procedure, their rights and obligations; did they receive the necessary practical and psychological support during their testimony?	
19.	Did any party request a postponement of the court hearing? If so, was the request approved?	
20.	Was the defendant informed of their right to defence? if *in absentia*, please indicate it in the answer.	
21.	Was the defence provided with the opportunity to review the criminal case file provided that request was made? Is there a sufficient time for this? If such an opportunity was not provided or was provided with restrictions, what were the reasons? Has any information been removed or redacted? If so, what were the reasons?	
22.	Was the defence allowed to fully examine the witness or victim during the trial, did the presiding judge remove any question and, if so, what were the reasons?	
23.	Were there allegations (or are there indications) during the proceedings suggesting that the prosecution withheld exculpatory evidence? If so, please provide details.	
24.	Did the defence have the necessary time to prepare its position on the prosecution's evidence?	
25.	Are there any indications suggesting that witnesses of the prosecution or defence were under pressure? If so, please provide details.	

26.	Did the accused have the opportunity to consult with their defence counsel in confidence, and were they given a reasonable time to do so?	
27.	Are there any indications suggesting that any restrictions were placed on defence counsel in accessing their client in detention (e.g., in a pre-trial detention centre)? Were their meetings confidential (no video or audio recording)? Were their meetings limited in time?	
28.	Were there any signs indicating that the defence counsel was clearly indifferent or unqualified to represent the accused?	
29.	Is the trial conducted *in absentia*? If so, what were the reasons for this? Have all possible and reasonable measures been taken to ensure the presence of the accused? What was the procedure for summoning in criminal proceedings (delivery of the summons, sending it by post, e-mail, fax, telephone, telegram, or other means)?	
30.	In the case of a trial i, did the defendant's counsel participate? If so, did he or she have the opportunity to cross-examine prosecution witnesses and present arguments on behalf of the accused?	
31.	If the criminal proceedings were conducted *in absentia*, please specify: - Was there a mechanism for reviewing a court verdict issued *in absentia*? Were there any obstacles to this? - Has the court decision been appealed to an appellate or cassation court?	

V. Equality of arms

(please provide open answers to the questions)

32.	Do the defence and prosecution have equal procedural opportunities to prove their case? If not, please comment.	
33.	Does the defence have the same opportunity as the prosecution to perform procedural actions (request an expert examination, request expert testimony, question witnesses, etc.)	

VI. Presumption of innocence and burden of proof

(please provide open answers to the questions)

34.	Does the court make statements during the trial that indicate bias against the accused?	
35.	Does the trial appear to be one in which the defence has to prove its innocence?	
36.	Has anyone (judicial officials, other civil servants, etc.) made public statements in which the defendant was found guilty of crimes before the court's decision?	
37.	Are there any facts of torture or ill-treatment of the accused during the pre-trial investigation or the failure to properly investigate these facts? If so, were such facts considered and taken into account by the court or the prosecution?	
38.	Are there any indications suggesting that the defendant was bribed, threatened or induced to confess guilt?	
39.	Is the defendant's testimony the only evidence leading to his or her conviction in the case?	
40.	Did the court take into account the testimony of the defendant as a witness without informing him/her of his/her rights as a suspect/accused?	
41.	Did the court take into account documents indicating unsuccessful negotiations within the plea agreement when establishing guilt?	

VII. Right not to incriminate oneself and right to remain silent

(please provide open answers to the questions)

42.	Was the accused properly informed of his/her rights?	
43.	Does the court remind the defendant of his or her rights during the proceedings, if necessary?	
44.	Does the court consider the silence of the accused as a sign of guilt?	
45.	Did the court, the prosecution, and the defence comply with the ethical rules of conduct in the case when concluding the plea agreement?	

VIII. Right to a reasonable duration and efficiency of the trial

(please provide open answers to the questions)

46.	Please indicate the date of commencement of criminal proceedings (entry of information into the URPTI). Please indicate the date of completion of the criminal proceedings (if the trial is ongoing, please indicate this).	
47.	Are there any indications of violation of the terms of the pre-trial investigation or trial in the criminal proceedings? If so, what are they?	
48.	Are there any indications that the defence is deliberately delaying the proceedings? If so, what are they?	
49.	Are there any indications suggesting that the presentation of expert or other evidence is taking an unreasonably long time and the court is not seeking to expedite the process? If so, what are they?	
50.	Are there any indications suggesting that the court is not conducting the proceedings efficiently (e.g., the court does not send subpoenas and documents in the case within the time limits established by law, or the court repeatedly calls too many witnesses to testify on a particular day, etc.)? If so, please provide details.	
51.	Does the court take appropriate measures to ensure the attendance of important witnesses who are unwilling or unable to attend court (e.g., verify service of subpoenas, fine and/or protect them, etc.)?	
52.	Does the court hold parties, members of the public, etc. accountable for contempt of court in accordance with the law?	

IX. Right to translation

(please provide open-ended answers to the questions)

53.	Was the defendant provided with a professional and independent interpreter if he/she does not understand the language of the proceedings?	
54.	Are court documents provided to the defendant in a language that he or she understands? Please specify which ones.	
55.	Does the defence counsel speak the language that the defendant understands best?	

X. Right to liberty and person integrity

(please provide open answers to the questions)

56.	When selecting and/or extending the application of preventive measures in the form of detention, was the possibility of applying preventive measures alternative to detention considered?	
57.	Does the investigating judge/court properly consider the issue of the person's detention in custody (during the pre-trial investigation/trial), justify and provide sufficient reasons (specify) for the person's detention in custody, which makes it impossible to apply measures alternative to detention? Enter information from the Unified State Register of Court Decisions on this issue (references to relevant court decisions). Indicate the time of detention during the pre-trial investigation/trial.	
58.	Are the verdicts passed in terms of the imposed sentence commensurate with the duration of the detention of the accused? Did the defence have the necessary time to present evidence of mitigating circumstances or evidence about the identity of the accused, motions for a reduced sentence or sentences alternative to imprisonment?	

XI. Right to a public and reasoned court decision

(please provide open-ended answers to the questions)

59.	Was the verdict pronounced in publicly?	
60.	In the event of a guilty verdict, does the applied sentence correspond to the limits set by law?	
61.	If there were mitigating or aggravating circumstances in the case, were they taken into account?	
62.	Was a civil claim filed as part of the criminal proceedings for compensation for moral and/or material damage? Were these claims satisfied (in full or in part)?	

Catalogue of verdicts with hyperlinks

The list of verdicts of the courts of first instance analysed during the third phase of monitoring of court proceedings in war crime cases:

1. Verdict of the Vinnytsia City Court of Vinnytsia oblast of 20.03.2024 in case No. 127/15500/23 https://reyestr.court.gov.ua/Review/117947422 (the said verdict was appealed to the courts of appeal and cassation. At the time of writing, the cassation review of the criminal proceedings is ongoing)

2. Verdict of the Ivankivskyi District Court of Kyiv oblast of 30.05.2024 in case No. 366/2305/23. https://reyestr.court.gov.ua/Review/119382555 (the verdict has entered into force)

3. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 31.05.2024 in case No. 748/1469/24. https://reyestr.court.gov.ua/Review/119430956 (verdict has entered into force)

4. Verdict of the Trostianetskyi District Court of Sumy oblast of 03.06.2024 in case No. 588/156/24. https://reyestr.court.gov.ua/Review/119440612 (sentence has entered into force)

5. Verdict of the Desnianskyi District Court of Chernihiv of 13 June 2024 in case No. 748/2095/23. https://reyestr.court.gov.ua/Review/119729167 (the verdict was appealed to the court of appeal; the verdict has entered into force)

6. Verdict of the Vilnyanskyi District Court of Zaporizhzhia region of 14 June 2024 in case No. 314/2584/23. https://reyestr.court.gov.ua/Review/119756832

   (information on the verdict is prohibited for publication in accordance with paragraph four of part one of Article 7 of the Law of Ukraine «On Access to Court Decisions»; the verdict was not appealed to the court of appeal; the verdict has entered into force)

7. Verdict of the Biliaiivskyi District Court of Odesa oblast of 18.06.2024 in case No. 496/2300/23. https://reyestr.court.gov.ua/Review/119823787 (the verdict has entered into force)

8. Verdict of the Snihurivskyi District Court of Mykolaiv oblast of 05.07.2024 in case No. 485/1015/23. https://reyestr.court.gov.ua/Review/120200633 (the verdict was appealed to the court of appeal - the appeal is ongoing)

9. Verdict of the Kherson City Court of Kherson oblast of 05.08.2024 in case No. 766/1560/24. https://reyestr.court.gov.ua/Review/120819241 (the verdict has entered into force)

10. Verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13 August 2024 in case No. 638/11302/23. https://reyestr.court.gov.ua/Review/120995921 (appealed to the court of appeal; the verdict has entered into force)

11. Verdict of the Bobrovytskyi District Court of Chernihiv oblast of 02.09.2024 in case No. 729/1125/23. https://reyestr.court.gov.ua/Review/121306414 (the verdict has entered into force)

12. Verdict of the Borodianskyi District Court of Kyiv oblast of 12 September 2024 in case No. 939/1435/22. https://reyestr.court.gov.ua/Review/121563993 (the verdict was appealed to the court of appeal; the verdict has entered into force)

13. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 16 September 2024 in case No. 748/259/24. https://reyestr.court.gov.ua/Review/121610838 (the verdict was appealed to the court of appeal - the appeal is ongoing)

14. Verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24. https://reyestr.court.gov.ua/Review/122241348 (the verdict has entered into force)

15. Verdict of the Chervonozavodskyi (Osnovyanskyi) District Court of Kharkiv of 16.10.2024 in case No. 646/4862/23. https://reyestr.court.gov.ua/Review/122340678 (verdict has entered into force)

16. Verdict of the Pavlohrad City District Court of Dnipropetrovska oblast of 11.11.2024 in case No. 185/12535/23. https://reyestr.court.gov.ua/Review/122971013 (verdict has entered into force)

17. Verdict of the Lebedynskyi District Court of Sumy oblast of 18 November 2024 in case No. 950/3703/23. https://reyestr.court.gov.ua/Review/123060677 (verdict has entered into force)

18. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 29 November 2024 in case No. 748/2174/24. https://reyestr.court.gov.ua/Review/123386411 (verdict has entered into force)

19. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 27.12.2024 in case No. 748/3438/24. https://reyestr.court.gov.ua/Review/124093768 (verdict has entered into force)

    1. Verdict of the Velykooleksandrivskyi District Court of Kherson oblast of 16.01.2025 in case No. 650/2358/23. https://reyestr.court.gov.ua/Review/124441061

       (information on the verdict is prohibited for disclosure in accordance with paragraph four of part one of Article 7 of the Law of Ukraine «On Access to Court Decisions»; the verdict was not appealed to the court of appeal; the verdict has entered into force)

20. Verdict of the Pavlohradskyi District Court of the Dnipro oblast of 16 January 2025 in case No. 185/10275/22. https://reyestr.court.gov.ua/Review/124518642 (the verdict has entered into force)

21. Verdict of the Menskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 739/772/24. https://reyestr.court.gov.ua/Review/124852968

    (information on the verdict is prohibited for disclosure in accordance with paragraph four of part one of Article 7 of the Law of Ukraine 'On Access to Court Decisions'; the verdict was appealed to the court of appeal; the verdict has entered into force)

22. Verdict of the Snihurivskyi District Court of Mykolaiv oblast of 03.02.2025 in case No. 485/742/24. https://reyestr.court.gov.ua/Review/124851030 (the verdict has entered into force)

23. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 743/262/24. https://reyestr.court.gov.ua/Review/124852078 (the verdict has entered into force)

24. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 748/3480/24. https://reyestr.court.gov.ua/Review/125178086 (verdict has entered into force)

25. Verdict of the Ripkynskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 743/908/24. https://reyestr.court.gov.ua/Review/12517984 (the verdict has entered into force)

26. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 748/4732/24. https://reyestr.court.gov.ua/Review/125347765 (the verdict has entered into force)

27. Verdict of the Velykooleksandrivskyi District Court of Kherson region of 26.02.2025 in case No. 650/1462/24. https://reyestr.court.gov.ua/Review/125482420 (verdict has entered into force)

28. Verdict of the Bobrovytskyi District Court of Chernihiv oblast of 24.02.2025 in case No. 729/861/24. https://reyestr.court.gov.ua/Review/126077450 (verdict has entered into force)

29. Verdict of the Kommunarskyi District Court of Zaporizhzhia of 26.02.2025 in case No. 333/5566/24. https://reyestr.court.gov.ua/Review/125791333 (verdict has entered into force)

30. Verdict of the Borodianskyi District Court of Kyiv oblast of 13.03.202 in case No. 939/226/235. https://reyestr.court.gov.ua/Review/125798844 (sentence has entered into force)

31. Verdict of the Desnianskyi District Court of Kyiv of 18.03.2025 in case No. 754/18236/23. https://reyestr.court.gov.ua/Review/125913241 (appealed to the Court of Appeal - appeal proceedings are pending)

32. Verdict of the Novovorontsovskyi District Court of Kherson region of 19.03.2025 in case No. 954/266/23. https://reyestr.court.gov.ua/Review/125938305 (the verdict has entered into force)

33. Verdict of the Shevchenkivskyi District Court of Kyiv of 24.03.2025 in case No. 761/28971/22. https://reyestr.court.gov.ua/Review/126159129 (verdict has entered into force)

34. Verdict of the Shevchenkivskyi District Court of Kyiv of 27.03.2025 in case No. 761/7615/23. https://reyestr.court.gov.ua/Review/126919967# (verdict has entered into force)

35. Verdict of the Snihurivskyi District Court of Mykolaiv oblast of 07.04.2025 in case No. 485/167/25. https://reyestr.court.gov.ua/Review/126402305 (verdict has entered into force)

36. Verdict of the Khersonskyi District Court of Kherson oblast of 07.04.2025 in case No. 766/12885/23 https://reyestr.court.gov.ua/Review/126490833 (verdict has entered into force)

37. Verdict of the Snihurivskyi District Court of Mykolaiv oblast of 08.04.2025 in case No. 485/2098/24. https://reyestr.court.gov.ua/Review/126435594 (verdict has entered into force)

38. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 11.04.2025 in case No. 748/4032/24. https://reyestr.court.gov.ua/Review/126524631 (verdict has entered into force)

39. Verdict of the Brovary City District Court of Kyiv oblast of 08.04.2025 in case No. 361/1117/24 https://reyestr.court.gov.ua/Review/126870871 (verdict has entered into force)

40. Verdict of the Industrialnyi District Court of Kharkiv of 16.04.2025 in case No. 638/11148/23. https://reyestr.court.gov.ua/Review/126641897 (the verdict has not entered into force)

    information on the verdict is prohibited for publication in accordance with paragraph four of part one of Article 7 of the Law of Ukraine «On Access to Court Decisions»

41. Verdict of the Snihurivskyi District Court of Mykolaiv oblast of 28.04.2025 in case No. 485/2061/23. https://reyestr.court.gov.ua/Review/126891635 (the verdict has entered into force)

42. Verdict of the Velykooleksandrivskyi District Court of Kherson oblast of 02.05.2025 in case No. 650/1189/24. https://reyestr.court.gov.ua/Review/127124241 (verdict has entered into force)

43. Verdict of the Solomianskyi District Court of Kyiv of 09.05.2025 in case No. 760/21748/24. https://reyestr.court.gov.ua/Review/127418319

44. Verdict of the Vyshhorodskyi District Court of Kyiv oblast of 15.05.2025 in case No. 363/2119/24. https://reyestr.court.gov.ua/Review/127350687

45. Verdict of the Shevchenkivskyi District Court of Kharkiv of 15.05.2025 in case No. 638/8749/23. https://reyestr.court.gov.ua/Review/127385113

46. Verdict of the Khortytskyi District Court of Zaporizhzhia of 19.05.2025 in case No. 337/4647/24. https://reyestr.court.gov.ua/Review/127424787

47. Verdict of the Chernihivskyi District Court of Chernihiv region of 22.05.2025 in case No. 748/2577/24. https://reyestr.court.gov.ua/Review/127524899 (the verdict has entered into force)

48. Verdict of the Ichnianskyi District Court of Chernihiv region of 23.05.2025 in case No. 733/37/24. https://reyestr.court.gov.ua/Review/127581010 (the verdict has entered into force)

49. Verdict of the Makarivskyi District Court of Kyiv oblast of 23.05.2025 in case No. 370/2058/22. https://reyestr.court.gov.ua/Review/127640506 (verdict has entered into force)

50. Verdict of the Chernihivskyi District Court of Chernihiv oblast of 27.05.2025 in case No. 748/5045/24. https://reyestr.court.gov.ua/Review/127664733

51. Verdict of the Tsentralnyi District Court of Mykolaiv of 02.06.2025 in case No. 490/9491/23. https://reyestr.court.gov.ua/Review/127796477#

52. Verdict of the Desnianskyi District Court of Kyiv of 10 June 2025 in case No. 754/15727/23. https://reyestr.court.gov.ua/Review/128063971

53. Verdict of the Velykooleksandrivskyi District Court of Kherson oblast of 11 June 2025 in case No. 650/3777/24. https://reyestr.court.gov.ua/Review/128058801

54. Verdict of the Kherson City Court of Kherson region of 13 June 2025 in case No. 766/10206/23. https://reyestr.court.gov.ua/Review/128231478

The list of rulings of the appellate courts analysed during the third phase of monitoring of court decisions during the third phase of monitoring of court proceedings in war crime cases:

1. Ruling of the Vinnytsia Court of Appeal of 28.03.2025 in case No. 127/15500/23. https://reyestr.court.gov.ua/Review/126197446 (appealed to the court of cassation)

2. Ruling of the Chernihiv Court of Appeal of 11.10.2024 in case No. 748/2095/23. https://reyestr.court.gov.ua/Review/122231369 (the decision has entered into force)

3. Ruling of the Kharkiv Court of Appeal of 03.10.2024 in case No. 638/11302/23. https://reyestr.court.gov.ua/Review/122112497 (the decision has entered into force)

4. Ruling of the Kyiv Court of Appeal of 08.05.2025 in case No. 939/1435/22. https://reyestr.court.gov.ua/Review/127403028 (not yet in force)

5. Ruling of the Kharkiv Court of Appeal of 11.03.2025 in case No. 638/1305/24. https://reyestr.court.gov.ua/Review/125718802 (the ruling has entered into force)

6. Ruling of the Sumy Court of Appeal of 24.03.2025 in case No. 950/3703/23. https://reyestr.court.gov.ua/Review/126102174 (the decision has entered into force)

7. Ruling of the Chernihiv Court of Appeal of 07.04.2025 in case No. 739/772/24. https://reyestr.court.gov.ua/Review/126384920

8. Ruling of the Chernihiv Court of Appeal of 24.04.2025 in case No. 748/3480/24. https://reyestr.court.gov.ua/Review/126852324 (the ruling has entered into force)

9. Ruling of the Kharkiv Court of Appeal of 16.06.2025 in case No. 638/11148/23 https://reyestr.court.gov.ua/Review/128125999 (the ruling has not entered into force; it was appealed to the CCU of the Supreme Court)

   The information on the ruling is prohibited for disclosure in accordance with paragraph four of part one of Article 7 of the Law of Ukraine “On Access to Court Decisions”

List of verdicts of the courts of first, appeal, and cassation instancesdelivered during the first and second phases of monitoring

1. **Case No. 760/5257/22**

Verdict of the Solomianskyi District Court of Kyiv of 23.05.2022 https://reyestr.court.gov.ua/Review/104432094

Ruling of the Kyiv Court of Appeal of 29.07.2022 https://reyestr.court.gov.ua/Review/105669005

Court decisions have entered into force

2. **Case No. 535/244/22**

Verdict of the Kotelevsky District Court of Poltava oblast of 31.05.2022 https://reyestr.court.gov.ua/Review/104531363

Ruling of the Poltava Court of Appeal of 21.09.2022. https://reyestr.court.gov.ua/Review/106448411

Court decisions that have entered into force

3. **Case No. 554/3925/22**

Verdict of the Oktyabrskyi District Court of Poltava of 09.06.2022 https://reyestr.court.gov.ua/Review/104701812 (the verdict has entered into force)

4. **Case no. 554/3864/22**

Verdict of the Oktyabrskyi District Court of Poltava of 13 June 2022 https://reyestr.court.gov.ua/Review/104739440

Ruling of the Poltava Court of Appeal of 26 September 2022 https://reyestr.court.gov.ua/Review/106528443

The appeal proceedings were closed due to the appellants' withdrawal of their appeals

The court decisions have entered into force

5. **Case No. 554/3954/22**

Verdict of the Oktyabrskyi District Court of Poltava of 13.06.2022 https://reyestr.court.gov.ua/Review/104731235

Ruling of the Poltava Court of Appeal of 26 September 2022 https://reyestr.court.gov.ua/Review/106528446

The appeal proceedings were closed due to the appellants' withdrawal of their appeals

Court decisions have entered into force

6. **Case No. 761/14035/22**

Verdict of the Shevchenkivskyi District Court of Kyiv of 03.08.2022 https://reyestr.court.gov.ua/Review/106643372 (the verdict has entered into force)

7. **Case No. 750/2891/22**

Verdict of the Desnianskyi District Court of Chernihiv of 08 August 2022 https://reyestr.court.gov.ua/Review/105614689

Ruling of the Chernihiv Court of Appeal of 02.11.2022. https://reyestr.court.gov.ua/Review/107069742 (the ruling has entered into force).

8. **Case No. 751/2961/22**

Verdict of the Novozavodskyi District Court of Chernihiv of 31.08.2022 https://reyestr.court.gov.ua/Review/105986768 (the verdict has entered into force)

9. **Case No. 760/4174/22**

Verdict of the Solomianskyi District Court of Kyiv of 26.09.2022 https://reyestr.court.gov.ua/Review/106808179 (verdict has entered into force)

10. **Case No. 751/2659/22**

Verdict of the Novozavodskyi District Court of Chernihiv of 02.11.2022 https://reyestr.court.gov.ua/Review/107111142

Ruling of the Chernihiv Court of Appeal of 23.03.2023 https://reyestr.court.gov.ua/Review/110415036

Court decisions have entered into force

11. **Case No. 369/9950/22**

Verdict of the Kyievo-Sviatoshynskyi District Court of Kyiv oblast of 17.11.2022 https://reyestr.court.gov.ua/Review/107577110 (the verdict has entered into force)

12. **Case No. 729/574/22**

Verdict of Bobrovytskyi District Court of Chernihiv oblast of 24 November 2022 https://reyestr.court.gov.ua/Review/107481395 (verdict has entered into force)

13. **Case No. 729/592/22**

Verdict of Bobrovytskyi District Court of Chernihiv oblast of 25 November 2022 https://reyestr.court.gov.ua/Review/107503138 (verdict has entered into force)

14. **Case No. 758/14216/21**

Verdict of the Podilskyi District Court of Kyiv of 19.12.2022 https://reyestr.court.gov.ua/Review/108048620 (verdict has entered into force)

15. **Case No. 535/2922/22**

Verdict of the Kotelevsky District Court of Poltava oblast of 23 December 2022 https://reyestr.court.gov.ua/Review/108042992 (verdict has entered into force)

16. **Case no. 535/2100/22**

Verdict of the Kotelevsky District Court of Poltava oblast of 26.12.2022 https://reyestr.court.gov.ua/Review/108302451 (verdict has entered into force)

17. **Case No. 748/2272/22**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 10.01.2023. https://reyestr.court.gov.ua/Review/108302451# (the verdict has entered into force)

18. **Case No. 748/1773/22**

Verdict of the Chernihivskyi District Court of Chernihiv region of 12 January 2023 https://reyestr.court.gov.ua/Review/108357178

Ruling of the Chernihiv Court of Appeal of 06.04.2023 https://reyestr.court.gov.ua/Review/110071819

Court decisions have entered into force

19. **Case No. 753/23311/21**

Verdict of the Darnytskyi District Court of Kyiv of 30.01.2023 https://reyestr.court.gov.ua/Review/108861126

Ruling of the Kyiv Court of Appeal of 02.05.2023 https://reyestr.court.gov.ua/Review/110709640

Court decisions have entered into force

20. **Case No. 748/1824/22**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 17.02.2023 https://reyestr.court.gov.ua/Review/109074116 (the verdict has entered into force)

21. **Case No. 588/1009/22**

Verdict of the Trostianetskyi District Court of Sumy region of 01.03.2023 https://reyestr.court.gov.ua/Review/109272987

Ruling of the Sumy Court of Appeal of 18.10.2023. https://reyestr.court.gov.ua/Review/114842547

Ruling of the panel of judges of the Third Judicial Chamber of the Criminal Court of Cassation of the

Supreme Court of 18.10.2023. https://reyestr.court.gov.ua/Review/116704925 (cassation proceedings were denied)

Court decisions have entered into force

22. **Case No. 638/1343/23**

Verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 02.03.2023 https://reyestr.court.gov.ua/Review/109334224 (the verdict has entered into force)

23. **Case No. 748/22/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 08.03.2023 https://reyestr.court.gov.ua/Review/109438873 (verdict has entered into force)

24. **Case No. 369/7906/22**

Verdict of the Kyievo-Sviatoshynskyi District Court of Kyiv oblast of 27.03.2023 https://reyestr.court.gov.ua/Review/109824184 (verdict has entered into force)

25. **Case No. 753/2458/22**

Verdict of the Darnytskyi District Court of Kyiv of 28.03.2023 https://reyestr.court.gov.ua/Review/110157736 (verdict has entered into force)

26. **Case No. 750/6470/22**

Verdict of the Desnianskyi District Court of Chernihiv of 11.04.2023 https://reyestr.court.gov.ua/Review/110135338 (verdict has entered into force)

27. **Case No. 370/179/23**

Verdict of the Makarivskyi District Court of Kyiv oblast of 20.04.2023 https://reyestr.court.gov.ua/Review/110354341 (verdict has entered into force)

28. **Case No. 753/14148/21**

Verdict of the Darnytskyi District Court of Kyiv of 24.04.2023 https://reyestr.court.gov.ua/Review/110409601 (verdict has entered into force)

Ruling of the Kyiv oblastal Court of Appeal of 10.07.2023. https://reyestr.court.gov.ua/Review/113698929 (the verdict has entered into force)

Decision of the panel of judges of the Third Judicial Chamber of the Criminal Court of Cassation of the Supreme Court of 28.02.2024. https://reyestr.court.gov.ua/Review/117442733 (upheld the decisions of the courts of first and appellate instances)

The court decisions have entered into force

29. **Case No. 733/923/22**

Verdict of the Ichnianskyi District Court of Chernihiv region of 26.04.2023 https://reyestr.court.gov.ua/Review/110482776

Verdict of the Chernihiv Court of Appeal of 26.07.2023. https://reyestr.court.gov.ua/Review/112456514

Court decisions that have entered into force

30. **Case No. 734/2129/22**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 27.04.2023 https://reyestr.court.gov.ua/Review/110482938

Ruling of the Chernihiv Court of Appeal of 09.08.2023 https://reyestr.court.gov.ua/Review/112760946

Court decisions have entered into force

31. **Case No. 588/1072/22**

Verdict of the Trostianetskyi District Court of Sumy oblast of 09.05.2023 https://reyestr.court.gov.ua/Review/110714705

Ruling of the Sumy Court of Appeal of 04.12.2023. https://reyestr.court.gov.ua/Review/115635407

Court decisions that have entered into force

32. **Case No. 367/3477/22**

Verdict of the Irpin City Court of Kyiv oblast of 12.05.2023 https://reyestr.court.gov.ua/Review/110824305 (the verdict has entered into force)

33. **Case No. 212/4028/22**

Verdict of the Zhovtnevyi District Court of Kryvyi Rih, Dnipro region of 15.05.2023 https://reyestr.court.gov.ua/Review/110845948 (verdict has entered into force)

34. **Case No. 748/655/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 24.05.2023 https://reyestr.court.gov.ua/Review/111050241 (the verdict has entered into force)

35. **Case No. 748/727/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 29.05.2023 https://reyestr.court.gov.ua/Review/111139770 (the verdict has entered into force)

36. **Case no. 523/1944/23**

Verdict of Suvorovskyi District Court of Odesa of 01.06.2023 https://reyestr.court.gov.ua/Review/111270096 (verdict has entered into force)

37. **Case No. 758/16427/21**

Verdict of the Podilskyi District Court of Kyiv of 15 June 2023 https://reyestr.court.gov.ua/Review/111764865 (verdict has entered into force)

38. **Case No. 366/869/23**

Verdict of the Ivankivskyi District Court of Kyiv oblast of 28.06.2023 https://reyestr.court.gov.ua/Review/111894270 (verdict has entered into force)

39. **Case No. 366/2363/22**

Verdict of the Ivankivskyi District Court of Kyiv oblast of 28 June 2023 https://reyestr.court.gov.ua/Review/111986970

Ruling of the Kyiv Court of Appeal of 26.12.2023. https://reyestr.court.gov.ua/Review/116158551

Court decisions have entered into force

40. **Case No. 751/3261/22**

Verdict of the Ripkynskyi District Court of Chernihiv oblast of 17.07.2023 https://reyestr.court.gov.ua/Review/112364078

Decision of the Chernihiv Court of Appeal of 28.09.2023. https://reyestr.court.gov.ua/Review/113807470

Court decisions that have entered into force

41. **Case No. 748/1991/22**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 01.08.2023 https://reyestr.court.gov.ua/Review/112559865 (the verdict has entered into force)

42. **Case No. 361/6215/22**

Verdict of the Brovary City District Court of Kyiv oblast of 15.08.2023 https://reyestr.court.gov.ua/Review/112819115 (verdict has entered into force)

43. **Case No. 748/1599/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 28 August 2023 https://reyestr.court.gov.ua/Review/113102312

Decision of the Chernihiv Court of Appeal of 04.12.2023. https://reyestr.court.gov.ua/Review/115390958

Court decisions that have entered into force

44. **Case No. 588/1122/23**

Verdict of the Trostianetskyi District Court of Sumy oblast of 30.08.2023 https://reyestr.court.gov.ua/Review/113106427

Ruling of the Sumy Court of Appeal of 11.03.2024. https://reyestr.court.gov.ua/Review/117964366

Court decisions that have entered into force

45. **Case No. 748/855/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 14.09.2023 https://reyestr.court.gov.ua/Review/113458684 (the verdict has entered into force)

46. **Case No. 202/3594/23**

Verdict of the Industrialnyi District Court of Dnipropetrovs'k of 02.10.2023 https://reyestr.court.gov.ua/Review/113875389 (verdict has entered into force)

47. **Case No. 748/3990/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 11.12.2023 https://reyestr.court.gov.ua/Review/115639014 (the verdict has entered into force)

48. **Case No. 522/3868/23**

Verdict of the Saksahansk District Court of Kryvyi Rih, Dnipro region of 10.10.2023 https://reyestr.court.gov.ua/Review/114042300

Ruling of the Dnipro Court of Appeal of 21.02.2024. https://reyestr.court.gov.ua/Review/117199185

Court decisions that have entered into force

49. **Case No. 585/2381/22**

Sentence of the Romny City District Court of Sumy oblast of 18.10.2023 https://reyestr.court.gov.ua/Review/114246483 (the sentence has entered into force)

50. **Case No. 361/6545/22**

Verdict of the Brovary City District Court of Kyiv oblast of 23 October 2023 https://reyestr.court.gov.ua/Review/114340568 (verdict has entered into force)

51. **Case No. 751/1303/23**

Verdict of the Novozavodskyi District Court of Chernihiv of 26 October 2023 https://reyestr.court.gov.ua/Review/114511607

Ruling of the Chernihiv Court of Appeal of 22.01.2024. https://reyestr.court.gov.ua/Review/116467305

Court decisions that have entered into force

52. **Case No. 523/8377/23**

Verdict of the Suvorovskyi District Court of Odesa of 30.10.2023 https://reyestr.court.gov.ua/Review/114705146 (the verdict has entered into force)

53. **Case no. 333/2316/23**

Verdict of the Kommunarskyi District Court of Zaporizhzhia of 22.11.2023 https://reyestr.court.gov.ua/Review/115263819

The information is prohibited for disclosure under paragraph four of part one of Article 7 of the Law of Ukraine «On Access to Court Decisions»)

Ruling of the Zaporizhzhia oblastal Court of 22.08.2024 https://reyestr.court.gov.ua/Review/121178547

Court decisions have entered into force

54. **Case No. 748/3888/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 04.12.2023 https://reyestr.court.gov.ua/Review/115421876

Ruling of the Chernihiv Court of Appeal of 21.02.2024 https://reyestr.court.gov.ua/Review/117239611

Court decisions have entered into force

55. **Case No. 370/380/23**

Verdict of the Kyievo-Sviatoshynskyi District Court of Kyiv oblast of 06.12.2023 https://reyestr.court.gov.ua/Review/116083621

Ruling of the Kyiv Court of Appeal of 27.11.2024. https://reyestr.court.gov.ua/Review/123988492

Ruling of the Supreme Court of 06.03.2025. https://reyestr.court.gov.ua/Review/125639387 (the cassation appeal was returned to the person who filed it)

Court decisions that have entered into force

56. **Case No. 611/229/23**

Verdict of the Krasnohrad District Court of Kharkiv oblast of 06.12.2023 https://reyestr.court.gov.ua/Review/115464004 (the verdict has entered into force)

57. **Case No. 369/358/23**

Verdict of the Kyievo-Sviatoshynskyi District Court of Kyiv oblast of 08.12.2023 https://reyestr.court.gov.ua/Review/116101034 (verdict has entered into force)

58. **Case no. 367/3635/22**

Sentence of Borodianskyi District Court of Kyiv oblast of 11.12.2023 https://reyestr.court.gov.ua/Review/115543640

Appealed to the Court of Appeal (left without motion and returned for correction of deficiencies). A new appeal has been filed. The appeal is still pending.

59. **Case No. 332/441/23**

Verdict of the Zavodskyi District Court of Zaporizhzhia of 02.01.2024 https://reyestr.court.gov.ua/Review/116072492 (the verdict has entered into force)

60. **Case no. 369/3120/23**

Verdict of the Kyievo-Sviatoshynskyi District Court of Kyiv oblast of 09.01.2024 https://reyestr.court.gov.ua/Review/116176015 (verdict has entered into force)

61. **Case No. 728/665/23**

Verdict of the Bakhmach District Court of Chernihiv oblast of 25 January 2024: https://reyestr.court.gov.ua/Review/116539533 (the verdict has entered into force)

62. **Case No. 748/3511/23**

Verdict of the Chernihivskyi District Court of Chernihiv region of 29.01.2024: https://reyestr.court.gov.ua/Review/116622634

Ruling of the Chernihiv Court of Appeal of 01.05.2024. https://reyestr.court.gov.ua/Review/118787280

Court decisions that have entered into force

63. **Case No. 523/6894/23**

Verdict of the Suvorov District Court of Odesa of 31 January 2024. https://reyestr.court.gov.ua/Review/116791581 (the verdict has entered into force)

64. **Case No. 588/1363/23**

Verdict of the Trostianetskyi District Court of Sumy region of 14.02.2024. https://reyestr.court.gov.ua/Review/116968500

Ruling of the Sumy Court of Appeal of 11.09.2024 https://reyestr.court.gov.ua/Review/121868850

Court decisions that have entered into force

65. **Case No. 760/2836/23**

Verdict of the Solomianskyi District Court of Kyiv of 20.02.2024 https://reyestr.court.gov.ua/Review/118944945 (the verdict has entered into force)

66. **Case no. 743/380/23**

Verdict of the Kulykivka District Court of Chernihiv oblast of 28 February 2024 https://reyestr.court.gov.ua/Review/117304451 (verdict has entered into force)

67. **Case No. 367/3486/22**

Verdict of the Obolonskyi District Court of Kyiv of 06.03.2024. https://reyestr.court.gov.ua/Review/117778018 (the verdict has entered into force)

68. **Case No. 760/10793/22**

Sentence of the Solomianskyi District Court of Kyiv of 11.03.2024. https://reyestr.court.gov.ua/Review/117558621 (the verdict has entered into force)

69. **Case No. 748/1278/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 11.03.2023. https://reyestr.court.gov.ua/Review/117537510

Ruling of the Chernihiv Court of Appeal of 28.05.2024. https://reyestr.court.gov.ua/Review/119350031

Court decisions that have entered into force

70. **Case No. 748/4122/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 25.03.2024. https://reyestr.court.gov.ua/Review/117864445 (the verdict has entered into force)

71. **Case No. 733/961/23**

Verdict of the Ichnianskyi District Court of Chernihiv oblast of 25.03.2024. https://reyestr.court.gov.ua/Review/117894180 (the verdict has entered into force)

72. **Case No. 523/224/23**

Verdict of the Suvorov District Court of Odesa of 27.03.2024. https://reyestr.court.gov.ua/Review/117988682 (the verdict has entered into force)

Appellate review is ongoing

73. **Case no. 638/4210/23**

Verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 02.04.2024 https://reyestr.court.gov.ua/Review/118097896 (the verdict has entered into force)

74. **Case no. 754/3227/23**

Sentence of the Desnianskyi District Court of Kyiv of 05.04.2024. https://reyestr.court.gov.ua/Review/118166721 (the verdict has entered into force)

75. **Case No. 939/2083/23**

Sentence of the Borodianskyi District Court of Kyiv oblast of 09.04.2024. https://reyestr.court.gov.ua/Review/118220618 (the verdict has entered into force)

76. **Case No. 748/1665/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 16.04.2024. https://reyestr.court.gov.ua/Review/118372054

Ruling of the Chernihiv Court of Appeal of 08.08.2024 https://reyestr.court.gov.ua/Review/120904899

Court decisions that have entered into force

77. **Case No. 748/4474/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 22.04.2024. https://reyestr.court.gov.ua/Review/118552526

Ruling of the Chernihiv Court of Appeal of 03.07.2024 https://reyestr.court.gov.ua/Review/120191949

Court decisions that have entered into force

78. **Case No. 361/488/23**

Verdict of the Brovary City District Court of Kyiv oblast of 23.04.2024. https://reyestr.court.gov.ua/Review/118555675

Information is prohibited for disclosure in accordance with paragraph four of part one of Article 7 of the Law of Ukraine «On Access to Court Decisions»

Appellate review is ongoing

79. **Case No. 953/7767/22**

Verdict of the Kyiv District Court of Kharkiv of 30.04.2024. https://reyestr.court.gov.ua/Review/118781560

Ruling of the Kharkiv Court of Appeal of 23.01.2025. https://reyestr.court.gov.ua/Review/124729174

Court decisions that have entered into force

80. **Case No. 650/1870/23**

of the Velykooleksandrivskyi District Court of Kherson oblast of 29.04.2024. https://reyestr.court.gov.ua/Review/118734665 (the verdict has entered into force)

81. **Case No. 748/2091/23**

Verdict of the Chernihivskyi District Court of Chernihiv oblast of 02.05.2024. https://reyestr.court.gov.ua/Review/118771999

Ruling of the Chernihiv Court of Appeal of 26.08.2024 https://reyestr.court.gov.ua/Review/121218502

Court decisions have entered into force

82. **Case No. 522/6292/23**

Verdict of the Prymorskyi District Court of Odesa of 20.05.2024. https://reyestr.court.gov.ua/Review/119124094 (the verdict has entered into force)

The information is prohibited for disclosure in accordance with paragraph four of part one of Article 7 of the Law of Ukraine "On Access to Court Decisions"

Arguments in appeals and their assessment by appellate courts

In their appeals, the appellants, when demanding to change the verdict of the court of first instance, delivered under Article 438 of the CCU, put forward the following arguments:

1) the **verdict of the Vinnytsia City Court of Vinnytsia oblast of 20.03.2024 in case No. 127/15500/23** was appealed to the Vinnytsia Court of Appeal by three defence lawyers of the three convicts. In their appeal, each of them stated their reasons for the need to overturn the decisions of the first and appellate instances.

In his appeal, defence counsel 1 requested that the verdict of the court of first instance be quashed and the criminal proceedings against his client be closed on the basis of Article 284(3)(1) of the CPC, as there was insufficient evidence to prove the person's guilt in court and the possibilities of obtaining it had been exhausted, citing the following arguments

- the charges against the defendant are untrue and have not been confirmed during either special pre-trial investigation or special trial;
- the incompleteness of the trial led to the inconsistency of the court''s conclusions with the actual circumstances of the criminal proceedings and entailed a significant violation of the requirements of the criminal procedure law;

Defence counsel 2 in his appeal requested that the verdict of the court of first instance be quashed and a new verdict be passed finding his client not guilty of the criminal offence charged and that the direct participation of the client in the theft of agricultural machinery and the preparation of documents at the request of the first defendant for its further illegal sale be declared not proven, citing the following arguments

- the accusation against the defendant is based on assumptions due to the incompleteness of the trial, since the victim's representative and witnesses did not report the direct participation of his client in the seizure of agricultural machinery, the preparation of accompanying and payment documents, and the personal removal of it from the storage facilities;
- screenshots of correspondence on the Internet confirm the very fact of communication, but do not confirm the facts of the defendant's committing specific actions based oneither his written orders or orders signed by him;
- the court failed to interrogate the expert to find out what reliable sources he used to investigate the identity of the voice and spoken language on the voice messages recorded in the relevant files, and the expert's opinion is an inadmissible piece of evidence.

In his appeal, Defence counsel 3 requested that the verdict of the trial court be quashed and a new trial be ordered in the trial court, and made the following argument

- there were significant violations of the requirements of the criminal procedure law, since the court summoned the defendant and other accused persons to court twice, and therefore the court did not comply with the requirements for special court proceedings in violation of part 5 of Article 139 of the CPC.

Based on the results of consideration of the defence counsels' appeals***, the Vinnytsia Court of Appeal issued a ruling of 28.03.2025 in case No. 127/15500/23.***

Argument in the appeal	Reasoning of the Court of Appeal
Argument in the appeal of defence counsel 3 the existence of significant violations of the requirements of the criminal procedural law, since the court summoned the defendant to court hearings twice, and therefore the court violated the requirements of part 5 of Article 139 of the CPC	the fact that the court of first instance notified the defendant of the criminal proceedings through the media and the court's website only twice, rather than three times, given the actual circumstances of the proceedings, is not a significant violation of the requirements of the criminal procedure law, since the trial in the court of first instance was conducted in absentia in accordance with the requirements of the CPC, with the rights of the accused to access to justice and to seek defence, taking into account the peculiarities established by law for criminal proceedings in which a special investigation was carried out. The State of Ukraine, under the control of the defence and the court, used all possibilities to ensure that the defendant had the right to at least the following guarantees during the trial: to be informed promptly and in detail in a language they understand of the nature and grounds of the charges; to have sufficient time and opportunity to prepare their defence, to choose their own defence counsel; to participate in the proceedings and defend themselves in person or through the chosen defence counsel, to be informed of this right and to have a defence counsel appointed at no cost to them.
Argument in the appeals of defence counsel 1 and defence counsel 2 The court of first instance established the guilt of the defendants on the basis of inadmissible evidence that could not be used as a basis for a guilty verdict	The defence did not file any motions to declare any evidence inadmissible, citing convincing arguments, during the trial in the court of first instance. Therefore, the court found no grounds for declaring the evidence inadmissible. The guilt of the three defendants in committing war crimes is confirmed, in particular, by the protocols of the review of publications posted on the Internet and the protocols of the review of the defendants' correspondence with each other and with other persons, which were thoroughly examined by the trial court. In addition, the guilt of Defendant 1 and Defendant 2 in the theft of agricultural machinery owned by the LLC is also confirmed by the testimony of the witnesses questioned at the trial. The court considers the testimony of these witnesses to be clear, consistent, complimentary to each other and to other written evidence in the case collected by the prosecution. The court of first instance has grounds to criticise the testimony of two witnesses, as the latter, being rectors of higher education institutions, were subordinate to one of the defendants at the time of the latter's tenure as Minister of Education and Science of Ukraine.
Argument in the defence counsel's appeal 1 the court did not interrogate the expert in order to find out what reliable sources he used to investigate the identity of the voice and spoken language on the voice messages recorded in the relevant files	Depending on the circumstances of a particular criminal proceeding, the need to summon an expert is at the discretion of the court, which has the right, rather than the obligation, to summon him or her. Based on the requirements for completeness, validity and clarity, the expert opinion available in the present proceedings does not raise convincing doubts as to its reliability; its introductory part indicates the qualifications, education and majoring field of the expert; the opinion contains the necessary components and answers to all the questions posed, the expert has been warned of liability in accordance with the requirements of Articles 384, 385 of the Criminal Code. The defence counsel did not provide objective grounds that the expert who provided the opinion did not have either authority or sufficient knowledge, or skills to conduct it.

General conclusion of the court of appeal in the decision of 28.03.2025 in case No. 127/15500/23:

the court of first instance considered the criminal proceedings in compliance with the provisions of part 1 Art. 337 of the CPC of Ukraine within the framework of the charges, the court, relying on its onner conviction, based on a comprehensive, full and impartial examination of all the circumstances of the criminal proceedings, guided by law, assessed each evidence provided by the prosecution in terms of relevance, admissibility, reliability, and the totality of the collected evidence – In terms of sufficiency and interconnection, reasonably considered the said evidence to be appropriate, admissible, reliable and, in the aggregate, sufficient to decide on the guilt of the three defendants in committing the criminal offences charged, and the punishment imposed on them in accordance with the requirements of Article 65 of the Criminal Code, taking into account the severity and factual circumstances of the criminal offences and the personality of perpetrators, etc.

No violation of the criminal procedural law that would entail the amendment or cancellation of the verdict of the court of first instance was detected during the appeal proceedings.

The decision made by the court of appeal

The appeals of the defence counsels of the three defendants were dismissed.

The verdict of the Vinnytsia City Court of Vinnytsia Region of 20.03.2024 in case No. 127/15500/23 against the three defendants is to be upheld.

2) The **verdict of the Desnianskyi District Court of Chernihiv of 13.06.2024 in case No. 748/2095/23** was appealed to the Chernihiv Court of Appeal by the defendant's defence counsel

In the appeal, the defence counsel requested that the verdict of the court of first instance against her client be cancelled and the criminal proceedings be closed on the basis of Article 284(1)(3) of the CPC, citing the following arguments

- the materials of the criminal proceedings do not contain indisputable, proper and admissible evidence of the commission of a criminal offence under part 2 of Article 28 - Part 2 of Article 438 of the Criminal Code by the accused, and therefore she is convinced that the court came to an erroneous conclusion about the proof of the accused's guilt in the charges, in particular:

- when passing the guilty verdict, the court of first instance did not give due consideration to the testimony of the witness, the identification reports based on the photographs of three witnesses, and the reports of investigative experiments regarding the appearance of the accused;

- the witness confirmed in court that he saw through the open gate that the accused was taking two people to a dilapidated barn next to his farm, but he did not see what was happening there, and only a few minutes later he heard two shots in a row coming from the direction of this destroyed barn, he did not see who made them. The conclusion of the weapons examination also does not prove that the shell casings provided for examination were fired from the same weapon. It is not possible to establish the type of weapon from which two of the six shell casings submitted for examination were fired. It has also not been proven that the shots at the servicemen were fired from the accused's weapon and not from the weapons of other Russian military personnel;

- the prosecution did not provide evidence that the military unit of the Russian armed forces that occupied the village of Sloboda by 05.03.2022, where they remained until 30.03.2022, included only the accused with Tuvan or Buryat ethnicity, and evidence that it was his shots that killed two victims.

Following the consideration of the defence counsels' appeals***, the Chernihiv Court of Appeal issued a ruling on 11 October 2024 in case No. 748/2095/23***

The materials of the criminal proceedings show that the court of first instance fully investigated all the circumstances relevant to the decision in the case, fully and comprehensively checked the evidence collected during the pre-trial investigation and gave them a proper assessment, as indicated by the analysis of evidence in the verdict, which the panel of judges agrees with.

In such circumstances, the panel of judges believes that the evidence examined by the trial court in terms of relevance, admissibility and interconnection for making the relevant procedural decision indicates that the prosecution has proved both the event of criminal offences to the extent charged to the accused and that the crime was committed by the accused.

All the differences in appearance pointed out by the defence counsel were verified by the court, taking into account the totality of all the evidence examined, and therefore do not raise doubts about their sufficiency to form an unambiguous conclusion about the identity of the accused.

The circumstances of the crime charged against the accused were confirmed in the course of the trial in the explanations of witnesses and written evidence, which were analysed.

The discovery of shell casings with different markings near the murder scene of the two victims, as if they had been fired from different weapons, does not call into question the evidence obtained, the logical analysis of which points to the commission of the crime by the accused.

The decision of the court of appeal

The defence counsel's appeals were dismissed.

The verdict of the Desnianskyi District Court of Chernihiv of 13 June 2024 in case No. 748/2095/23 is to be upheld.

3) **The verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 13.08.2024 in case No. 638/11302/23** was appealed to the Kharkiv Court of Appeal by the defendant's counsel

In the appeal, the defence counsel requested that the verdict of the court of first instance be cancelled and the criminal proceedings be closed in the absence of a criminal offence, arguing that the case file did not contain convincing evidence that it was the defendant who had stolen the jewellery from the individual entrepreneur. The defence counsel noted that at the trial court hearing, the witnesses interviewed indicated that they had seen the military personnel carrying the safe from the store to the car, but they did not see what was in the safe. Thus, the defence counsel believes that the court of first instance did not establish for certain what items were in the safe (possibly documents or other items), and the prosecution did not prove that the safe contained jewellery.

Following consideration of the defence counsels' appeals***, the Kharkiv Court of Appeal issued a ruling on 03.10.2024 in case No. 638/11302/23***

Argument in the appeal	**Reasoning of the Court of Appeal**
In the appeal, the defendant's defence counsel refers to the fact that the court of first instance did not establish for certain what items were in the safe taken from the store premises by the defendant, and the prosecution did not prove that the safe contained jewellery.	The panel of judges was critical of the defence counsel's arguments, considering them far-fetched and contradicted by the criminal proceedings. The three witnesses interrogated by the court of first instance, pointing to the defendant and another person as the persons who took the safe from the Zolotyi Vik store, stated that they had not seen the contents of the safe. However, the criminal proceedings contain personal explanations, in particular of the accused, which were recognised as material evidence and seized during the inspection of the premises where the Izyum Military Police was located, in which the accused recounts in detail the events that took place on 25-26.04.2022, namely, that he and other servicemen of the Russian Armed Forces found a safe in the Zolotyi Vik store, which was seized and brought to a car repair shop. In the car repair shop, the safe was dismantled and jewellery was found, which the latter appropriated. He stated that after a short period of time he was detained by the Russian Guard and during a personal search, the appropriated jewellery was found in his clothes.
The general conclusion of the court of appeal in its decision of *03.10.2024 in case No. 638/11302/23*: the remaining arguments of the appeal are derivative of those analysed above and are clearly not indicative of the illegality of the court decision, the panel of judges does not give a separate assessment to such arguments. All the arguments raised by the appellant to refute the guilt of the accused were directly examined by the court of first instance, and all the evidence on the basis of which the court of first instance concluded that the accused was guilty does not raise doubts about the legality of their collection (formation) and procedural consolidation and, by virtue of Article 84 of the CPC, is evidence in criminal proceedings. The defence counsel did not provide any convincing appeal arguments that would indicate the opposite and a significant violation of the CPC requirements. Analysing the evidence examined by the court of first instance, the panel of judges of the Court of Appeal concludes that it is appropriate and admissible, and that there were no procedural violations in the collection, examination and evaluation of the evidence that would call into question the correctness of the court's conclusions regarding the proof of the accused's guilt in committing the criminal offence under Part 2 of Article 28 - Part 1 of Article 438 of the Criminal Code. When reviewing the verdict of the court of first instance, the panel of judges found that the court of first instance based its conclusions on the proof of the accused's guilt in committing the criminal offence under Part 2 of Article 28 - Part 1 of Article 438 of the Criminal Code on the evidence directly examined in the court hearing, which was verified by the appellate court and given a proper legal assessment.	
The decision of the court of appeal To dismiss the defence counsel's appeals. The verdict of the Dzerzhynskyi District Court of Kharkiv dated 13.08.2024 in case No. 638/11302/23 is to be upheld.	

4) **The verdict of the Borodianskyi District Court of Kyiv oblast of 12.09.2024 in case No. 939/1435/22** was appealed to the Kyiv Court of Appeal by the defendant's counsel

In the appeal, the defence counsel requested that the verdict be cancelled due to the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings, citing the following arguments

- the materials of the criminal proceedings do not contain adequate evidence that, taken together, would be sufficient to prove the defendant's guilt in committing the war crime charged against him beyond reasonable doubt, because

- during the trial, through the interrogation of prosecution witnesses and the victim's representative, it was established that the defendant did not commit any criminal offences, as the unit under his command was not located directly in the Borodianskyi psychoneurological institution, he did not commit any unlawful acts against its employees and patients, and did not obstruct their free movement;

- during the trial it was not established whether the criminal offences were committed by the accused voluntarily and intentionally or under coercion of third parties;

- the prosecution did not provide reliable information on the sanity of the accused at the time of the alleged offence;

- the accused was not aware of the criminal proceedings initiated against him and the existence of a guilty verdict, and the fact that the pre-trial investigation body and the court published summonses in the media and official publications of Ukraine cannot indicate that he was duly notified. Thus, according to the appellant, the trial court did not have sufficient grounds to consider the proceedings without the participation of the accused, since the accused was not aware of the criminal proceedings against him, was not hiding in the territory of the Russian Federation or the temporarily occupied territory, and was not put on the international wanted list.

Following consideration of the defence counsels' appeals***, the Kyiv Court of Appeal issued a ruling of 08.05.2025 in case No. 939/1435/22***

Argument in the appeal	Reasoning of the Court of Appeal
The accused was not aware of the criminal proceedings initiated against him and the existence of a guilty verdict, and the placement of summonses by the pre-trial investigation body and the court in the media and official publications of Ukraine cannot indicate that he was duly notified	The criminal proceedings contain numerous documents confirming that the accused was duly summoned in advance to the investigator (prosecutor) and the court, and that he was notified of his rights and obligations, the suspicion, the charges and the progress of the special court proceedings, which in turn indicates that there are grounds to be aware that criminal proceedings have been initiated against him, he has received or should have received the suspicion, the relevant summonses and charges, and had the opportunity to be aware
The court of first instance, having assessed the evidence in its totality, correctly established the factual circumstances of the criminal offence and came to a reasonable conclusion that the accused was guilty of the charges under Part 1 of Article 438 of the Criminal Code, namely, committing cruel treatment of civilians, giving orders to commit such acts, as well as giving orders to commit other violations of the laws and customs of war.	
The decision of the court of appeal The defence counsel's appeal was dismissed. The verdict of the Borodianskyi District Court of Kyiv Region of 12 September 2024 in case No. 939/1435/22 is to be upheld.	

5) **The verdict of the Dzerzhynskyi (Shevchenkivskyi) District Court of Kharkiv of 11.10.2024 in case № 638/1305/24** was appealed to the Kharkiv Court of Appeal by the defendant's defence counsel.

In the appeal, the defence counsel requested that the decision to close the criminal proceedings be cancelled and issued on the basis of clause 3, part 1, Article 284 of the CPC, due to the failure to establish sufficient evidence to prove the person's guilt in court and the exhaustion of the possibility of obtaining it:

- The evidence provided by the prosecution is not undoubted and indisputable evidence of the criminal offence charged against the accused;

- the reports on the identification of the person from the photographs state that two witnesses only saw the accused personally and do not indicate that this person caused the victim to commit the acts envisaged by the disposition of the crime charged against the accused. According to the defence counsel, the information contained in these protocols cannot serve as direct evidence of the accused's guilt;

- the protocol of the investigative experiment indicates the circumstances of the crime and the victim reports and reproduces the events that took place in his household, indicates the topics of conversations and the mechanisms of inflicting bodily harm. An investigative experiment carried out in a form that does not contain signs of reproduction of actions, circumstances of the event, conducting necessary experiments or tests, but only certifies the suspect's confession to a criminal offence for the purpose of its procedural consolidation, should be regarded as a repeated interrogation, which cannot be of evidentiary value in court in view of part 4 of Article 95 of the CPC;

- the inspection report, the subject of which was the victim's explanations; copies of the explanations of four witnesses, in the opinion of the defence counsel, do not contain evidence of the accused's commission of the crime charged and cannot be evidence of his guilt, either separately or in conjunction with other information contained in the criminal proceedings;

- in the opinion of the defence counsel, the testimony of two witnesses interrogated in court who were not direct witnesses to the events is not evidence of the accused's guilt.

Based on the results of consideration of the defence counsels' appeals***, the Kharkiv Court of Appeal issued a decision of 11.03.2025 in case No. 638/1305/24***

Argument in the appeal	Reasoning of the Court of Appeal
The reports of the identification of a person from photographs indicate that two witnesses only saw the accused in person, and do not indicate that this person caused the victim to act in the manner prescribed by the disposition of the crime charged against the accused	Identification by the victim and a witness confirms the identity of the accused who directly committed the war crime.
The protocol of the investigative experiment indicates the circumstances of the crime and the victim reports and reproduces the events that took place in his/her home, indicates the topics of conversations and the mechanisms of inflicting bodily harm	The protocol of the investigative experiment can be evidence, as it contains the victim's reconstruction of the circumstances of the crime and the mechanism of inflicting bodily harm, which confirms his testimony and is consistent with other evidence in the case.

the report of the examination, the subject of which was the victim's explanations; copies of the explanations of four witnesses, in the opinion of the defence counsel, do not contain evidence of the accused's commission of the crime charged and cannot be evidence of his guilt either separately or in conjunction with other information contained in the criminal proceedings	The victim's explanations describe the circumstances of the beatings and violent acts of the Russian Armed Forces against civilians, and the explanations of two witnesses confirm that the accused conducted illegal raids, used violence and fired at civilian homes. This information is consistent with each other and with other evidence in the case, which together confirms the guilt of the accused in committing the crime charged .
the testimony of two witnesses interrogated in court who were not direct witnesses to the events is not evidence of the accused's guilt	Although these witnesses were not direct eyewitnesses to all the events, their testimony confirms the facts of violent acts against the victim and his family. One witness saw the victim's injuries and knew from him that he had been beaten by the Russian Armed Forces, and the second witness witnessed the emotional state of the victim's wife after the attack, which confirms the use of physical violence. Their testimonies are consistent with other evidence in the case and further confirm the circumstances of the crime.
Having properly examined and assessed the evidence collected in the criminal proceedings in their totality, the court came to a reasonable conclusion that the accused was guilty of the crime and correctly qualified his actions under Part 2 of Article 28 - Part 1 of Article 438 of the Criminal Code. No evidence of bias or prejudice on the part of the investigating authorities or the court was found. There were no significant violations of the criminal procedure law that could have affected the correctness of the court's conclusions and would have been grounds for the verdict to be cancelled. The punishment of the accused was imposed in accordance with the requirements of Article 65 of the Criminal Code, taking into account the nature and severity of the criminal offence committed by him and all the data on his person, it is necessary and sufficient for his correction and prevention of new crimes.	
The decision of the court of appeal The defence counsel's appeal was dismissed. The verdict **of the Dzerzhynskyi District Court of Kharkiv of 11.10.2024 in case No. 638/1305/24** is to be upheld.	

6) The **verdict of the Lebedynskyi District Court of Sumy region of 18.11.2024 in case No. 950/3703/23** was appealed to the Sumy Court of Appeal by two lawyers representing the interests of the three defendants convicted by this verdict.

In his appeal, defence counsel 1 requested that the trial court's verdict against the two defendants be cancelled and a new verdict be passed acquitting the defendants, citing arguments indicating that the prosecution had not proved the defendants' guilt in committing the war crime charged:

- the trial was conducted under special rules, without the participation of the defendants and their supporters, which violated the rights of the defendants to give explanations, to present evidence and to have a confidential conversation with their defence counsel to agree on their legal position.
- the court of first instance unreasonably took into account such evidence as the original information of the military unit personnel as it does not confirm that his client was on the territory of the household; also, the pre-trial investigation did not conduct examinations to confirm the signature allegedly belonging to the accused in this information;

- with regard to the identification report based on photographs with a video recording to it, the defence counsel noted that the victim had provided explanations that contradicted the circumstances provided by her during interrogation as a victim. The text of the protocol itself was already printed, and the prosecution's objections that a printer was used during the investigative action are inconsistent with the fact that the protocol was printed on one page and that the printer was not included in the protocol as a means by which the investigative action was carried out. Also, the time on the video does not match the time in the protocol;

- with regard to the protocol of the investigative experiment with the video recording of the victim, the defence counsel argued that the victim in court could not describe in detail the actions of the persons, nor could she describe the actions of each of the accused, nor could she describe the appearance of the accused, whom she had previously recognised. The victim explained that there were three people of Asian appearance and one person of Slavic appearance in her household, and one of them was the commander. At the same time, only one person from the Russian armed forces , who is not the accused, is listed as a commander. The other persons interrogated by the court did not see the Russian military in person, and therefore do not confirm the involvement of the accused in the criminal offence.

In his appeal, defence counsel 2 requested that the trial court's verdict against his client be cancelled and a new acquittal be delivered, by which the proceedings against his client be closed due to the failure to establish sufficient evidence to prove the person's guilt in court and due to the exhaustion of opportunities to obtain it, providing arguments:

- the court of first instance did not take into account the fact that no witness or victim identified the defendant as the person who committed the crime, no one directly witnessed or eyewitnessed his actions;

- the protocols of investigative experiments on video discs were provided to the persons for reading already printed out on a printer, but no process of making a procedural document, the presence of a printer at the place of the investigative action was confirmed at all;

- the victims recognised the accused only by his Asian appearance, while there were other persons with similar appearance among the unidentified military personnel from the Russian armed forces . Also, no one indicated whether the defendant acted on his own initiative or under orders;

- the trial was held in the absence of the accused, which violated his right to defence. He could not provide testimony or evidence and did not have a confidential conversation with his defence counsel.

Following consideration of the defence counsels' appeals***, the Sumy Court of Appeal issued a ruling on 24.03.2025 in case No. 950/3703/23***

Argument in the appeal	Reasoning of the Court of Appeal
the trial was conducted under special rules, without the participation of the accused and his associates, which violated the rights of the accused to explanations, to provide evidence and to have a confidential conversation with a defence lawyer to agree on a legal position	The trial of this criminal proceeding was conducted by the court in the absence of the defendants (in absentia) under the rules of special court proceedings. At the same time, the investigating judge's rulings granted permission to conduct a special pre-trial investigation in criminal proceedings on suspicion of servicemen of the Russian Armed Forces. It also follows from the materials that, in accordance with the requirements of Part 6 of Article 297-4 of the CPC, information about the investigating judge's rulings on the special pre-trial investigation in respect of the four accused was published on the official website of the PGO and in the nationally circulated media - the newspaper of the Cabinet of Ministers of Ukraine "Uriadovyi Kurier", and the investigator's rulings put the accused on the wanted list. Upon receipt of the indictment by the court of first instance, the court ruled to schedule a preparatory court hearing in this case, and given that the pre-trial investigation was conducted under the rules of a special pre-trial investigation, both at the stage of preparatory proceedings and at the stage of trial of criminal proceedings, summonses to summon the accused were published in the media of the national sphere of distribution - the newspaper of the Cabinet of Ministers of Ukraine "Uryadovyi Kurier" and on the official website of the court in accordance with the requirements of Part 3 of Article 323 of the CPC. It also follows from the materials that both at the stage of pre-trial investigation and during the trial, the accused were provided with defence counsels, who, including during the trial, defended the accused on behalf of the Regional Centre for Free Secondary Legal Aid in Sumy region (during the trial, a lawyer was appointed as a defence counsel for one of the accused on behalf of the Eastern Interregional Centre for Legal Aid. The decision of the court of first instance also granted the prosecutor's request for a special court proceeding in the criminal proceedings on charges of servicemen of the Russian Armed Forces of committing a criminal offence under Part 2 of Article 28 - Part 1 of Article 438 of the Criminal Code.

As for the identification protocol based on photographs with video recording, the defence counsel noted that the victim provided explanations that contradicted the circumstances provided by her during interrogation as a victim. The text of the protocol itself was already printed, and the prosecution's objections that a printer was used during the investigative action are inconsistent with the fact that the protocol was printed on one page and that the printer was not included in the protocol as a means by which the investigative action was carried out. Also, the time on the video does not match the time in the report;	The time on the video recording to the protocol does not match the time indicated in the protocol. However, in the video, the investigator, looking at his mobile phone, says out loud "14 hrs. 02 min. 28.07.2023...". At the end of the investigative action, the investigator reads out loud the time - "14 hrs. 10 min.". This time is reflected in the protocol. The video also shows the investigator looking at his mobile phone and saying out loud "17 hrs. 50 min. 28.08.2023...". At the end of the investigative action, the investigator reads out loud the time - "18 hrs. 00 min.". This time is reflected in the protocol. In both the court of first instance and the court of appeal, the defence counsel did not explain how the time discrepancy could affect the admissibility of such evidence, since the subject of the investigative action was the victim's ability to identify the persons - Russian military personnel - who had entered her household, damaging and seizing her property. The court found that in each of the video recordings examined, attached to the identification protocols, the investigator was holding sheets of paper. From the video recording examined by the court of first instance, it was established that the investigator periodically reads from time to time, explaining the content of the procedural action, the circumstances of the criminal offence, indicating its number and so on. However, this may be due to the need to reproduce a certain amount of information that is impossible/ inexpedient to keep in memory, namely, criminal proceedings numbers, names of actors, dates of certain events, addresses, names and models of equipment, etc. In other words, in order to promptly execute the investigative action and the relevant protocol, the investigator may use a pre-prepared certificate or draft protocol. Often, law enforcement agencies use pre-prepared forms of relevant protocols, such as the protocol of the review of the month of the event, drawn up by the investigator within the framework of this criminal proceeding, and the above is not a violation of the CPC provisions on the time of drawing up the protocol, since there is no reason to believe that the protocol itself has already been prepared, signed by participants, and the relevant annexes attached to it before the start of the investigative action. It is also possible that the investigator could have read information about this criminal proceeding from the previous protocol, since the first identification with the victim was conducted in June 2023, and the other protocols were drawn up later. In addition, the court found that the video to the protocol shows a laptop and a printer, which the investigator apparently used to draw up and print the protocol of the relevant investigative action.

the court of first instance unreasonably took into account such evidence as the original information of the military unit personnel, as it does not confirm that his client was on the territory of the household; also, the pre-trial investigation did not conduct examinations to confirm the signature allegedly belonging to the accused in this information	The fact of the accused's presence on the territory of the said household is confirmed both by the victim's explanations and other written evidence, the analysis of which is set out above. At the same time, the absence of an expert examination, which was mentioned by the defence counsel, is explained by the special procedure for pre-trial investigation.
regarding the protocol of the investigative experiment with a video recording of the victim, the defence counsel argued that the victim in court could not describe in detail the actions of the persons, nor could she describe the actions of each of the accused, nor could she describe the appearance of the accused, whom she had previously recognised	The victim's explanations in court are complete, logical and consistent, and there are no grounds for the court to distrust them. There were also no procedural violations in the course of drawing up the said report.
The decision of the court of appeal The defence counsel's appeal was dismissed. The verdict of the Lebedynskyi District Court of Sumy Region of 18.11.2024 in case No. 950/3703/23 is to be upheld.	

7) The verdict **of the Menskyi District Court of Chernihiv oblast of 03.02.2025 in case No. 39/772/24** was appealed to the Chernihiv Court of Appeal by the defendant's defence counsel.

In the appeal, the defence counsel requested that the verdict of the court of first instance against the defendant be cancelled and the criminal proceedings against him be closed on the basis of Article 284(1)(3) of the CPC due to the lack of evidence of guilt in committing a criminal offence under Article 28(2)(a) - Article 438(1)(a). 1, Article 438 of the CC, citing the following arguments: the court's verdict is unfounded and illegal, and the court's conclusions do not correspond to the actual circumstances of the case, the court incorrectly applied the criminal law and violated the norms of the criminal procedure law:

- the accused was sentenced to the maximum penalty provided for in part 1 of Article 438 of the Criminal Code only in the presence of one aggravating circumstance, despite the fact that the accused is a military serviceman who, by virtue of his status, must obey orders;
- failure to prove the guilt of the accused due to the fact that he/she is a military serviceman and was subordinate to commanders, therefore he/she had to execute orders received due to the specifics of military service, and the person who gave the orders was not identified by the pre-trial investigation body;
- the prosecution, if the actions of the servicemen are qualified as actions committed by prior conspiracy, must prove the absence of relevant orders from commanders, which should be indicated in the indictment, and the court, in turn, in the verdict.
- In the present criminal proceedings, the only source of information regarding the circumstances and nature of the actions of the Russian military personnel is the victim's testimony. Thus, the circumstances known from the victim's testimony directly indicate that the servicemen of the Russian armed forces executed an order to detain the victim and seize his property. The execution of the order excludes the qualification of actions under part 2 of Article 28 of the CCU.
- Failure to prove the following aggravating circumstance - committing a crime by prior conspiracy by a group of persons; assumption of the existence of the following mitigating circumstance - committing a criminal offence due to official dependence (Article 66(1)(6) of the Criminal Code).

Based on the results of consideration of the defence counsels' appeals***, the Chernihiv Court of Appeal issued a decision of 07.04.2025 in case No. 739/772/24***

Argument in the appeal	**The reasoning of the Court of Appeal**
The defendant's guilt was not proved due to the fact that he was a military man and was subordinate to his commanders, so he had to follow the orders he received due to the specifics of military service, and the person who gave the orders was not identified by the pre-trial investigation body	*For war crimes, in addition to individual responsibility, there is also command responsibility. That is, the circle of persons who execute instructions or orders, as well as certain officials who give or transmit them, are determined. All these persons must be held accountable for their actions. Command responsibility can include both formal military commanders who have authority over a unit and individuals who are not formal military commanders but play an important role through their authority. Also, so-called civilian superiors who direct the actions of their subordinates may fall under command responsibility.* *In this case, the victim stated that the defendant acted as a commander, all other servicemen followed his orders, it was he who communicated with her husband, showed him a photograph of the dead Russian soldier and accused the victim of his death, it was he who ordered to drive away the cars belonging to their family, put her husband in it and then got behind the wheel of one of the cars with the accused and drove in an unknown direction towards the Russian border.* *The absence of documents in the criminal case file confirming that the defendant was a commander does not diminish the degree of his guilt or indicate that the charges against him were unfounded.* *The accused is not charged with giving a knowingly criminal or unlawful order. At the same time, according to the testimony of the victim and witnesses, it was indisputably established that all the military personnel who occupied the territory of the village of Hremyach village, as well as a group of 20-30 people who entered the territory of the victims' home, acted in a coordinated and coherent manner, all the servicemen of the RF Armed Forces followed the instructions of the accused, and he, in turn, accused the victim of having killed their commander, which became the formal basis for his illegal deprivation of liberty. These circumstances are not denied by the defence.* *Thus, given that the commander of the division where the defendant served was killed, which cannot be ruled out in any armed conflict, and the defendant took command of the military unit, he was the commander of that unit, even if there were no documents confirming this fact.* *Moreover, in case of agreement with the defence counsel's position that the accused acted not of his own free will, but on the order of his superiors, the panel of judges draws attention to the fact that in case of disagreement with such an order, realising its illegality and contradiction with international norms, the accused could have refused to comply with it, but did not do so, playing an active role in the seizure of the victims' property and the victim's illegal detention.*

	In addition, being aware of the unlawfulness of his actions, the accused had the opportunity not to take the victim, who could have been his father by age, was in a sickly state and did not resist the occupation forces, who freely searched his home without any grounds or rights to do so, in violation of all international norms. *Having deprived the victim of his liberty, he could have informed his wife of his fate, but he did not do so, feeling superior to the civilian population, who had neither the strength nor the means to resist the armed military formation, whose servicemen were robbing civilians in violation of their rights protected by international conventions.*
Regarding the qualification of PERSON_8's actions under Part 2 of Article 28, Part 1 of Article 438 of the CC, i.e. the commission of a criminal offence by prior conspiracy by a group of persons.	*A significant number of war crimes in Ukraine are committed in complicity. This is natural, since the military personnel of the armed forces of the Russian Federation fight as part of military units - associations of different quantitative and qualitative composition. Most military tasks are performed by groups. The top military and political leadership of the Russian Federation tolerates, and in certain cases, orders cruel treatment of prisoners of war and civilians or other violations of the laws and customs of war, as well as encourages the commission of such torts.* *The qualification of giving an order, to which the defence counsel draws attention in his appeal, should be made depending on the circumstances of the act. Thus, in the present criminal proceedings, the servicemen of the RF Armed Forces agreed to commit several war crimes and one of them (no matter who) gives the order to commit such a crime, which indicates the existence of a division of roles and a prior conspiracy or organisation of the association by prior conspiracy.* *In such circumstances, the offence should be qualified with reference to Part 2 or 3 of Article 28 of the CC.* *In some cases, giving an order to violate the laws and customs of war is only a form of the objective side of this crime, which is assessed outside the scope of complicity, and in others it may indicate the presence of a certain form of complicity.* *As established during the trial, the servicemen of the Russian Armed Forces acted in a coordinated manner, as a group of individuals, clearly aware that they were violating international law, but acted against the civilian population, feeling superior, and robbed residents of the village of Hremyach, Novhorod-Siverskyi district, including the family's household.* *The servicemen were following the instructions of the accused, which gives reasonable grounds to believe that he acted as the commander of the group, and all together they acted by prior conspiracy, each aware of the consequences of their actions and the purpose of the criminal offences.*

As for the sentence	*The 12-year prison sentence imposed on the accused corresponds to the gravity of the criminal offence, the consequences, the personality of the perpetrator and the purpose of the punishment, as defined in Part 2 of Article 50 of the Criminal Code, which should be carried out by the court.* *Such a punishment complies with the general principles of sentencing and the principles of legality, fairness, reasonableness and individualisation of punishment, the panel of judges finds no grounds to recognise it as excessively severe, as stated in the defence counsel's appeal.*
The decision of the court of appeal The defence counsel's appeal was dismissed. The verdict of the Mena District Court of Chernihiv Region of 03.02.2025 in case No. 39/772/24 is to be upheld.	

8) **The verdict of the Chernihivskyi District Court of Chernihiv oblast of 17.02.2025 in case No. 748/3480/24** was appealed to the Chernihiv Court of Appeal by the defendant's counsel.

In the appeal, the defence counsel requested that the trial court's verdict against the defendant be cancelled and the criminal proceedings be closed, providing the following arguments and confirming that the verdict was unfounded, that it was passed with a significant violation of the requirements of the criminal procedure law and that the law of Ukraine on criminal liability was incorrectly applied, and that the conclusions set out therein did not correspond to the actual circumstances of the criminal proceedings:

- The court's conclusions on the defendant's guilt are mainly based on the testimony of the victim and a witness, who are the victim's mother and sister respectively, , as well as on the protocols of investigative actions with their participation, forensic examinations, and the victim's testimony regarding the circumstances of his brother's residence in Zolotynka village, Chernihiv region;

- the court did not prove that the illegal detention of the victims was not caused by military necessity;

- in finding a person guilty, the court made assumptions; unreasonably and without reference to proper and admissible evidence, it rejected the defence counsel's position on the innocence of the accused due to the prosecutor's failure to prove the subjective side of the alleged crime;

- the lack of evidence that the actions of the accused, by prior conspiracy with other currently unidentified servicemen of the Armed Forces of the Russian Federation, resulted in the illegal (unlawful) detention of the victims with the latter being placed in a specially designated room.

Following consideration of the defence counsels' appeals***, the Chernihiv Court of Appeal issued a decision of 24.04.2025 in case No. 748/3480/24***

Argument in the appeal	Reasoning of the Court of Appeal
Lack of evidence that the actions of the accused, by prior conspiracy with another currently unidentified serviceman of the Russian Armed Forces, the materials in respect of whom are separated into separate proceedings, resulted in the illegal (unlawful) detention of the victims	All the evidence described in detail by the court in the verdict regarding the identification of the Russian Federation Armed Forces serviceman accused in this criminal proceeding and the information processed regarding his identity allow the court to state that the accused has been correctly identified and that the person responsible for issuing the order to deprive the victims of the possibility of free movement has been brought to justice by a local court for his illegal actions.
On the absence of the subjective side of a war crime in the actions of the accused	As for the absence of a subjective side in the actions of the accused, such arguments are groundless, given that, as established during the trial, the accused held the position of commander of a military unit, and therefore had not only the theoretical possibility, but also the practical possibility of issuing his orders to both subordinates and persons residing in the occupied territory. The existence of an armed conflict and the awareness of the person being prosecuted that he or she is violating international humanitarian law, and the fact that an illegal paramilitary invasion of the territory of another state already indicates such a violation, and the issuance of an order against the will of the victims, who were deprived of the opportunity to choose their relocation, proves the existence of intent in the illegal actions of the accused under in relation to civilians who did not participate in hostilities.
The evidence examined by the court, which was verified in detail, does not cause the panel of judges to doubt its relevance, and therefore it was reasonably used as the basis for the verdict, as it is relevant, admissible and sufficient. The materials of the criminal proceedings show that the court of first instance fully investigated all the circumstances relevant to the decision in the case, fully and comprehensively checked the evidence collected during the pre-trial investigation and gave them a proper assessment, as indicated by the analysis of evidence in the verdict, which the panel of judges agrees with.	
The decision of the court of appeal The defence counsel's appeal was dismissed. The verdict of the Chernihiv District Court of Chernihiv Region of 17.02.2025 in case No. 748/3480/24 is to be upheld.