USAID FROM THE AMERICAN PEOPLE

UKRAINIAN HELSINKI HUMAN RIGHTS UNION

АСОЦІАЦІЯ ПРАВНИКІВ УКРАЇНИ
UKRAINIAN BAR ASSOCIATION

INTERNATIONAL BAR ASSOCIATION
Human Rights Institute

# REPORT

## ON THE RESULTS OF THE SECOND PHASE OF THE PROJECT

# THE TRIAL MONITORING IN WAR CRIMES CASES

June 2024

**DEVELOPER:**
All-Ukrainian Non-Governmental Organisation "Ukrainian Bar Association"

*This publication is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of the UBA and do not necessarily reflect the views of USAID or the United States Government.*

**Contents.**

## I. FOREWORD

This report (hereinafter the Report) was prepared by the Ukrainian Bar Association (hereinafter the UBA) within the framework of the second phase of the project "The Trial Monitoring in War Crimes Cases" (hereinafter the Project).

The Project is implemented by the UBA under a grant agreement with the **USAID Human Rights in Action Program, which is implemented by the Ukrainian Helsinki Human Rights Union (UHHRU).**

The relevance of the project is conditioned by the fact that with the outbreak of a full-scale war in Ukraine, the national criminal justice system faced the need to quickly and efficiently consider a large number of criminal cases related to war crimes. According to the statistics of the Prosecutor's General Office, as of 31 May 2024, over the period of the full-scale invasion of the Russian Federation on the territory of Ukraine, law enforcement agencies have registered more than 133,062 cases of crimes of aggression and war crimes, including 80 cases of propaganda of war (Article 436 of the Criminal Code of Ukraine), 104 cases of planning, preparation or initiation and conduct of an aggressive war (Article 437 of the Criminal Code of Ukraine), 129,065 cases of violation of the laws and customs of war (Article 438 of the Criminal Code of Ukraine) and 3,813 cases of other crimes.

Given the significant number of crimes related to violation of the laws and customs of war (129,065), these became the subject of careful monitoring as part of the mentioned Project. The large number of such criminal proceedings and the specifics of these cases present a challenge for Ukraine's judicial system in wartime. Among others, this is because consideration of the relevant criminal proceedings implies (but is not limited to) the availability of special knowledge, particularly in the field of applying international humanitarian law. Therefore, judges, prosecutors, and lawyers must ensure and guarantee compliance with international standards and requirements when considering relevant criminal proceedings at the national level. At the same time, it is worth noting that any country like Ukraine would also have problems with a large number of criminal proceedings, especially in the context of an ongoing war.

The right to a fair trial should be guaranteed and ensured in all circumstances, including during martial law, as required by Article 10 of the Universal Declaration of Human Rights (hereinafter the UDHR), Article 14 of the International Covenant on Civil and Political Rights (hereinafter the ICCPR) Article 6 of the European Convention of Human Rights (hereinafter the ECHR). The intention to demonstrate a high standard of national justice in cases of international crimes has been repeatedly confirmed by representatives of all branches of government.

The scope of the monitoring includes all components of the right to a fair trial (access to justice, public trial, independent and impartial court, trial within a reasonable time, right to defence, equality of participants in the trial, adversarial proceedings, etc.), as well as related human rights and fundamental freedoms (prohibition of torture, right to liberty and security of person, etc.)

As for the geography and temporal component of the Project, the monitoring of court proceedings in the second phase took place from December 2023 to May 2024 throughout Ukraine. In particular, these categories of cases are being considered and monitored in the following regions: **Kyiv and Kyiv Oblast, Dnipro, Zaporizhzhia, Mykolaiv, Odesa, Sumy, Kharkiv, Kherson, Cherkasy and Chernihiv Oblasts**. Since the

aggression of the Russian Federation covers the entire territory of Ukraine, it is necessary to analyse the practice and support participants in war crimes trials in all regions of the country.

At the national level, the Office of the Prosecutor General, the Supreme Court, the High Council of Justice, the Council of Judges of Ukraine, the State Judicial Administration of Ukraine, the National School of Judges of Ukraine, the Coordination Centre for Legal Aid Provision, as well as courts and prosecutors' offices throughout Ukraine played a significant role in the implementation of the monitoring.

**THE AIM OF THE PROJECT IS TO:**

- ensure effective applied ongoing analysis of war crimes trials for compliance with international requirements, including all components of the right to a fair trial. The focus of the monitoring is on courts, the role of prosecutors, the quality of defence of the accused, etc;
- generate clear analytical and statistical data on the observance of international standards at the national level, including the right to a fair trial, in the course of judicial review of criminal proceedings for war crimes;
- identify both systemic and individual, positive and negative phenomena regarding the observance of international standards, in particular the right to a fair trial, in the course of judicial review of criminal proceedings for war crimes. To draw the attention of the legal community to problematic aspects and initiate possible ways to solve them.

At the request of the UBA, the **International Bar Association (IBA) and the IBA's Human Rights Institute (IBAHRI)** formed a group of international experts in international law and human rights who, together with the UBA, drafted the Methodology for Trial Monitoring of War Crimes Criminal Proceedings (hereinafter the Methodology) and the Questionnaire for Trial Monitoring of War Crimes Criminal Proceedings (hereinafter the Questionnaire) within the first phase of the Project. The Methodology was based on the IBAHRI Guidelines on Trial Observation.

The Methodology, among other things, sets out the basic principles underlying the monitoring and outlines the international standards guaranteed by the UDHR, the ICCPR, as well as the ECHR, which are key guidelines for monitoring war crimes trials.

**The Methodology and Questionnaire focus on the following elements of the right to a fair trial and other related human rights and fundamental freedoms:**

- accessibility of justice (informational and physical);
- publicity and openness of court proceedings;
- an independent and impartial court;
- consideration of criminal proceedings within a reasonable time;
- the right to participate in court proceedings;
- the right to defence;
- equality of the parties;
- presumption of innocence and burden of proof;
- prohibition of torture;

- the right to liberty and security of person;
- the right to a public and reasoned court decision, etc.

Within the second phase of the Project, the methodological components of the monitoring – the Questionnaire and the Methodology – were improved. As for the Methodology update: i) the list and description of international standards that are key benchmarks for monitoring the trial of war crimes criminal proceedings were improved; ii) the list and description of the components of the right to a fair trial, as well as related rights and freedoms were improved; iii) the order of presentation of the material was partially changed. As for the changes to the Questionnaire: i) the wording of the questions was improved in accordance with the purpose of the study, national procedural legislation, international standards, etc.; ii) the logical arrangement of questions was ensured in accordance with the procedure of the trial (questions are arranged from general to specific or special); iii) the list of questions was partially changed (some questions were removed due to inconsistency with the national legal system or the scope of the relevant study; some questions were merged; questions were added to strengthen the

The Project also analysed the verdicts delivered in war crimes cases between October 2023 and May 2024.

To conduct this monitoring, the UBA assembled a team of national experts, including two main national experts in the field of international law and human rights and **18 monitors** who are lawyers with experience in the field of criminal law. The monitors directly attended court hearings, recorded information on the trial of war crimes criminal proceedings and information on court decisions in accordance with the previously approved Questionnaire and Methodology. This ensured competent monitoring participation of the public in the trial of war crimes criminal proceedings, professional analytical analysis of the relevant monitoring, qualitative assessment of national criminal and criminal procedure legislation for its compliance with international standards and professional processing of court decisions in war crimes cases.

Thus, this report on the results of monitoring the trial of criminal proceedings for war crimes and the analysis of court decisions already delivered presents conclusions on the compliance of court proceedings with international standards and indicates possible challenges and areas of growth in the consideration of this category of cases.

The first phase of court monitoring was implemented from July to October 2023 (inclusive) in the courts of Kyiv and Kyiv Oblast, Kharkiv, Chernihiv, Zaporizhzhia, Kherson, Odesa, Sumy and Dnipro Oblasts.

**Report on the results of implementation of the first phase of the Project is available by QR code.**

## II. METHODOLOGY FOR MONITORING AND ANALYSING COURT DECISIONS

The methodology is based on the rights and freedoms guaranteed by the UDHR, the ICCPR as well as the ECHR, and the case law of the ECtHR.

The monitoring of court hearings under the Project was carried out in accordance with several principles, including the principle of non-interference in the judicial process, objectivity and consent.

**THE PRINCIPLE OF NON-INTERFERENCE IN THE JUDICIAL PROCESS** means respect for the independence of the judiciary. The judiciary as an institution and individual judges administering justice in certain cases should be able to perform their professional duties without undue influence from executive, legislative or other bodies and individuals. The Project monitors were instructed not to interfere in the proceedings and to act as an "external observer".

**THE PRINCIPLE OF OBJECTIVITY** requires that trial monitoring accurately reports on court proceedings using clearly defined and accepted standards and applying them impartially. Trial monitoring is a diagnostic tool that should provide accurate and reliable information on the functioning of the justice system. Trial monitoring should be conducted without bias, conflicts of interest or other aspects that may unduly influence conclusions and analysis, and without any agenda or purpose other than to protect and promote the functioning of the justice system. During the first phase of the Project, two monitors monitored court hearings, but due to logistical difficulties in ensuring the participation of two monitors in each hearing, the number of monitors was reduced to one in the second phase of the Project.

**THE CONSENT PRINCIPLE** means that trial monitoring should be conducted with the consent of and in cooperation with the relevant actors in the state. These actors include the judiciary, prosecutors, the defence, victims and witnesses, law enforcement agencies, and others. The UBA is grateful to the national partners who expressed their consent and provided assistance for the monitoring.

The start of the monitoring was preceded by a training for monitors, during which the monitors were presented with the improved Methodology and Questionnaire, as well as professional ethics, procedures for collecting, storing and processing information. The UBA also held meetings and consultations with representatives of the judiciary and prosecution authorities, during which the second phase of the Project and its expected results were presented, as well as the updated Methodology and Questionnaire.

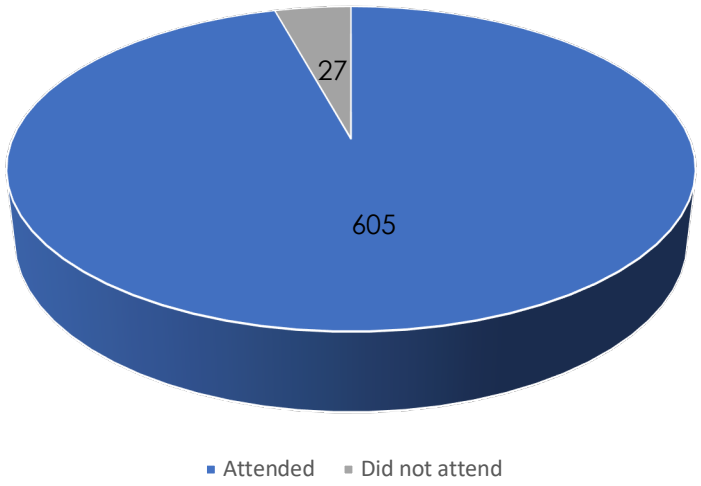
In order to monitor court hearings, information on current war crimes trials and their territorial scope was analysed. Monitors with a law degree, relevant qualifications and the necessary knowledge to participate in trial monitoring were selected.

**Given the scale of the Project, the monitoring had a number of limitations, in particular:** i) the monitoring covered only criminal proceedings under Article 438 of the Criminal Code of Ukraine; ii) the monitoring did not include cases of crimes committed before 24 February 2022; iii) the monitoring did not include an analysis of case files, as the monitors did not have access to them; iv) the analysis of court decisions was based on decisions available in the Unified State Register of Court Decisions under Article 438 of the Criminal Code of Ukraine.

## III. GENERAL CONCLUSIONS AND RECOMMENDATIONS

The monitoring of war crimes trials in the second phase of the Project took place **from December 2023 to May 2024** in courts of Kyiv and Kyiv Oblast, Dnipropetrovsk, Zaporizhzhia, Mykolaiv, Odesa, Sumy, Kharkiv, Kherson, Cherkasy and Chernihiv Oblasts.

During this period, the monitors attended **605 court hearings in 172 unique cases and for various reasons** (air raids, shelling, late receipt of information about court hearings, inability to get to court quickly, etc.) **did not attend 27 court hearings**. During the monitoring, it was noted that **new unique cases appeared with different intensity in different months**: [January – 2; February – 9; March – 4; April – 10; May – 21].




The monitoring also included an analysis of **35 verdicts** delivered by first instance courts, **10 decisions of** appellate courts, and **2 decisions of the** cassation court.

**A team** of **2** key national **experts** in international law and human rights and **18 monitors, all** lawyers with experience in criminal law, was **formed** to conduct the monitoring. The monitoring tools were the pre-approved **Questionnaire and Methodology**.

**The scope of the** monitoring included all **components of the right to a fair trial** (access to justice, public trial, independent and impartial court, trial within a reasonable time, right to defence, equality of participants in the trial, adversarial proceedings, etc.), as well as **related human rights and fundamental freedoms** (prohibition of torture, right to liberty and security of person, etc.)

### Based on the results of the monitoring, the following conclusions can be drawn:

- **No** facts were **established to** conclude that there had been systemic **violations of**: i) the right to an independent and impartial tribunal; ii) the right to liberty and security of person; iii) the right to translation; iv) the right to a public and reasoned court decision; v) the principle of presumption of innocence.
- **There is no unified database of** criminal proceedings on war crimes in Ukraine. The Project team obtained all information from open information resources. Therefore, the Project does not have complete information concerning all criminal proceedings being undertaken. Information from various information sources was collected and processed manually, which is the most resource-intensive part of the Project.

- In rare cases, Project monitors **attended court hearings** in criminal proceedings (for example, under Article 436-2 of the Criminal Code of Ukraine) that **are not subject to monitoring,** as these hearings, as well as those under Article 438 of the Criminal Code of Ukraine, were displayed in the search engine using the search criterion "violation of the laws and customs of war". Such criminal proceedings were removed from the monitoring.
- The Project monitors and experts **generally had the necessary access** to court hearings in war crimes proceedings. At the same time, there were cases that either presumed possible restrictions on the right of access to court, or made it difficult for the public to access court hearings, or made it impossible for monitors to attend court hearings.
- In almost all cases, the courtrooms **were adapted** for proper consideration of cases. **In some cases,** criminal proceedings were held in the **judge's office or in the basement of the court building rather than in the courtroom**.
- The vast majority of criminal proceedings for war crimes **were considered in open court (95 per cent)**. Court proceedings were **closed** (in whole or in part) in criminal proceedings due to the existence of circumstances related to conflict-related **sexual violence, security reasons**, **state secrets,** etc.
- **The courts** generally allocated **reasonable amount of time for** consideration of the cases and took measures to ensure an effective trial. At the same time, there were both **isolated polar cases** and **systemic phenomena** that may form a tendency to the **opposite**. These include: i) lack of judicial personnel in the judicial system; ii) increased workload of some courts, in particular, in criminal proceedings under Article 438 of the Criminal Code of Ukraine; iii) systematic postponement of court hearings, etc.
- The monitoring did **not reveal any violations of the** provision of **free legal aid to the** accused. At the same time, both positive and negative facts regarding the content of legal aid were recorded. Therefore, the **effectiveness, reality and practicality of legal aid** in war crimes cases is an **area for improvement. In** addition, the Project has concluded that there is a **moral dilemma and security risks** for lawyers in war crimes cases.
- **The majority of** war crimes trials were conducted **in absentia**. Only in 4 war crimes cases (2%) monitored were the accused present. All other cases (98%) were considered in absentia. This is due to the fact that most of the defendants are not on the territory of Ukraine and are in the temporarily occupied territory of Ukraine, the territory of the Russian Federation, etc.
- **The procedure for notifying** the suspect/accused of the criminal proceedings against him/her requires critical **attention.** As a rule, summonses in war crimes criminal proceedings are carried out by publishing a summons in the newspaper Uriadovyi Kurier and on the website of the Office of the Prosecutor General, including in a language understood by the accused (Russian). At the same time, the effectiveness of such a notice must be reviewed and other methods for informing the accused should be urgently considered.
- There were cases when the state authorities **took other possible and reasonable measures to** establish the whereabouts of the accused and to effectively notify the accused of the trial. These include: i) contacting the Coordination Headquarters for the Treatment of Prisoners of War regarding the defendant's

captivity or liquidation by the Ukrainian defence forces; ii) establishing the location or contacts of the defendant or his family members in social networks, messengers, etc.; iii) sending an electronic message (summons) to the official email address of the Federal Security Service of the Russian Federation, to the defendant's email address, to the email address where the defendant works, etc. These are i**solated cases** rather **than standard practice**.

- **Interpreters were involved in** those criminal proceedings concerning war crimes that were considered by courts with the accused present at the time of the Project implementation.
- **Only custody was** recorded as a preventive measure. In some cases, lawyers filed motions for non-custodial measures of restraint, which were rejected by the court.
- We note an **improvement in the quality of verdicts** in war crimes cases, the reasoning used by the courts in passing them, and the establishment of all the necessary elements of the elements of violation of the laws or customs of war. The relevant verdicts are generally not overburdened with a description of the contextual circumstances of the crime, which are clear and can be deduced from well-known historical facts.

**Based on the monitoring results, the Project recommends the following:**

The judiciary should consider **improving the search engine** "List of court cases scheduled for consideration", in particular, to provide for an article-by-article search criterion for court cases scheduled for consideration in this search engine.

The judiciary should ensure regular updating of information on court cases scheduled for consideration and **timely entry of data on court schedules into the** relevant information funds.

The judiciary should **standardise the practice of admission** to court hearings of media and public representatives (documents and information to be submitted to the court, procedure of admission, etc.).

The judiciary should coordinate the **development of a unified approach of courts to the consideration of cases in closed court proceedings**. The right to a public trial, particularly in such an important category of cases, is a key element of the rule of law and democratic governance. The fact of public attention to war crimes cases should not, on its own, influence the decision to hold a closed trial.

The judicial governance bodies (High Qualification Commission of Judges of Ukraine, High Council of Justice) should take effective measures to **overcome the staffing shortage** in the courts. Addressing this issue will help to resolve the problem of the **critical level of workload** on judges.

The National Bar Association of Ukraine, the Higher School of Advocacy of the National Bar Association of Ukraine, the Coordination Centre for Free Legal Aid should provide **educational and training opportunities for lawyers** in war crimes cases and consider the feasibility of **specialising lawyers** to quickly build their capacity in this category of cases.

The moral dilemma and security risks for lawyers in war crimes cases should be resolved by **introducing awareness campaigns** on not identifying the client with the lawyer, **psychological support for** lawyers, ensuring **effective security measures,** etc.

Through legislative initiatives and/or practice, ensure that the state (prosecution, court) complies not only with the formal requirements of the law on the publication of summonses in the media and on the Internet, but also takes all **possible and reasonable measures to effectively notify** the suspect/accused of criminal proceedings against him/her (e.g., via email, social media, messengers, telephone, etc.).

Given that the effectiveness of notifying the suspect/accused of the criminal proceedings against him/her is questionable and presupposes a possible review of the relevant criminal proceedings in the future, we recommend **improving the** legislative regulation of the mechanism for **reviewing a court verdict in absentia** or **developing a separate procedure for a** new review of this category of cases.

To the Verkhovna Rada of Ukraine to consider amending national legislation to introduce **specialisation of judges** in war crimes cases.

To pay attention to **training** law enforcement officers conducting pre-trial investigations in criminal proceedings under Article 438 of the Criminal Code of Ukraine, **prosecutors, procedural supervisors, and judges on how to** write procedural decisions in relevant criminal proceedings. It is advisable to conduct such training both on the specifics of establishing the elements of violations of the laws and customs of war and the application of international humanitarian law, and on legal writing, the specifics of legal argumentation in procedural documents, etc. We recommend conducting joint exercises and exchanging experience between law enforcement agencies and judges.

To hold periodic legal conferences on the problems of criminal proceedings under Article 438 of the Criminal Code of Ukraine, to **involve leading specialists in** training investigators, prosecutors, judges at the Training Centre of the Prosecutors of Ukraine, the National School of Judges of Ukraine, as well as in educational institutions of the Ministry of Internal Affairs of Ukraine.

To **introduce digests** by engaged experts analysing court decisions of first instance, appellate and cassation courts in Ukraine that have entered into force, which will highlight the key legal positions of the relevant court, as well as case law commentaries analysing how Ukrainian courts have resolved certain legal issues in comparison with the standards of international humanitarian law and international criminal law.

Given the fact that the Rome Statute has not been ratified by Ukraine, the use of its provisions as an additional regulatory basis for qualification under Article 438 of the CC of Ukraine is not currently considered appropriate. This may contradict the very provision of part one of Article 438 of the CC of Ukraine, which provides for the violation of those laws and customs of war provided for by treaties ratified by the Verkhovna Rada of Ukraine. We propose to draw attention to this aspect of qualification using this international document during training of judges and meetings with judges of first instance and appellate courts. To guide judges to use the provisions of the Rome Statute for additional substantiation of criminal law qualifications until the Rome Statute is ratified. If the provisions of the Rome Statute reproduce the norms of customary humanitarian law, which are a source of international law, then these sources should be used in the course of qualification under Article 438 of the CC.

In some verdicts, the courts, while stating the existence of elements of a crime under Article 438 of the Criminal Code of Ukraine, do not specify which

international rules of the law of war were violated. We recommend that this approach be improved, as otherwise court decisions may be considered unfounded. We propose that the Supreme Court and the National School of Judges of Ukraine, when reviewing court decisions and conducting training activities for judges, respectively, draw the attention of judges to the need to **clearly indicate in court decisions the norms of humanitarian law that have** been violated.

## IV. MONITORING TRIALS

The monitoring of war crimes trials in the second phase of the Project took place **from December 2023 to May 2024** inclusive [the first phase was from July to October 2023 inclusive].

The geography of the monitoring covered those regions of Ukraine where criminal proceedings on war crimes are being considered, in particular: **Kyiv and Kyiv** Oblast**, Dnipropetrovsk, Zaporizhzhia, Mykolaiv, Odesa, Sumy, Kharkiv, Kherson, Cherkasy and Chernihiv** Oblasts. During the reporting period, the monitoring geography was expanded both by joining new regions [Mykolaiv and Cherkasy Oblasts] and by expanding the monitoring within certain regions [Leninskyi District Court of Dnipro, Ordzhonikidze District Court of Zaporizhzhia, Khortytskyi District Court of Zaporizhzhia, Derhachiv District Court of Kharkiv Oblast, Menskyi District Court of Chernihiv Oblast and others were added]. The largest number of court proceedings in war crimes cases took place in the courts of Kyiv and Kyiv Oblast (about 43% of the total number of cases monitored), followed by Kharkiv (about 13%), Chernihiv (about 12%), Kherson (about 11%) and other regions.

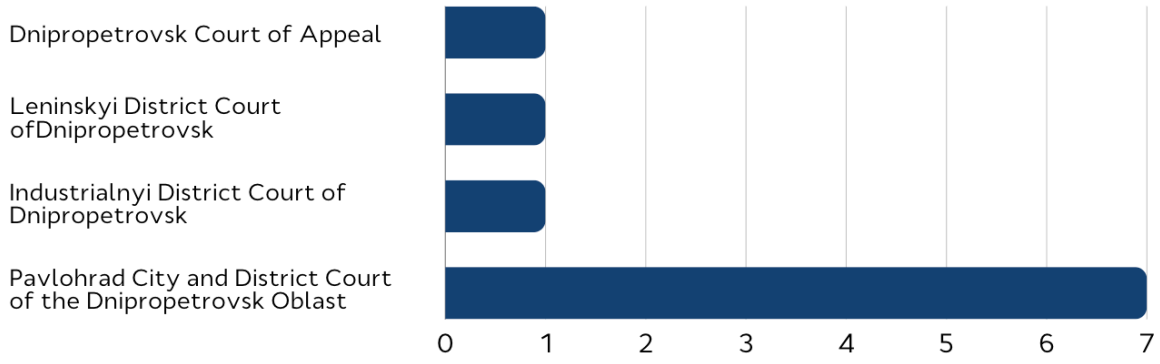
The monitoring covered all components of the right to a fair trial: access to justice, public trial, independent and impartial court, trial within a reasonable time, right to defence, equality of participants in the trial, adversarial proceedings, etc. as well as related human rights and fundamental freedoms (prohibition of torture, right to liberty and security of person, etc.).

During this period, the monitors **attended 605 court hearings in 172 unique cases and for various reasons** (air raids, shelling, late receipt of information about court hearings, inability to get to court quickly, etc.) **did not attend 27 court hearings** [during the first phase of the Project – 237 court hearings in 114 unique cases].

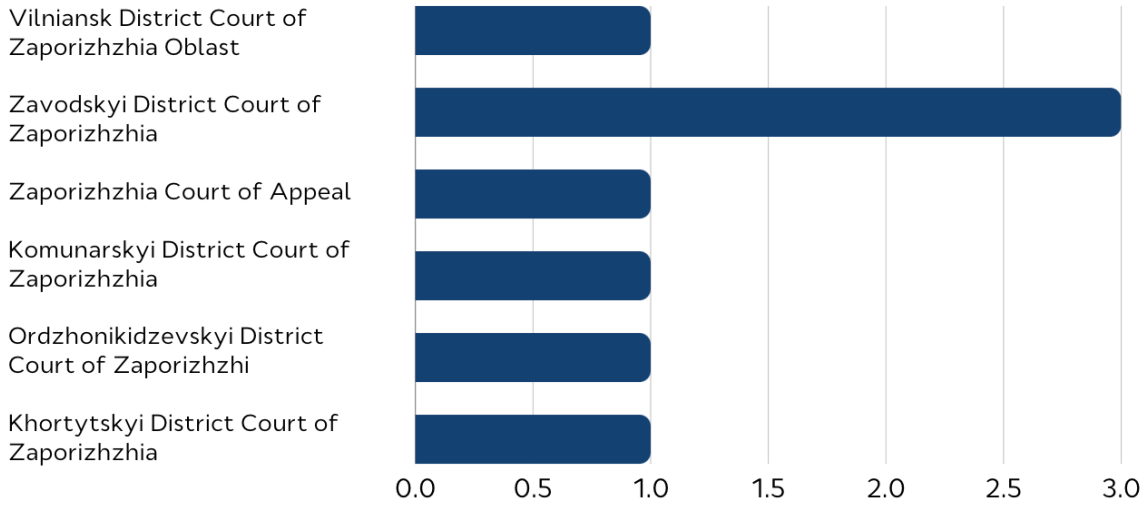
Among the total number of court hearings attended, there were 14 court hearings in 8 unique cases that were removed from the monitoring, as it was found during the presentation of the case file that they related to circumstances that occurred before 24 February 2022 and 1 hearing in a case under parts one and two of Article 436-2 of the Criminal Code of Ukraine.

In total, the Project monitored 617 hearings under Article 438 of the Criminal Code of Ukraine, the subject of which is circumstances that occurred after 24 February 2022. The above statistics relate to those criminal proceedings that the Project team is aware of from open sources, namely:

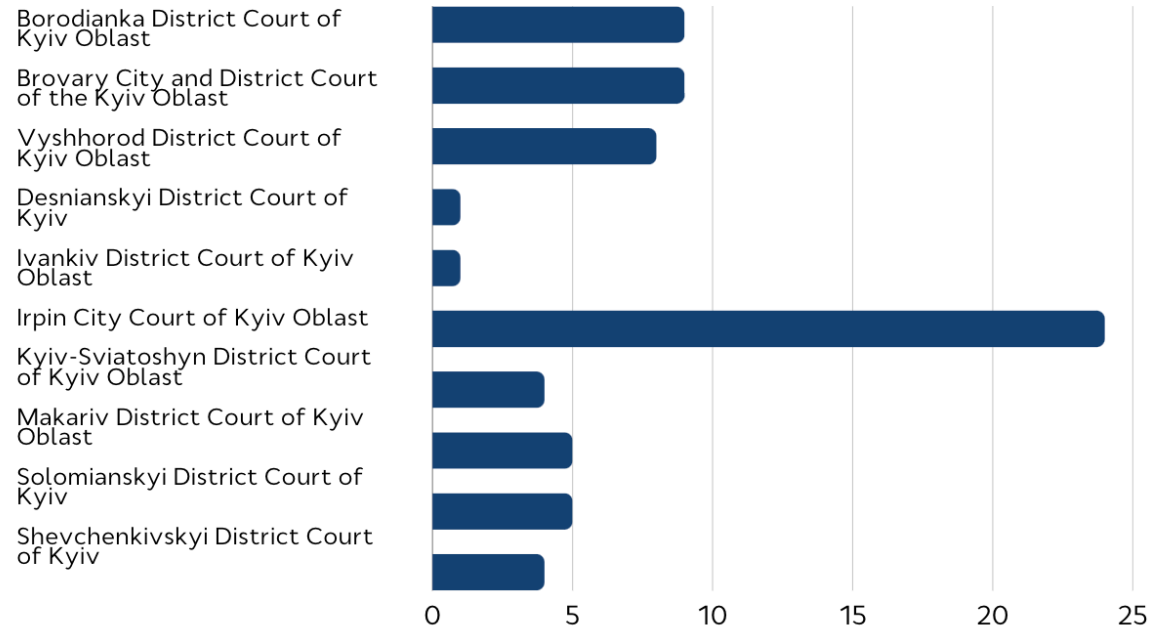
**The city of Dnipro and Dnipropetrovsk Oblast:** 10 unique cases



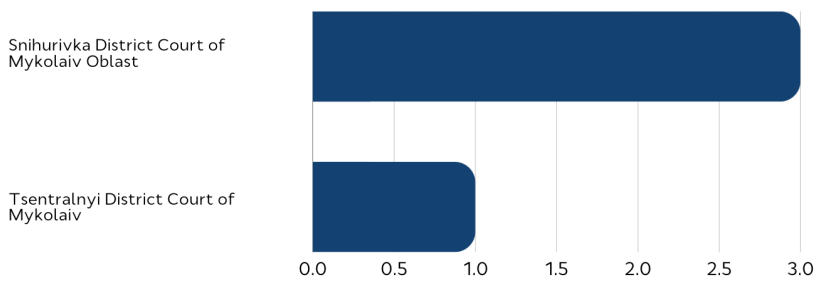
**The city of Zaporizhzhia and Zaporizhzhia Oblast:** 8 unique cases



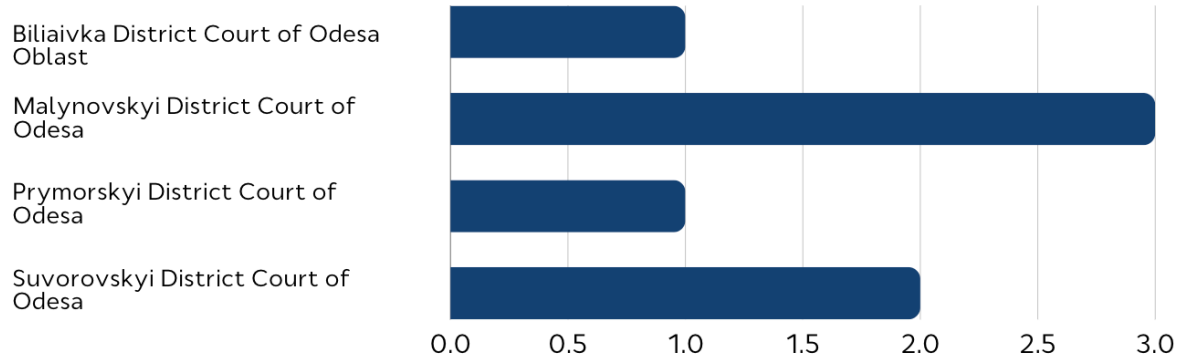

**The city of Kyiv and Kyiv Oblast:** 70 unique cases



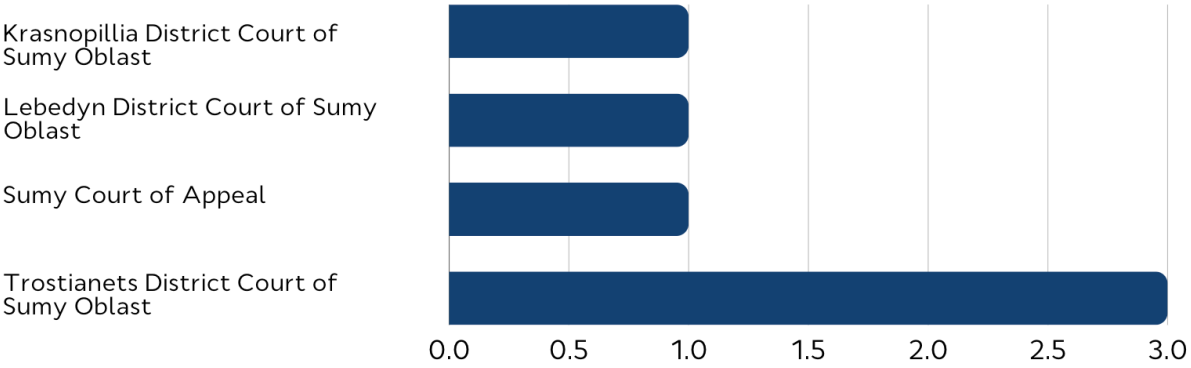

**The city of Mykolaiv and Mykolaiv Oblast:** 4 unique cases



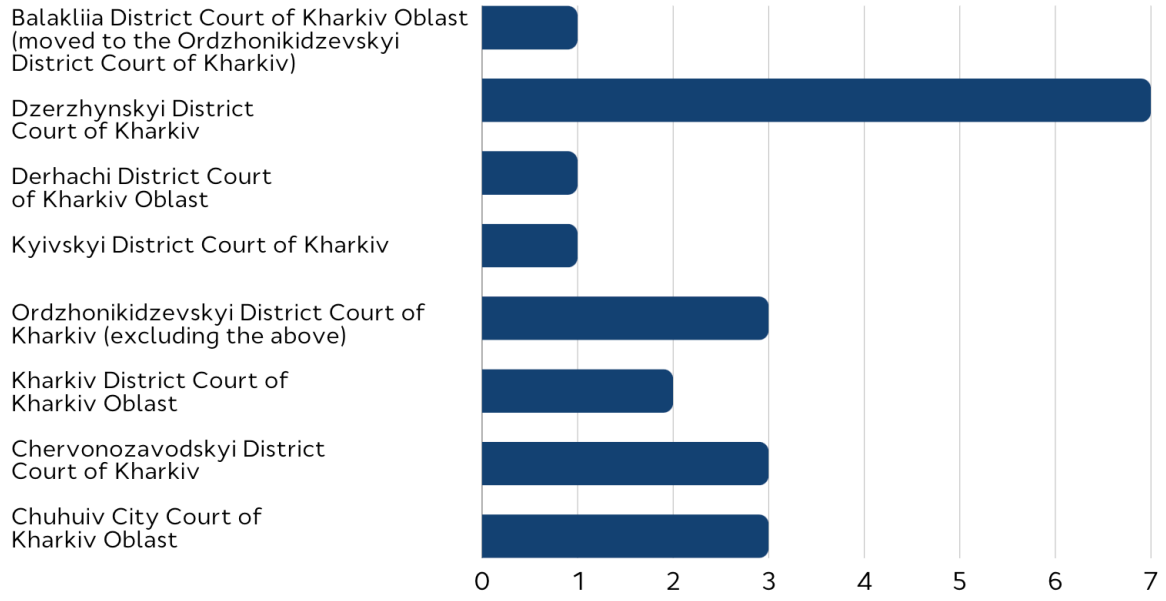
**The city of Odesa and Odesa Oblast:** 7 unique cases



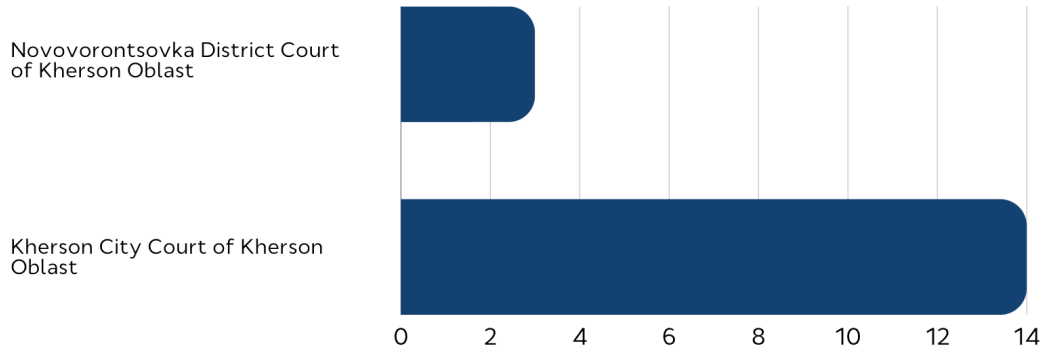

**The city of Sumy and Sumy Oblast:** 6 unique cases



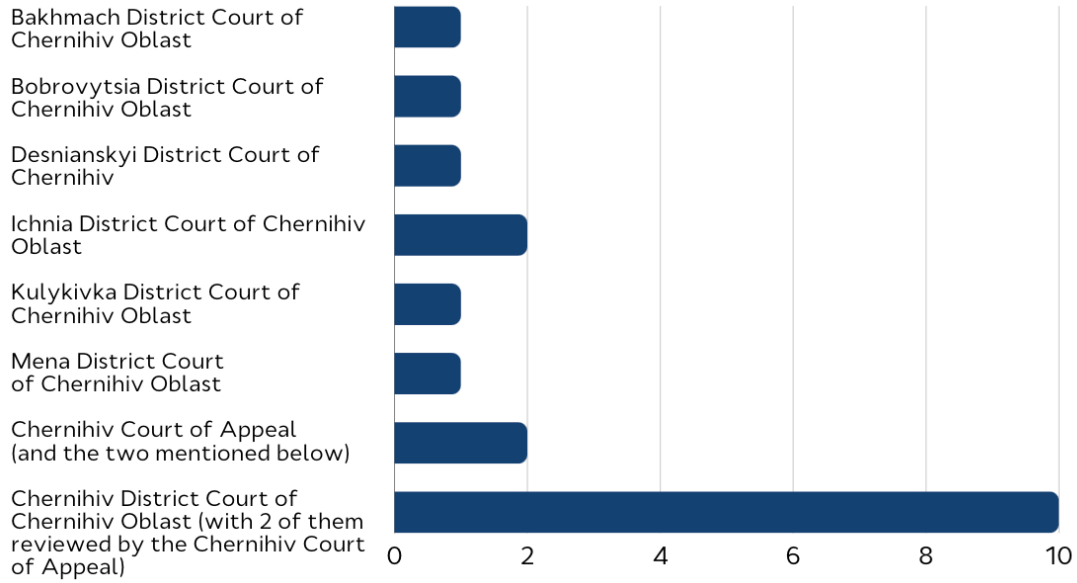

**The city of Kharkiv and Kharkiv Oblast:** 21 unique cases



**The city of Kherson and Kherson Oblast:** 17 unique cases




**The city of Chernihiv and Chernihiv Oblast:** 19 unique cases




**The city of Cherkasy and Cherkasy Oblast:** 1 unique case


**During the monitoring, it was noted that new unique cases appeared with different intensity in different months:** [January - 2; February - 9; March - 4; April - 10; May - 21].

A questionnaire was filled out based on the results of each court hearing attended (including postponed ones). The analysis of all received questionnaires allowed us to obtain qualitative and quantitative indicators for each of the elements of the right to a fair trial and to state the **following conclusions**.

## 1. THE RIGHT OF ACCESS TO COURT: INFORMATION AND PHYSICAL ACCESSIBILITY / OTHER

### LEGAL REGULATION

The right of access to a court is guaranteed by Articles 8 and 10 of the UDHR, Article 14(1) of the ICCPR and Article 6(1) of the ECHR. This right is not explicitly enshrined in Article 6 of the ECHR, but derives from its evolutionary interpretation in the case law of the ECHR[1] .

Thus, in the case of Golder v. the United Kingdom, the ECtHR for the first time concluded that the very construction of Article 6 of the ECHR would be meaningless and ineffective if it did not protect the right to have the case heard by a court at all. The ECtHR has enshrined the rule that Article 6(1) of the ECHR contains an inalienable right of access to a court[2] . This means that the right to a fair trial includes the right of access to a court, which makes it possible to use further guarantees set out in Article 6 of the ECHR. According to the ECHR case law, the right of access to court is a multicomponent phenomenon.

At the national level, the right of access to court is guaranteed by Article 55 of the Constitution of Ukraine, Article 7 of the Law of Ukraine "On the Judiciary and the Status of Judges", Articles 7 and 21 of the Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine), etc.

### MONITORING RESULTS

Regarding **information** accessibility.

There is no unified database of criminal proceedings on war crimes in Ukraine. All information on court hearings was obtained by the Project team from open information resources (the Judiciary of Ukraine website, websites of individual courts, the Unified State Register of Court Decisions, notice boards in courtrooms), from courts, prosecutors, etc. Accordingly, the Project may not have information on all court hearings held by Ukrainian courts in this category of cases without exception. This information was collected and processed manually. Searching for and updating such information from various information sources was the most resource-intensive part of the Project.

For the most part, information on the consideration of criminal proceedings for war crimes and the results of such consideration was publicly available and reflected on the relevant information resources mentioned above. At the same time, there were cases when the information was not available or was displayed in a fragmented manner. In particular, it should be noted that in some courts, for example, in Odesa (Malynovskyi District Court of Odesa, Prymorskyi District Court of Odesa), Kyiv and Kyiv **Oblast** (Makariv District Court of Kyiv Oblast), and in Kyiv and Kyiv **Oblast** (Makariv District Court of Kyiv **Oblast**, Borodianka District Court of Kyiv **Oblast**, Irpin City Court of Kyiv Oblast, Kyiv-Sviatoshyn District Court of Kyiv Oblast, Desnianskyi District Court of Kyiv) do not have court schedules available to visitors in the court premises, but the necessary information is posted on the court websites.

In rare cases, trial monitors attended court hearings in criminal proceedings (for example, under Article 436-2 of the Criminal Code of Ukraine) that are not subject to monitoring, as these hearings, as well as those under Article 438 of the Criminal Code

[1] Guide on Article 6 Criminal: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng.

[2] See the ECHR judgment Golder v. the United Kingdom [21/02/1975].

of Ukraine, were displayed in the search engine "List of court cases scheduled for consideration" using the search criterion "violation of the laws and customs of war". The hearings in these criminal proceedings were removed from the monitoring. Individual hearings in the proceedings under a set of articles were found by the monitors on their own by analysing the decisions made by the courts in their regions.

Regarding **physical accessibility**.

During the monitoring, attention was paid to whether trial monitors had access to court hearings and whether there were any signs that would indicate problems with access to court hearings for members of the public and the media.

The national authorities, including the courts, were open to monitoring and generally did not object to public and media attendance at court hearings. Throughout the Project implementation period, the UBA team actively cooperated with the Supreme Court, the Prosecutor General's Office, as well as regional courts and prosecutors' offices.

Based on the results of the monitoring, it can be affirmatively noted that trial monitors and experts **generally had the necessary access** to court hearings in the relevant criminal proceedings. The monitors often recorded the presence of representatives of other international and national organisations (UN Monitoring Mission, Ukrainian Helsinki Human Rights Union, NGO "Educational House of Human Rights in Chernihiv", NGO "Media Initiative" and other NGOs), as well as media representatives, at court hearings. In one of the criminal proceedings, where the victim was a citizen of the Federal Republic of Germany, the courtroom was attended by free listeners - a group of foreigners - representatives of an unnamed organisation accompanied by an interpreter. These persons reported that they did not have the status of an official delegation (No. 367/3598/23, Irpin City Court of Kyiv Oblast).

At the same time, there are cases that either suggest **possible restrictions on** the right of access to court or have made it difficult for the public to access court hearings. For example:

- the Kherson City Court of Kherson Oblast stopped receiving citizens in person during the period of martial law. However, during the implementation of the Project, the monitor's access to the court hearings of criminal proceedings on war crimes in this court was not restricted;
- In the Solomianskyi District Court of Kyiv, increased attention was paid to the participation of Project monitors in court hearings. The court security service, court clerks, and judges asked in detail about the grounds, methodology, and procedure for monitoring. The monitors were admitted to court hearings only after presenting a letter of support from the Supreme Court or after detailed explanations of the monitoring. Cases of difficult access to court hearings with this judge were also observed during the first phase of the Project;
- In the Dzerzhynskyi District Court of Kharkiv, a negative attitude towards monitors was observed on the part of the court.

There are isolated cases where monitors, having arrived at the court, were **unable to attend court hearings** because court staff either concealed information about the start, course, and location of the court hearing and did not invite monitors to the courtroom for unknown reasons or forgot to invite them. For example:

- In the Suvorovskyi District Court of Odesa, the court hearing was scheduled for the appropriate time and date. The monitor arrived at the court ahead of time,

but at the same time, an air raid alert was announced. The court is closed during the air raid and no court hearings are held. After the air raid was lifted, it was found that the court session had taken place, with court arguments and a verdict. The clerk reported that the defence counsel had requested the judge to hold the hearing earlier than scheduled due to his poor health. It is not known when the court hearing was held or whether it was held under air raid alert (no. 523/6894/23);

- in Dzerzhynskyi District Court of Kharkiv, the monitor arrived at the court hearing in advance and informed the secretary of his presence. After a long wait, the secretary informed the monitor that the hearing had already taken place, but the monitor was not invited to the courtroom (No. 638/1305/24);
- in the Ordzhonikidze District Court of Zaporizhzhia, the following was recorded. The monitor arrived at the court session 15 minutes before it started. The court security officers informed him that he should wait in the court lobby and that the secretary would invite him to the hearing. Despite actually waiting in the courtroom before the start of the hearing, the monitor was denied access to the courtroom due to the fact that the hearing had already started (№ 335/3484/24).

It is worth noting that in almost all cases, the courtrooms were adapted for the proper consideration of cases (size, technical equipment, etc.). At the same time, the following requires attention:

- the previous building of the Borodianka District Court in Kyiv Oblast was destroyed by a Russian missile. Currently, another court building is in operation, with only one courtroom and no isolated cell for the accused, which means that criminal proceedings are considered via video conferencing with suspects/accused.

We would also like to draw attention to the fact that in the course of the monitoring, we have recorded **isolated cases of** consideration of criminal proceedings on war crimes not in the courtroom, but in the **judge's office and in the basement of the court building**. For example:

- In Kherson City Court of Kherson Oblast, Borodianka District Court of Kyiv Oblast, Irpin City Court of Kyiv Oblast, Khortytskyi District Court of Zaporizhzhia, all judges' offices where court hearings were held had the necessary means for technical recording of the trial and holding court hearings via video conferencing. The absence of free courtrooms is caused by the overload of the court and lengthy trials, etc;
- a court hearing in Kherson City Court was held in the basement of the court building due to the shelling of Kherson. This room is of sufficient size, fully equipped and adapted for court hearings.

**RECOMMENDATIONS**

To the judiciary - to consider improving the search engine "List of court cases scheduled for consideration", in particular, to provide for an article-by-article search criterion for court cases scheduled for consideration in this search engine.

The judiciary should ensure regular updating of information on court cases scheduled for consideration and timely entry of data on court schedules into the relevant information funds.

The judiciary should unify the practice of admission to court hearings of media and public representatives (documents and information to be submitted to the court, procedure of admission, etc.) [recommendation remains relevant from the first phase of the Project].

## 2. PUBLICITY AND OPENNESS

### LEGAL REGULATION

The right to a public trial is guaranteed by Article 10 of the UDHR, Article 14(1) of the ICCPR and Article 6(1) of the ECHR. At the same time, these provisions provide for exceptions to this rule, namely, "the press and the public may be excluded from the courtroom during all or part of the trial in the interests of morals, public order or national security in a democratic society, if the interests of minors or the protection of the private life of the parties so require, or to the extent deemed strictly necessary by the court, when in special circumstances the publicity of the proceedings would prejudice the interests of justice." The right to a public hearing is regulated by the case law of the ECHR[3] .

At the national level, the relevant requirements for a public trial are enshrined in Article 129 of the Constitution of Ukraine, Article 11 of the Law of Ukraine "On the Judiciary and the Status of Judges", Articles 7 and 27 of the CPC of Ukraine, etc.

### MONITORING RESULTS

As during the first phase of the Project, the vast majority of court hearings attended by monitors **were open (95%)**. The courts generally facilitated the participation of the public (Project monitors, representatives of other NGOs) and the media in court proceedings in war crimes cases. As a rule, courts did not impose restrictions on broadcasting court hearings/photography and video recording. At the same time, there were cases when the court:

- refused to broadcast a court hearing for security reasons due to the fact that the trial took place near the aggressor country, but allowed a media representative to be in the courtroom (No. 588/1363/23, Trostianets District Court of Sumy Oblast);
- imposed restrictions on filming certain participants in the proceedings (defence lawyers, victims, etc.), as they were against it, but allowed filming of the court and the prosecutor, etc. (No. 367/4183/22, Irpin City Court of Kyiv Oblast).

Closed court hearings (in whole or in part) were held in criminal proceedings due to the existence of circumstances of conflict-related sexual violence, security reasons, state secrets, etc. (No. 522/6292/23, Prymorskyi District Court of Odesa; No. 361/8279/23, Brovary City District Court of Kyiv Oblast; No. 638/11148/23, from Ordzhonikidze District Court of Kharkiv to the Dzerzhynskyi District Court of Kharkiv; No. 337/2029/24, Khortytskyi District Court of Zaporizhzhia; No. 638/4038/24, Dzerzhynskyi District Court of Kharkiv; No. 361/1117/24, Brovary City District Court of Kyiv Oblast -

[3] Guide on Article 6 Criminal: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng.

likely to be considered in camera as it concerns the rape of a pregnant woman, the victim's personal data has been changed and the case is being considered in open court).

In criminal proceedings where the trial is held in closed court, no members of the public are allowed to attend. This is in line with the provisions of Article 27(4) of the CPC of Ukraine, which stipulates that only the parties and other participants in criminal proceedings may be present at a trial in camera.

With regard to the practice of resolving the issue of a closed hearing, we note the following. The courts granted motions for a closed trial if they were based on the requirements of the law. In other cases, such motions were left without a procedural response. For example:

- in one of the criminal proceedings, the prosecutor filed a motion to refer the case to the court of appeal to resolve the issue of jurisdiction, given that the criminal proceedings contained state secrets and there were no judges in the court who had access to state secrets. The motion was granted. This criminal proceeding is being considered in camera, which makes it impossible for monitors to participate (No. 638/11148/23, transferred from the Dzerzhynskyi District Court of Kharkiv to the Ordzhonikidze District Court of Kharkiv);
- in another criminal case, the prosecutor, before reading the motion for special court proceedings, asked the judge to remove all members of the public from the courtroom. The judge rejected this request, citing the requirements of the criminal procedure legislation, according to which preparatory hearings should be held in an open mode (case No. 638/11148/23, Ordzhonikidze District Court of Kharkiv).

It is worth noting that in one of the criminal proceedings, the defence counsel linked the presence of the public in the court hearing to the facts of receiving strange calls from unknown numbers to his personal phone and noted that he would file a complaint with the regional bar council to ban public participation in court hearings on war crimes (No. 638/8749/23, Dzerzhynskyi District Court of Kharkiv).

**RECOMMENDATIONS**

> To the judiciary - to coordinate the development of a standardised/uniform approach of courts to the consideration of cases in closed court proceedings. The right to a public trial, particularly in such an important category of cases, is a key element of the rule of law and democratic governance. The fact of public attention to war crimes cases should not influence the decision to hold a closed trial [recommendation remains relevant from the first phase of the Project].

## 3. TRIAL WITHIN A REASONABLE TIME

**LEGAL REGULATION**

The right to a hearing within a reasonable time without undue delay is guaranteed by Article 14 of the ICCPR and Article 6(1) of the ECHR respectively. Since the concept of reasonable time is an evaluative one, it must be considered in the context of the provisions of national legislation.

The ECtHR has repeatedly emphasised the need to comply with reasonable time limits for consideration of a case. A reasonable time limit in criminal proceedings starts from the moment when a person is charged, i.e. from the moment when the competent

authority officially notifies the applicant that he or she is accused of committing a crime. The reasonableness of the duration of the proceedings should be assessed in the light of the specific circumstances of the case and taking into account such criteria as the complexity of the case, the behaviour of the applicant and the relevant authorities. The requirements for prompt consideration of criminal proceedings in cases in which the defendant is held in custody are based on increased requirements for a reasonable time limit[4] .

At the national level, the right to a court hearing within a reasonable time is guaranteed by Article 129 of the Constitution of Ukraine, Article 7 of the Law of Ukraine "On the Judiciary and the Status of Judges", Articles 7, 21, 28, 303, 318 of the CPC of Ukraine.

**MONITORING RESULTS**

Official statistics from open sources do not allow us to trace the actual duration of consideration 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 in the second phase and decided by the courts of first instance and appellate courts in the reporting period.

The time period was determined from the moment a person was served with a notice of suspicion until the date of the relevant court decision. Therefore, the total duration of criminal proceedings covers the period of pre-trial investigation. Given these circumstances, the duration of the trial itself is shorter than the total duration of the criminal proceedings.

**Criminal proceedings completed in the court of first instance:**

No. 953/7767/22 [26.05.2022 - 30.04.2024 (1 year, 11 months, 5 days; 706 days)].
No. 748/1278/23 [17.05.2022 - 11.03.2024 (1 year, 9 months, 24 days; 665 days)].
No. 728/665/23 [02.04.2022 - 25.01.2024 (1 year, 9 months, 24 days; 664 days)].
No. 748/4122/23 [14.06.2022 - 25.03.2024 (1 year, 9 months, 12 days; 651 days)].
No. 743/380/23 [11.06.2022 - 28.02.2024 (1 year, 8 months, 18 days; 628 days)].
No. 748/2091/23 [29.08.2022 - 02.05.2024 (1 year, 8 months, 4 days; 613 days)].
No. 588/1363/23 [15.07.2022 - 14.02.2024 (1 year, 7 months, 0 days; 580 days)].
No. 748/1665/23 [21.11.2022 - 16.04.2024 (1 year, 4 months, 27 days; 513 days)].
No. 638/4210/23 [14.12.2022 - 02.04.2024 (1 year, 3 months, 20 days; 476 days)].
No. 332/441/23 [14.12.2022 - 02.01.2024 (1 year, 0 months, 20 days; 385 days)].
No. 748/3888/23 [10.04.2023 - 04.12.2023 (7 months, 25 days; 239 days)].
No. 748/3990/23 [28.03.2023 - 11.12.2023 (8 months, 14 days; 259 days)].
No. 748/4474/23 [28.03.2023 - 22.04.2024 (1 year, 0 months, 26 days; 392 days)].
No. 748/3511/23 [10.04.2022 - 29.01.2024 (1 year, 9 months, 20 days; 660 days)].
No. 733/961/23 [03.03.2022 - 25.03.2024 (2 years, 0 months, 23 days; 754 days)].
No. 754/3227/23 [12.07.2022 - 05.04.2024 (1 year, 8 months, 25 days; 634 days)].
No. 367/3486/22 [31.05.2022 - 06.03.2024 (1 year, 9 months, 5 days; 646 days)].
No. 760/10793/22 [27.05.2022 - 11.03.2024 (1 year, 9 months, 14 days; 655 days)].
No. 367/3635/22 [13.05.2022 - 11.12.2023 (1 year, 6 months, 29 days; 578 days)].
No. 939/2083/23 [24.07.2023 - 09.04.2024 (8 months, 17 days; 261 days)]
No. 361/488/23 [29.09.2022 - 23.04.2024 (1 year, 6 months, 26 days; 573 days)].
No. 370/380/23 [08.03.2022 - 06.12.2023 (1 year, 8 months, 29 days; 639 days)].
No. 369/358/23 [11.04.2022 - 08.12.2023 (1 year, 7 months, 28 days; 607 days)].

[4] See the ECHR judgment Ringeisen v. Austria [16/07/1971].

No. 369/3120/23 [10.05.2022 - 09.01.2024 (1 year, 8 months, 0 days; 610 days)].
No. 650/1870/23 [01.08.2022 - 29.04.2024 (1 year, 8 months, 29 days; 638 days)].
No. 611/229/23 [24.06.2022 - 06.12.2023 (1 year, 5 months, 13 days; 531 days)].
No. 522/6292/23 [08.12.2022 - 20.05.2024 (1 year, 5 months, 13 days; 530 days)].
No. 523/6894/23 [23.11.2022 - 01.02.2024 (1 year, 2 months, 10 days; 436 days)].

The arithmetic mean[5] of the duration of criminal proceedings from the moment a person is served with a notice of suspicion to the verdict by the court of first instance is 1 year, 6 months, 14 days.

**Criminal proceedings that have been subject to review by the courts of appeal:**

No. 748/3511/23 [10.04.2022 - 01.05.2024 (2 years, 0 months, 22 days; 753 days)].
No. 751/1303/23 [05.03.2022 - 22.01.2024 (1 year, 10 months, 18 days; 689 days)]
No. 522/3868/23 [20.07.2022 - 21.02.2024 (1 year, 7 months, 2 days, 582 days)]
No. 588/1122/23 [09.09.2022 - 11.03.2024 (1 year, 6 months, 7 days; 551 days)].
No. 748/3888/23 [10.04.2023 - 21.02.2024 (10 months, 12 days, 318 days)
No. 366/2363/22 [30.06.2022 - 26.12.2023 (1 year, 5 months, 27 days; 545 days)].
No. 588/1072/22 [19.03.2022 - 04.12.2023 (1 year, 8 months, 16 days; 626 days)

The arithmetic mean[6] of the duration of criminal proceedings from the moment a person is served with a notice of suspicion until the appellate court makes a decision is 1 year, 7 months, 11 days.

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

The courts usually **facilitate a reasonable time for** consideration of the relevant criminal proceedings and take measures to ensure an effective trial. In some cases, the monitors positively noted the absence of excessive formalism on the part of the court in organising and conducting court hearings, which contributes to a reasonable duration of criminal proceedings, etc. (No. 367/4583/23, Irpin City Court of Kyiv Oblast).

At the same time, there are both isolated polar cases where the court's behaviour/decisions, etc. are likely to have a **negative impact on the reasonableness of the** court's consideration of the case, and systemic phenomena that may form a tendency to the contrary are noted. Among other things, these are:

- lack of judicial personnel in the judicial system.

For example, there are only 2 judges in Makariv District Court of Kyiv Oblast, 3 judges in Borodianka District Court of Kyiv Oblast, etc.

Criminal proceedings No. 370/2813/23 were transferred from Makariv District Court of Kyiv Oblast to Kyiv-Sviatoshyn District Court of Kyiv Oblast due to the inability to form a panel of judges. Accordingly, the new court is considering the case as a panel. Given the different workloads of the judges on the panel, court hearings are scheduled at long intervals. The situation is similar in criminal proceedings No. 367/5761/23, which is being considered by the Irpin City Court of Kyiv Oblast;

[5] Considering the above list of criminal proceedings.
[6] Ibid.

- Increased workload of certain courts, in particular, in criminal proceedings under Article 438 of the Criminal Code of Ukraine (for example, an excessive workload in this category of cases is observed in the Irpin City Court of Kyiv Oblast).

For example, in April, almost half of the war crimes criminal proceedings monitored in the Kyiv Oblast were considered in the Irpin City Court of Kyiv Oblast, where it is difficult to assemble a panel due to the workload of judges. The above is the reason why cases are considered with a long delay both in terms of the process as a whole (one of the criminal proceedings in the Irpin City Court of Kyiv Oblast began in early 2023, and as of April 2024, the case is at the preparatory stage) and within a single day (sometimes hearings start more than 2 hours late or do not take place at all).

For example, there is a case pending in the Irpin City Court, the trial of which is systematically postponed. In particular, attention should be paid to the situation when the victims and their representatives, the prosecutor, and the accused were brought to the court hearing, and the defendant was brought from the Lukianivska pre-trial detention centre. However, the court first said that there was a slight delay in the schedule and the hearing would take place later, and later said that the hearing would be postponed because the panel of judges had not met due to the presence of one judge in another case. The court schedule analysed by the monitor showed that two judges from the panel were scheduled to consider other cases during the monitoring case. Thus, it can be assumed that when the time and date of the court hearing were set and agreed upon, the court knew in advance that it would not be possible to hold the court hearing in the monitoring case at the specified time (No. 367/2115/23).

Another example from the Irpin City Court concerns the ineffectiveness of interrogating victims due to the court's workload on the days of interrogation. The victims were summoned for interrogation and the interrogation was postponed twice (No. 367/8696/23).

- systematic postponement of court hearings.

Court hearings are postponed due to: i) the judge is in the conference room in another case, on leave, on sick leave, due to a change in the composition of the panel, etc.; ii) the absence of parties and other participants in criminal proceedings, including for unknown reasons; iii) systematic absence/replacement of defence counsels due to excessive defence workload in certain regions, logistical difficulties, non-compliance of the appointed defence counsel with the terms of the contract, etc; iv) failure to notify, improperly or insufficiently notify the accused of the criminal proceedings against them (failure to publish/improperly publish an announcement in the Uriadovyi Kurier newspaper and on the website of the Prosecutor General's Office, failure to use other effective means to notify the accused, etc.); v) prolonged air raids, rocket attacks, problems with electricity supply (the Ukrainian power system has been seriously damaged in recent period), problems with Internet connection, etc.

The focus is on such individual cases:

- in criminal proceedings No. 367/4529/22, the decision to schedule a preparatory court hearing was issued in November 2022, the first court hearing was held in January 2023, in January 2024, the motion for special court proceedings in absentia was granted, at the meeting at the end of March 2024, the preparatory proceedings were closed and the next trial date was set

for May 2024 (Irpin City Court of Kyiv Oblast). This situation is also observed in some other criminal proceedings;

- criminal proceedings No. 367/2218/23 were opened in 2022, the trial began in April 23, and as of March 2024, the representatives of the defendants have not yet been finally identified [this affects both the reasonable duration of the relevant criminal proceedings and the proper exercise of the right to defence] (Irpin City Court of Kyiv Oblast);
- In criminal proceedings No. 361/1552/23, no court hearings were held during the second phase of the Project. The frequency of court hearings is as follows: 21.12.2023, 12.02.2024, 16.04.2024 (Brovary City District Court of Kyiv Oblast).

Based on the above, it can be concluded that the court usually promotes a reasonable duration of criminal proceedings and takes measures to ensure an effective trial. At the same time, there are both individual polar cases and systemic phenomena that may form a tendency to the opposite.

**RECOMMENDATIONS**

Judicial governance bodies (High Qualification Commission of Judges of Ukraine, High Council of Justice) - to take effective measures to overcome the staffing shortage in the courts. Resolving this issue will help to solve the problem of the critical level of workload on judges.

## 4. THE RIGHT TO DEFENCE

### LEGAL REGULATION

The right to defence is guaranteed by Article 11 of the UDHR, Article 14 of the ICCPR and Article 6, paragraph 3 of the ECHR.

Special attention should be paid to the following conclusions of the ECHR[7] .

Restriction of access to a lawyer in the early stages of the proceedings is a violation[8], while prompt access to a lawyer, on the contrary, is an important counterbalance to the vulnerability of individuals, a guarantee of protection against coercion, ill-treatment by law enforcement officers, due process of law, etc.[9] . The absence of the right to legal aid during court proceedings is a violation, even if such access was granted at earlier stages of criminal proceedings[10] .

The right of a person to represent (defend) himself/herself is not absolute, since national legislation may establish mandatory participation of a legal representative (lawyer), in particular in case of committing serious or especially serious crimes[11] .

A person has the right to choose a lawyer if he or she is able to pay for his or her services[12] . A person who is provided with free legal aid does not have the right to choose a defence counsel. In cases where the legal aid defence counsel is clearly

[7] Access to a lawyer: https://ks.echr.coe.int/documents/d/echr-ks/access-to-a-lawyer .

[8] See the ECtHR judgements *Shabelnik v. Ukraine* [19/02/2009], *Geletey v. Ukraine* [24/04/2018], *Romanov v. Ukraine* [28/05/2020], *Salduz v. Turkey* [27/11/2008] (paras. 56-62).

[9] See the ECtHR judgment *Salduz v. Turkey* [27/11/2008].

[10] See the ECHR judgment *Ezeh and Connors v. the United Kingdom* [09/10/2003] (paras. 100-108).

[11] See the ECHR judgment *Kamasinski v. Austria* [23/11/1989].

[12] See the ECHR judgment *Zagorodniy v. Ukraine* [24/11/2011].

not fulfilling his/her duties, the authorities have a positive obligation to replace him/her. When deciding on the right to free legal aid, the authorities must take into account the financial capabilities of the person, the interests of justice, which include the nature and gravity of the offence, the severity of the punishment that may be imposed on the person, and other circumstances, including the ability of the accused to participate in the trial and to represent himself properly[13] .

The relevant legal regulation of the right to defence at the national level is enshrined in Article 131-2 of the Constitution of Ukraine, Article 10 of the Law of Ukraine "On the Judiciary and the Status of Judges", Articles 22, 45-54 of the CPC of Ukraine, the Law of Ukraine "On the Bar and Practice of Law", etc.

**MONITORING RESULTS**

Criminal proceedings for war crimes require the mandatory participation of a defence counsel and are considered in relation to war criminals who are either in captivity or whose whereabouts are unknown, or who are in the temporarily occupied territory of Ukraine or in the territory of the Russian Federation. Accordingly, the question arises of the appointment of defence counsels from free secondary legal aid to meet the requirements of fair justice. The monitoring **did not record any violations of the provision of free legal aid to** defendants in war crimes criminal proceedings. At the same time, there are the following isolated cases:

- criminal proceedings No. 367/2218/23 were opened in 2022, the trial began in April 23, and as of March 2024, the representatives of the accused have not yet been finally determined [this affects both the reasonable duration of the relevant criminal proceedings and the proper exercise of the right to defence - in fact, the accused has been without legal assistance for a long time] (Irpin City Court of Kyiv Oblast).

The ECHR guarantees **"effective, efficient and practical legal assistance/representation"**, **not just "the appointment of a defender"**. Accordingly, the mere appointment of a defence counsel by the free legal aid system is not sufficient to fulfil the state's obligation to provide a defence for war criminals.

Both positive and negative facts were recorded regarding the content of legal aid.

**The following proceedings can be cited as examples of an active defence position. The** defence counsels involved in the hearings demonstrate active procedural behaviour (No. 939/226/23, Borodianka District Court of Kyiv Oblast; 638/8749/23, Dzerzhynskyi District Court of Kharkiv and others).

A striking example is the well-known case of Russian soldiers who, during the occupation, forcibly detained residents of the village of Yahidne, Chernihiv Oblast, in the basement of a school - the prosecution demanded 12 years in prison, while the defence demanded acquittal and actively defended itself (No. 748/1278/23, Chernihiv District Court of Chernihiv Oblast, Chernihiv Court of Appeal).

In criminal proceedings No. 760/10793/22, the defence counsel requested a reduction in the term of imprisonment for the accused (Solomianskyi District Court of Kyiv). The monitors noted the participation of this defence counsel in other cases monitored during the first phase of the Project (No. 369/358/23, Kyiv-Sviatoshyn District Court of Kyiv Oblast), where he was the defence counsel for another Russian serviceman and also actively provided defence.

[13] See the ECHR judgment *Timergaliyev v. Russia* [14/10/2008].

In criminal proceedings No. 953/7767/22, the defence counsel's speech during the debate was well-reasoned (Kyivskyi District Court of Kharkiv).

In criminal proceedings No. 939/2083/23, the defence counsel's communications with the accused were confidential, but they were conducted by telephone. The free legal aid lawyer had limited time to meet with the accused in the pre-trial detention centre. At the same time, the defence counsel actively refuted the prosecution's arguments, requested that mitigating circumstances be taken into account, asked the court to show leniency and sentence the defendant to a lower sentence, and noted that the defendant had contributed in every way to the investigation of the criminal offence (Borodianka District Court of Kyiv Oblast).

In criminal proceedings No. 367/2276/23, the previous defence counsel periodically failed to appear at court hearings, and therefore the court applied to the free legal aid centre to replace him and bring him to disciplinary responsibility. The newly appointed defence counsel specializes in cases in absentia under Article 438 of the Criminal Code of Ukraine, is professional, punctual, and therefore the trial is proceeding without delays (Irpin City Court of Kyiv Oblast).

As part of the monitoring, a case was recorded when the defence drew attention to the existence of a conflict of interest. Namely, the regional centre of free legal aid issued a power of attorney for two defendants at once. Given that one defendant was the commander of another defendant, the defence counsel believed that she had a conflict of interest. The court ordered the regional centre of free legal aid to appoint another defence counsel (No. 367/3598/23, Irpin City Court of Kyiv Oblast). The above is in line with the ECHR case law, as defence in the face of a conflict of interest is an obvious deficiency that requires state intervention[14] .

In many cases, defence counsels pointed out that it was inappropriate to summon the defendants through the publication of summonses in the Uriadovyi Kurier newspaper and on the website of the Prosecutor General's Office, as the defendants probably do not have access to Ukrainian official Internet portals. Thus, the defence lawyers insisted on posting messages via social media in Russian Internet resources and through official Russian Internet portals, such as the Ministry of Defence of the Russian Federation, etc. In some cases, the lawyers insisted that the prosecutor's office make inquiries to the Security Service of Ukraine, which has a database of dead and captured persons, and also requested inquiries to the cyber police in order to establish contact with the accused through social media, etc. (No. 950/3703/23, Lebedyn District Court of Sumy Oblast; No. 367/2016/23, Irpin City Court of Kyiv Oblast).

There are cases where lawyers have filed motions for a non-custodial measure of restraint (No. 485/1015/23, Snihurivka District Court of Mykolaiv Oblast).

As a rule, defence counsels file well-founded appeals (No. 748/1278/23, Chernihiv Court of Appeal (first instance – Chernihiv District Court of Chernihiv Oblast); 588/1122/23, Sumy Court of Appeal (first instance – Trostianets District Court of Sumy Oblast), etc.

**On the negative side, the following can be noted:**

- systematic replacement of defence counsels due to both objective factors (excessive defence workload in certain regions, logistical difficulties, non-

[14] See the judgment of the ECtHR in *Mihai Moldoveanu v. Romania* [19/06/2012, para. 74].

compliance of the assigned defence counsel with the terms of the contract) and formal circumstances.

Thus, in criminal proceedings No. 361/10694/23, the case was under the jurisdiction of the Security Service of Ukraine. Accordingly, the appointment of lawyers cooperating with the free legal aid system, who, according to the contract, operate in Kyiv, was permissible. However, all representatives of the defence noted that in the event of further consideration of the case in the Brovary City District Court, they would not be able to effectively represent the interests of the accused, in particular due to the overload and the difficult and long journey to the city, etc. The judge granted the relevant motions and adjourned the preparatory hearing. The fact that the defence lawyers file applications for their replacement delays the consideration of the case, but this is not the fault of the defence lawyers, but a complex problem caused by objective circumstances. This has been recorded in criminal proceedings: No. 766/10206/23, Kherson City Court; No. 363/3994/23, Vyshhorod District Court of Kyiv Oblast; No. 367/1734/23, Irpin City Court of Kyiv Oblast; No. 361/9085/22, Brovary City District Court of Kyiv Oblast; No. 363/581/24, Vyshhorod District Court of Kyiv Oblast, etc.

Formal re-appointment of defence counsels does not ensure effective, real legal aid (no. 367/2276/23, Irpin City Court of Kyiv Oblast; no. 729/1125/23, Bobrovytsia District Court of Chernihiv Oblast). Failure of the state to provide sufficient time for the preparation of a lawyer for the defence does not guarantee real legal aid to the defendant[15] .

- systematic and/or unexplained absence of defence counsels at court hearings (no. 367/3395/23, Irpin City Court of Kyiv Oblast; no. 766/759/23, Kherson City Court; no. 729/1125/23, Bobrovytsia District Court of Chernihiv Oblast; no. 766/1133/24, Kherson City Court of Kherson Oblast; no. 644/685/24, Ordzhonikidze District Court of Kharkiv; No. 370/1757/23, Makariv District Court of Kyiv Oblast; No. 369/6336/23, Borodianka District Court of Kyiv Oblast; No. 363/6664/23, Vyshhorod District Court of Kyiv Oblast).

For example, in criminal proceedings No. 363/872/23, the defence counsel failed to attend the court hearing three times in a row because he was participating in another court hearing. The defence counsel was informed in advance of the need to postpone the court hearing (Vyshhorod District Court of Kyiv Oblast). A similar situation was observed in criminal proceedings No. 367/5761/23 (Irpin City Court of Kyiv Oblast).

- passive participation of defence counsels in court hearings; lack of evidence to defend the accused; lack of interest in getting acquainted with the case file, etc.

A lawyer in criminal proceedings No. 939/2083/23 was constantly looking at his phone during one of the court sessions (Borodianka District Court of Kyiv Oblast).

In criminal proceedings No. 521/14869/23, the defence was fully granted the right to question witnesses and the victim, but the defence had no questions (Malynovskyi District Court of Odesa).

In criminal proceedings No. 369/3120/23, the defence counsel noted during the debate that he could not find evidence to defend the accused, and asked the court

[15] See the ECtHR judgements in *Daud v. Portugal* [21/04/1998, para. 42], *Bogumil v. Portugal* [07/10/2008, paragraphs 27, 49], *Sannino v. Italy* [27/04/2006, paras. 10, 11].

to "make a lawful decision and impose a sentence in accordance with the provisions of the Criminal Code of Ukraine". After the court retired to the deliberation room, the defence counsel did not stay to hear the verdict against his client (Kyiv-Sviatoshyn District Court of Kyiv Oblast).

In case No. 370/1757/23, the victim's representative stressed that the defence counsel had not shown any interest in getting acquainted with the case file attached by the prosecution for two months. The defence counsel frankly stated that he did not have time to travel to the courtroom (he connected to the hearing from his own car) and, if the court insisted on his personal presence at the hearing, he would request the replacement of the defence counsel. The defence counsel joined the hearing later, all the participants in the trial were waiting for him, and disconnected earlier. The defence counsel noted that the cross-examination of witnesses and victims would be carried out via videoconference, despite the fact that the court had offered to come at least for the interrogation (Makariv District Court of Kyiv Oblast), etc;

- defence counsels are late or leave court hearings before they are completed due to involvement in other cases or for unknown reasons (No. 369/3120/23, Kyiv-Sviatoshyn District Court of Kyiv Oblast);
- agree with the prosecutors and leave the prosecutors' motions to the court's discretion, without raising any objections (No. 366/2305/23, Ivankiv District Court of Kyiv Oblast);
- communication with the accused is carried out remotely (by phone) so as not to waste time for visits to the SIZO (pre-trial detention centre) (No. 939/2083/23, Borodianka District Court of Kyiv Oblast).
- unofficially declare their interest in a speedy conviction (No. 367/8744/23, Irpin City Court of Kyiv Oblast);
- the involvement of separate defence counsels for each of the accused in one criminal proceeding involving several persons makes it difficult for them to attend the trial at the same time due to different work schedules and workloads.

The mere appointment of a defence counsel by the free legal aid system is not sufficient to fulfil the state's obligation to the right to defence. Therefore, the effectiveness, reality and practicality of legal aid in war crimes cases is an area for improvement.

Failure to provide effective defence of the accused raises reasonable doubts as to the proper enforcement of the right to a fair trial. According to the concept of independence of counsel, the state is generally not responsible for deficiencies in the actions of defence counsel. Positive obligations of the state arise in the event of a defence counsel's failure to fulfil his or her duty. The passive behaviour of the defendant cannot relieve the state of its obligation to guarantee effective legal defence. In cases where the deficiencies in the defence are clear and obvious, the defendant should not actively complain in order to draw the attention of the state to these deficiencies.[16] This issue is of particular relevance in ensuring the right to defence in war crimes cases considered in the absence of the accused - in absentia.

[16] See the ECtHR judgements in *Sannino v. Italy* [27/04/2006], *Cuscani v. United Kingdom* [24/09/2002].

Special attention should be paid to the **moral dilemma and security risks for lawyers in war crimes cases**. The following was recorded during the monitoring:

- courts impose restrictions on the filming of defence counsels and victims (they are against it on moral and/or security grounds), although the court allows filming of the trial in general (No. 523/224/23, Suvorovskyi District Court of Odesa; No. 367/4183/22, Irpin City Court of Kyiv Oblast);
- In one of the criminal proceedings, the interpreter involved asked the defence counsel whether he would really defend a war criminal and added that he probably would not, because if he did, he had no "national consciousness" (No. 939/2083/23, Borodianka District Court of Kyiv Oblast);
- in another criminal proceeding, the defence counsel made professional comments on the prosecutor's motion and actively participated in the discussion and defence, but when the judge went to the conference room, she told the prosecutor "sorry for the remarks, but this is my job" (No. 367/8696/23, Irpin City Court of Kyiv Oblast);
- there was an isolated case when a defence counsel linked the presence of the public in court with the facts of receiving strange calls from unknown numbers to his personal phone and noted that he would file a complaint with the regional bar council to ban public participation in court hearings on war crimes (No. 638/8749/23, Dzerzhynskyi District Court of Kharkiv);
- during public events with advocates and members of the public on their participation in criminal proceedings under Article 438 of the Criminal Code of Ukraine, advocates often noted security risks and interference with private and personal life due to their participation as defence counsels in these criminal proceedings, etc.

On the basis of the above, it can be concluded that the right to defence of defendants in war crimes cases requires protection. The mere appointment of a defence counsel by the free legal aid system is not sufficient to fulfil the state's obligation to the right to defence. Therefore, the effectiveness, reality and practicality of legal aid in war crimes cases is an area for improvement.

**RECOMMENDATIONS**

> The project recommends that the National Bar Association of Ukraine, the Higher School of Advocacy of the National Bar Association of Ukraine, and the Coordination Centre for Free Legal Aid provide educational and training opportunities for lawyers in war crimes cases and consider the feasibility of specialising lawyers to quickly build their capacity in this category of cases.
>
> Given the moral dilemma and existing security risks for lawyers in war crimes cases, we draw attention to the need for an appropriate response from the state to address these issues: educational campaigns on not identifying the client with the lawyer[17] ; psychological support for lawyers; ensuring effective security measures for lawyers[18] , etc.

[17] https://www.helsinki.org.ua/articles/p-iat-problem-na-shliakhu-pokarannia-voiennykh-zlochyntsiv-shcho-proponuiut-suddi-prokurory-ta-advokaty/

[18] https://drive.google.com/file/d/157VKl5jGyMgwbQkEo8OxKK9ArC-ml6mz/view

## 5. PROCEEDINGS IN ABSENTIA

**The bulk of** criminal proceedings for war crimes are considered **in absentia**.

According to the monitoring results, in 4 court cases (2%) concerning war crimes that were considered by courts during the reporting period, the accused were present [No. 939/2083/23, Borodianka District Court of Kyiv Oblast; No. 485/1015/23, Snihurivka District Court of Mykolaiv Oblast; No. 367/2115/23, Irpin City Court of Kyiv Oblast; No. 367/7326/23, Irpin City Court of Kyiv Oblast].

All other cases (98 per cent) were considered in the framework of special court proceedings (in absentia). This is due to the fact that most of the defendants are not on the territory of Ukraine and are in the temporarily occupied territory of Ukraine or in the territory of the Russian Federation and their whereabouts are unknown.

**LEGAL REGULATION**

Article 5, paragraph 2, and Article 6, paragraph 3, subparagraph (a) of the ECHR, as well as Article 14, paragraph 3, subparagraph (a) of the International Covenant, provide that "everyone charged with a criminal offence shall be informed promptly and in detail, in a language he or she understands, of the nature and grounds of the charges against him or her".

The ECtHR illustrates the relevant standard in its case law and points out the need to pay special attention to informing the defendant of the "charges". This gives the defendant the right to be informed not only about the "reason" for the charge, i.e. the actions he allegedly committed and on which the charge is based, but also about the "nature" of the charge, i.e. the legal qualification given to these actions. The provision of full and detailed information about the charges against a person is an important prerequisite for ensuring the fairness of the proceedings[19] .

According to Article 14 (3) (d) of the International Covenant, everyone is entitled to be tried in his own presence in any criminal charge against him. Article 6 of the ECHR does not explicitly provide for the right to be present at one's own trial, but the subject matter and purpose of this provision indicate that this right is of key importance in ensuring the right to a fair trial. However, this right is not absolute, and this requirement of the ECHR will not be violated in the absence of the accused, provided that: i) the accused has expressly or impliedly waived this right; ii) the state has demonstrated diligent but unsuccessful attempts to serve notice; iii) the deficiencies of the proceedings in absentia are remedied by guaranteeing the convicted person the right to a review of the sentence or a new trial.

Resolution (75)11 of the Committee of Ministers of the Council of Europe of 19 January 1973 on the criteria governing proceedings in the absence of the accused stipulates that the proceedings may be conducted in the absence of the accused: i) provided that the person is notified of the proceedings in good time and is given sufficient time to prepare a defence; ii) there is proof of actual receipt of such notification; iii) provided that the proceedings are conducted in the general procedure and the defence is given the right to intervene in the process; iv) provided that the

**The following conclusions of the ECtHR require special attention.**

In the judgment of **the** ECHR in ***Sejdovic v. Italy*, the ECtHR** found a violation of Article 6 of the ECHR in view of the fact that the court had delivered a verdict in absentia

[19] See the ECtHR judgements *Mattoccia v. Italy* [25.07.2000] (para. 59), *Penev v. Bulgaria* [07.01.2010] (paras. 33, 42).

against the applicant, who could not be found and was declared a fugitive. The applicant had not been notified of the criminal prosecution, and further had no effective means provided for by law to renew the time limit for filing an appeal or for a new trial. The ECtHR noted that where, as in the present case, a person has been found guilty as a result of proceedings which have led to non-compliance with the requirements of Article 6 of the ECHR, a new trial or reopening of the proceedings at the request of the person concerned is, in general, an appropriate remedy for the violation found[20] .

Under the circumstances of another **ECHR case Sanader v. Croatia, the** applicant was charged and sentenced to 20 years' imprisonment for committing war crimes against prisoners of war (the applicant shot twenty-seven prisoners of war, killing twenty-two and seriously injuring five of them). At the time of the proceedings before the domestic courts, the applicant was living in the occupied parts of Croatia and it was impossible to establish his whereabouts. Later, the applicant learned of his conviction and applied to the Croatian courts to reopen the proceedings. His application was rejected because he was residing in Serbia and was not available to the Croatian authorities. According to Croatian law, in order to re-examine the applicant's case, he had to appear in court and provide information about his address of residence in Croatia, presumably for the purpose of choosing a preventive measure, if necessary, in essence, giving up his freedom. In its judgement, the ECtHR noted that i) the right to be present at one's own trial is not absolute in itself, and criminal proceedings in absentia do not constitute an unlawful interference with the right to a fair trial; ii) at the same time, the state must guarantee and ensure fair trial standards, in particular in terms of retrial; iii) taking into account the peculiarities of this case, which concerned serious charges of war crimes, the ECtHR considered that the requirement to appear in court (actually surrender to custody) in order to exercise the right to retrial was unreasonable and disproportionate from a procedural point of view. In this case, the ECtHR found a violation of Article 6 of the ECHR and ordered Croatia to pay the applicant, a war criminal, EUR 4,000 in non-pecuniary damage + EUR 2,500 in court costs[21] .

At the national level, the in-absentia procedure was introduced by the Law of Ukraine No. 1689-VII of 7 October 2014 "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on the Inevitability of Punishment for Certain Crimes Against the Fundamentals of National Security, Public Safety and Corruption Offences". The full-scale war and the commission of numerous war crimes necessitated amendments to the criminal procedure legislation, in particular in terms of legislative regulation of the specifics of special investigation of criminal offences.

Pursuant to Article 139(5) of the CPC of Ukraine, failure to appear when summoned by an investigator, prosecutor or court summons of an investigating judge or court (failure to appear without a valid reason more than twice) by a suspect or accused person who is on the international wanted list and/or who has left and/or is located in the temporarily occupied territory of Ukraine or in the territory of a state recognised by the Verkhovna Rada of Ukraine as an aggressor state is grounds for a special pre-trial investigation or special court proceedings.

According to the current CPC of Ukraine, the awareness of a person subject to proceedings in absentia is determined by the fact of publication of the relevant

[20] See the ECHR judgment *Sejdovic v. Italy* [01.03.2006].

[21] See the ECHR judgment *Sanader v. Croatia* [12.02.2015].

announcement in the Uriadovyi Kurier and on the website of the Office of the Prosecutor General or the court.

**MONITORING RESULTS**

As a rule, summonses in war crimes criminal proceedings are carried out by publishing a summons in the Uriadovyi Kurier newspaper and on the website of the Office of the Prosecutor General and the court. The effectiveness of such notification is questionable, as Russian suspects/defendants are unlikely to have access to Ukrainian official internet portals. In such cases, the defence requests (or should have requested) the possibility of notification through social networks on Russian Internet resources, through official Russian Internet portals such as the Ministry of Defence of the Russian Federation, etc. (No. 950/3703/23, Lebedyn District Court of Sumy Oblast; No. 367/2016/23, Irpin City Court of Kyiv Oblast).

In most cases, notifications of summons in the media and on official Internet resources are also made in the language understood by the accused (Russian). There are cases when notices are made exclusively in Ukrainian, which is not understood by Russian suspects/accused (No. 370/399/23, Makariv District Court of Kyiv Oblast; No. 367/3121/24, Irpin City Court of Kyiv Oblast; No. 367/4583/23, Irpin City Court of Kyiv Oblast). As a rule, the defence draws attention to the imperfection of such notifications (No. 367/8696/23, Irpin City Court of Kyiv Oblast).

Due to failure to notify, improper or insufficient notification of the accused of the criminal proceedings against them (failure to publish/improperly announce in the Uriadovyi Kurier newspaper and on the website of the Prosecutor General's Office, failure to use other effective means to notify the accused, etc.

Particular attention should be paid to the facts when the state authorities took other measures to establish the whereabouts of the accused and to notify the accused of the trial.

**Among the "other" measures to establish the whereabouts of the accused were the** following:

- Appeal to the Coordination Headquarters for the Treatment of Prisoners of War regarding the defendant's captivity or liquidation by the Ukrainian defence forces (No. 367/4529/22, Irpin City Court of Kyiv Oblast; No. 367/2497/23, Irpin City Court of Kyiv Oblast; No. 766/7468/23, Kherson City Court; No. 367/4583/23, Irpin City Court of Kyiv Oblast);
- establishing the location or contacts of the accused or his family members in social networks, messengers, etc. (No. 766/7468/23, Kherson City Court);
- there are cases where the defence insisted on requests to the Security Service of Ukraine, which has a database of dead and captured persons, and to the cyber police, in order to establish contact with the accused through social media, etc. (No. 367/2016/23, Irpin City Court of Kyiv Oblast; No. 367/2769/23, Irpin City Court of Kyiv Oblast).

An isolated remark was recorded that the Coordination Headquarters for the Treatment of Prisoners of War was reluctant to provide information and stressed that this information was of limited access (No. 367/4583/23, Irpin City Court of Kyiv Oblast).

**Among the "other" possible and reasonable measures aimed at effectively notifying the accused of the** trial are the following:

- sending an electronic notice (summons) to the official email address of the Federal Security Service of the Russian Federation (No. 521/14869/23, Malynovskyi District Court of Odesa);
- sending an electronic notice (summons) to the email address of the accused (No. 521/14869/23, Malynovskyi District Court of Odesa; 760/10793/22, Solomianskyi District Court of Kyiv);
- sending an SMS summons (No. 367/4183/22, Irpin City Court of Kyiv Oblast; No. 950/3703/23, Lebedyn District Court of Sumy Oblast);
- sending a summons to the last known place of residence of the accused (No. 366/2305/23, Ivankiv District Court of Kyiv Oblast);
- sending a message to the email address where the accused works.

In criminal proceedings No. 185/10275/22, the summons was sent to the work email address (Pavlohrad City District Court of Dnipro Oblast).

In criminal proceedings No. 185/3969/23, the accused is the head of the department of the military commissariat in Luhansk, which is a structural unit of the Federal State Institution "Military Commissariat of the LPR". The accused is permanently located in the temporarily occupied territory of Luhansk Oblast, mainly in Luhansk. The accused was notified of the summons to the court hearing and the existence of criminal proceedings against him with additional measures taken by the prosecution. In particular, the prosecutor provided confirmation of sending the summons by e-mail to an e-mail address that, as established by the results of the court's order, belongs to the so-called "Federal State Institution "Military Commissariat of the Republic of Latvia" (Pavlohrad City District Court of Dnipropetrovsk Oblast).

- in one of the criminal proceedings, the accused is the Deputy Minister of the Ministry of Emergency Situations of the Russian Federation, who travelled to Turkey as part of a delegation from the Russian Federation to address the consequences of the disaster. Due to the fact that he was put on the international wanted list, the prosecutor's office sent a request to Turkey to extradite him to Ukraine. Turkey ignored Ukraine's request (No. 939/1435/22, Borodianka District Court of Kyiv Oblast);
- in another criminal case, the victim's representative contacted the defendant using the mobile application Telegram and sent him information about the criminal proceedings against him, indicating the place and time of the trial. The defendant replied: "I'll try to make it". Accordingly, the latter is aware of the case and his procedural rights (No. 367/2276/23, Irpin City Court of Kyiv Oblast).

It should be noted separately that it is necessary to consider the adversarial nature of the process and procedural equality of the parties in war crimes cases, which are usually considered in absentia, as noted above. All participants in these criminal proceedings are undoubtedly under pressure from local communities/society to ensure convictions and the most severe punishments for the accused. At the same time, it is necessary to comply with fair trial standards and ensure appropriate safeguards. There were no cases of judges showing any bias in favour of one of the parties.

**RECOMMENDATIONS**

> Critical attention should be paid to the procedure for notifying a suspect/accused of criminal proceedings against him/her. It is advisable to ensure through legislative initiatives and/or practice that the state (prosecution, court) complies not only with the formal requirements of the law on the publication of summonses in the media and on the Internet, but also takes all possible and reasonable measures aimed at effectively notifying the suspect/accused of criminal proceedings against him/her (e.g., by e-mail, social media, messengers, telephone, etc.).
>
> Given that the effectiveness of notifying the suspect/accused of the consideration of criminal proceedings against him/her is questionable and presupposes a likely review of the relevant criminal proceedings in the future, the Project recommends improving the legislative regulation of the mechanism for reviewing a court verdict in absentia or developing a separate procedure for a new review of this category of cases.

## 6. THE RIGHT TO TRANSLATION

**LEGAL REGULATION**

Article 14 of the ICCPR and Articles 5 and 6 of the ECHR guarantee everyone in the trial of any criminal charge against him the right to be informed promptly and in detail, in a language he understands, of the nature and cause of the charges against him and to have the assistance of an interpreter, free of charge, if he does not understand or speak the language used in court.

At the national level, the right to translation is ensured by Article 10 of the Constitution of Ukraine, Article 12 of the Law of Ukraine "On the Judicial System and Status of Judges", and Article 29 of the CPC of Ukraine.

**MONITORING RESULTS**

During the implementation of the Project, no reasons were found to conclude that the right to translation had been violated.

As a rule, summonses in criminal proceedings on war crimes are duplicated in a language understood by the accused (Russian). There are cases when notices are drawn up exclusively in Ukrainian, which is not understood by Russian suspects/accused (No. 370/399/23, Makariv District Court of Kyiv Oblast; No. 367/3121/24, Irpin City Court of Kyiv Oblast; No. 367/4583/23, Irpin City Court of Kyiv Oblast). As a rule, the defence draws attention to the imperfection of such notifications (No. 367/8696/23, Irpin City Court of Kyiv Oblast).

**Interpreters were involved in** those criminal proceedings concerning war crimes that were considered by courts with the accused present at the time of the Project implementation:

- In case No. 939/2083/23, the accused was provided with an interpreter. However, there are comments about the professionalism and impartiality of the translation. With regard to quality of the translation , the interpreter asked the defence counsel for terminology. Furthermore, the interpreter did not translate everything that the court and the parties to the criminal proceedings said. In terms of impartiality, the interpreter asked the defence counsel whether he would really defend a war criminal and added that he probably would not,

because if he did, he had no "national consciousness". Subsequently, a new interpreter was appointed, who was performs his duties effectively and professionally. The defence counsel confirmed that all court documents were translated into Russian (Borodianka District Court of Kyiv Oblast);

- We would like to make a separate mention of case No. 939/2099/23, which is being considered in absentia. However, the court asked the prosecutor to engage an interpreter for the witness, who is a serviceman of the Russian Federation and is in Ukrainian captivity and is being held in a pre-trial detention centre (Borodianka District Court of Kyiv Oblast).

**RECOMMENDATIONS**

> The judiciary should ensure that interpreters are familiar with the legal terminology used in proceedings and have other necessary skills,
>
> The judiciary should ensure the prompt replacement of appointed interpreters who do not perform their duties properly or do not perform them at all.

## 7. THE RIGHT TO LIBERTY AND SECURITY OF PERSON

**LEGAL REGULATION**

This right is guaranteed by Article 5 of the ECHR, Article 9 of the International the ICCPR and Article 9 of the UDHR. As per these standards , everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty except in such cases and in accordance with the procedure established by law. Anyone arrested or detained shall be brought promptly before a court. The court shall determine without delay the lawfulness of the detention and order the release if the detention is unlawful. Anyone who is the victim of an arrest or detention carried out contrary to the provisions of the law shall have the right to compensation.

The relevant legal regulation at the national level is enshrined in Article 29 of the Constitution of Ukraine, Articles 7 and 12 of the CPC of Ukraine, etc.

**MONITORING RESULTS**

During the implementation of the Project, no reasons were found to conclude that the right to liberty and security of person had been violated.

The monitors recorded the imposition of a preventive measure **in the form of detention only**. In many criminal proceedings, the measure of restraint in the form of detention was not imposed on the accused due to their absence from the territory of Ukraine.

In some cases, lawyers filed motions for non-custodial measures of restraint (No. 485/1015/23, Snihurivka District Court of Mykolaiv Oblast; No. 367/2276/23, Irpin City Court of Kyiv Oblast). For example, in case No. 367/2276/23, the prosecutor filed a motion for a preventive measure in the form of detention. The defence counsel objected and said that the mere fact that the defendant was on the territory of the Russian Federation and was put on the wanted list could not indicate that he was absconding, and there was no sufficient evidence that the defendant was aware of the suspicion. The court granted the prosecution's request for a preventive measure in the form of detention.

Thus, **during the** implementation of the Project, no reasons were found to conclude that there had been a violation of the right to liberty and security of person. Although there may be reports of torture, inhuman or degrading treatment in the public

domain, the monitors did not identify any such cases in the monitored cases in which the defendant was present.

**RECOMMENDATIONS**

Absent.

## 8. OTHER ELEMENTS OF THE RIGHT TO A FAIR TRIAL AND RELATED HUMAN RIGHTS AND FREEDOMS.

Based on the results of the Project implementation [of the first and second phases], no specifics of implementation were recorded and no facts were established to conclude that violations occurred:

- the right to an independent and impartial court. The court appeared to be objective and impartial;
- the right to a public and reasoned court decision. A detailed analysis of court decisions made during the Project implementation period is provided below in the section "Analysis of Court Decisions";
- the principle of presumption of innocence.

Given that court hearings are held in the context of a full-scale war, the Project also paid attention to the safety of participants in the proceedings. Since monitoring and court proceedings are carried out in the context of military operations throughout Ukraine, the safety of participants in court proceedings cannot be guaranteed. This is especially true in the regions that are under constant shelling (Kherson, Zaporizhzhia, Kharkiv, Odesa, Mykolaiv and other regions). At the same time, even in the Kyiv Oblast, travelling to court was repeatedly made impossible by air raids and shelling. It is also worth noting that not all court buildings have shelters, which creates additional security risks. As a result, different practices have emerged regarding compliance with the rules for visiting courts during air raid alerts: some courts continue to hear cases during air raid alerts, including in shelters, while others take a break.

Among the positive aspects of the monitoring, it is worth noting the attention of some judges and prosecutors to the Project. In some cases, prosecutors helped with logistical problems to ensure that monitors were present at as many hearings as possible in war crimes cases.

**RECOMMENDATIONS**

The judiciary should ensure the availability of shelters in court premises within existing facilities.

## V. ANALYSIS OF COURT DECISIONS

During two stages of court decision monitoring, the majority of verdicts under Art. 438 of the Criminal Code was adopted by the courts of Chernihiv Oblast – 33 verdicts (40%). The share of verdicts adopted by the courts of Kyiv Oblast is 17% (14 verdicts), Kyiv city – 15% (12 verdicts), Poltava Oblast – 7% (6 verdicts), Sumy Oblast – 6% (5 verdicts), Odesa and Kharkiv Oblasts – 5% (4 verdicts each), Dnipropetrovsk Oblast – 4% (3 verdicts), Zaporizhzhia Oblast – 3% (2 verdicts), Kherson Oblast – 2% (1 verdict).

Chernihiv District Court of Chernihiv Oblast is the absolute record holder in terms of the number of verdicts adopted under Article 438 of the Criminal Code. During the first and second stages of court decision monitoring, this court adopted 21 verdicts.

During the second stage of court decision monitoring under Art. 438 of the Criminal Code, the number of oblasts of Ukraine where courts adopted such verdicts expanded (Kherson, Zaporizhzhia, Odesa, Kharkiv Oblasts).

During the second stage of monitoring, **35 verdicts** were analysed, all of which (100%) were guilty verdicts.

### LEGAL QUALIFICATION OF WAR CRIMES

The qualification under Art. 438 of the Criminal Code was carried out both with reference to part 2 of Art. 28 of the Criminal Code (committing an offence by a group of persons by prior conspiracy) and without such reference.

In 21 verdicts, the actions of the convicts were qualified only under part 1 of Art. 438 of the Criminal Code, and in 16 verdicts with a reference to part 2 of Art. 28 of the Criminal Code. Usually, the actions of a person were qualified under part 1 or part 2 of Art. 438 of the Criminal Code in those verdicts that convicted only one person (for instance, the verdict of the Chernihiv District Court of Chernihiv Oblast of 25 March 2024 in case No. 748/4122/2).

In the verdict of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23, the qualification was made under part 1 of Art. 28 – part 1 of Art. 438 of the Criminal Code. In other words, the convict was charged with committing a criminal offence by a group of persons without prior conspiracy.

In many verdicts, when the actual circumstances of the case show that the convicted person violated the laws and customs of war together with other service members unidentified by the investigation, their actions are qualified under parts 1 or 2 of Art. 438 of the Criminal Code, although the objective side was, respectively, performed jointly with other accomplices, other service members of the Russian Armed Forces unidentified by the investigation (e.g., the verdict of the Chernihiv District Court of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22).

Thus, the verdict of the Chernihiv District Court of Chernihiv Oblast of 2 May 2024 in case No. 748/2091/23 states that according to the information provided by the Chernihiv Oblast District Division of the Directorate of the Security Service of Ukraine, it was not possible to identify another serviceman who was with the convict at the scene during the investigative (search) actions.

According to verdicts of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23 and the Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23, Article 438 of the Criminal Code was applied several times (i.e., qualification was a summary conviction). By the verdict of the Chernihiv

District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23, the actions of the convict were classified under part 1 of Art. 438; part 2 of Art. 28 – part 1 of Art. 438; part 2 of Art. 438 of the Criminal Code, and by the verdict of the Suvorovskyi District Court of Odesa of 27 March 2024, in case No. 523/224/23, two persons were convicted (one person under part 2 of Art. 28 – part 1 of Art. 438 of the Criminal Code, and second person under part 1 of Art. 438; part 2 of Art. 28 – part 1 of Art. 438 of the Criminal Code).

By the verdict of Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23, the first person whose actions were qualified under part 2 of Article 28 – part 1 of Article 438 of the Criminal Code was charged with ordering the commission of other violations of the laws and customs of war provided for in international treaties ratified by the Verkhovna Rada of Ukraine, committed by a group of persons by prior conspiracy, and the second person, whose actions were qualified under part 1 of Article 438, part 2 of Article 28 – part 1 of Article 438 of the Criminal Code, was charged with ordering the commission of other violations of the laws and customs of war provided for in international treaties ratified by the Verkhovna Rada and ordering the commission of other violations of the laws and customs of war provided for in international treaties ratified by the Verkhovna Rada, by a group of persons by prior conspiracy.

As can be concluded from the verdict of the Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23, in each case, the accused were not acting alone but in complicity with unidentified Russian Federation, military service members who were ordered to violate the laws and customs of war. That is, in each of these cases, there is a violation of the laws and customs of war committed in complicity.

Krasnohrad District Court of Kharkiv Oblast, in its verdict of 6 December 2023 in case No. 611/229/23, convicted the Russian Federation service members under part 2 of Art. 15, part 2 of Art. 28, and part 2 of Art. 438 of the Criminal Code. Under case circumstances, the company commander of a mechanised infantry battalion, while exercising unit command, ordered and directly fired at a civilian car with two civilians in it, resulting in the driver's wife remaining unharmed and the driver sustaining severe physical injuries. The qualification of the convicted service member's actions is incomplete, as it does not take into account the fact that the convict's actions constitute a perfect combination of crimes under part 1 of Article 438 (damage to property not caused by military necessity, ill-treatment of the population – aimed shots at the victims) and part 2 of Article 15 – part 2 of Article 438 of the Criminal Code.

By the verdict of the Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22, a service member of the Russian Armed Forces was convicted only under part 2 of Article 438 of the Criminal Code, although based on the actual circumstances of the case, he ordered the shooting of about ten cars belonging to civilians, which resulted in the death of one victim, and severe physical injuries to two other victims, and trivial injuries causing short-term health problems. The court classified the actions of the Russian Armed Forces service member under part 2 of Art. 438 of the Criminal Code.

## VICTIMS OF WAR CRIMES

In all but one of the verdicts, victims directly affected by the criminal offence were civilians. Detailed characteristics and identification of victims as civilians are provided in the verdict of the Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22.

By the verdict of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23, 368 victims were identified as civilians and protected by IHL, including ten civilians whose bodies, after the onset of biological death, were not immediately taken out of the school basement, but stayed among the living until the Russian Federation military allowed them to be taken outside, which was causing significant mental and moral suffering to the victims.

By the verdict of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23, the victim is a prisoner of war.

Victims in some verdicts were minors/juveniles (verdicts of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23, verdicts of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23, of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22, of the Prymorskyi District Court of Odesa of 20 May 2024 in case No. 522/6292/23).

For example, according to the verdict of the Chernihiv District Court of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22, a minor and an adult were victims of ill-treatment of civilians in the form of illegal confinement and threats of violence by the Russian Armed Forces.

Gender-based violence was committed against victims according to verdicts of the Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024, in case No. 650/1870/23, in which victims were women who had been repeatedly raped by service members of the Russian armed forces.

By the verdict of the Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22, the Russian Federation service members caused physical injuries and death to two Russian Federation service members who helped civilians escape from the shelling. However, respectively, such service members of the Russian Armed Forces are not victims of the crime under Art. 438 of the Criminal Code, as they had the status of combatants. The service member of the Russian Armed Forces who suffered physical injuries had the status of a witness in the criminal proceedings, and a number of investigative actions were carried out with him, including interviews and identification from photographs. According to a response signed by the Secretary of the Coordination Headquarters for the Treatment of Prisoners of War, this Russian Federation service member was handed over to the aggressor state during an exchange.

### SUBJECT OF WAR CRIMES

Verdicts analysed convicted **56 individuals**, including **52 citizens** of the Russian Federation and **four citizens** of Ukraine (for example, the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23).

On the basis of gender, **55 people** were men, and **one** was a woman (the verdict of the Desnianskyi District Court of Kyiv of 5 April 2024 in case No. 754/3227/23).

On the basis of professional status and military function, most convicts were service members of the Russian Federation, other convicts, citizens of Ukraine, include a service member of the illegal armed group of the "DPR" ("People's Militia of the "DPR") (1 person), a judge of the Yevpatoriia City Court of the Autonomous Republic of Crimea (1 person) (the verdict of the Desnianskyi District Court of Kyiv of 5 April 2024 in case No. 754/3227/23), "advisor to the head of the "DPR", head of the illegal armed group (IAG) of the "DPR" "Kalmius Battalion" (part of the Russian armed forces) (1

person) (the verdict of the Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23), a person appointed by the occupation authorities as head of the illegally established "Nova Kakhovka Military-Civil Administration" (1 person) (the verdict of the Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23).

According to certain verdicts, service members of the Russian Armed Forces were appointed to perform certain organisational and administrative functions. Thus, according to the verdict of the Zavodskyi District Court of Zaporizhzhia of 2 January 2024 in case No. 332/441/23, the subject of the crime is a service member of the Makhachkala OMON police unit of the Rosgvardia Department of the Republic of Dagestan, who "held the position" of deputy military commandant of the occupation administration of Vasylivka, Zaporizhzhia Oblast.

For objective reasons, verdicts do not contain information about previous convictions of those convicted of intentional crimes. Only according to the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023, in case No. 522/3868/23, the convict had one previous conviction under the verdict of the Halytskyi District Court of Lviv of 22 July 2022 under part 1 of Art. 111, part 1 of Art. 258-3, part 2 of Art. 260 of the Criminal Code.

## CHARACTERISATION OF CONTEXTUAL CIRCUMSTANCES

Many of the analysed verdicts contain an analysis of contextual circumstances in Ukraine that preceded the outbreak of the international armed conflict (in the terminology of international treaties), such as the formulation of the intention of the Russian Federation's top leadership to annex a part of Ukraine's territories, starting in 2013, the temporary occupation of the Autonomous Republic of Crimea, the creation of the "LPR" and "DPR" terrorist organisations, the deployment of Russian troops to the Russian-Ukrainian border, the recognition of the "independence" of the "LPR" and "DPR" by the political leadership of Russia, the announcement of Putin's decision to launch a "special military operation" on the territory of Ukraine, etc. Each of these events is described in great detail.

This was the case in 12 verdicts (e.g., verdicts of the Saksahanskyi District Court of Kryvyi Rih of the Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23, Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22, Chernihiv District Court of Chernihiv Oblast of 2 May 2024 in case No. 748/2091/23).

**In most verdicts, courts avoid such a detailed description of contextual circumstances, focusing on the following:**

– indication of an ongoing armed conflict (the verdict of the Suvorovskyi District Court of Odesa of 30 October 2023 in case No. 523/8377/23);

– description of contextual circumstances, starting from 24 February 2022 (verdicts of Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23) or from 19 February 2014 (verdicts of the Chernihiv District Court of Chernihiv Oblast of 25 March 2024 in case No. 748/4122/23, Chernihiv District Court of Chernihiv Oblast of 11 December 2023, Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024 in case No. 650/1870/23);

– description of the occupation of the settlement on the territory of which a war crime was committed (verdicts of Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23), entry of the convicted service member of

the Russian Federation into the territory of an occupied settlement of Ukraine (verdicts of the Suvorovskyi District Court of Odesa of 31 January 2024 in case No. 523/6894/23*)*.

Some courts, in their decisions describing contextual circumstances, refer to the Decision of the Appeals Chamber of the ICTY in the case of Duško Tadić of 2 October 1995 ("The Prosecutor v. Dusko Tadic"), which defines the concept of armed conflict (verdicts of the Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22, Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23), UN General Assembly resolution ES-11/1 of 2 March 2022, "Aggression against Ukraine", Opinion of the Parliamentary Assembly of the Council of Europe 300 (2022) "Consequences of the Russian Federation's Aggression against Ukraine", Order of 16 March 2022 on the application for interim measures in the case "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide" (Ukraine v. Russian Federation) and other (the verdict of Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23).

Comparing verdicts adopted by the courts of Ukraine during the first and second stages of the monitoring, we note that verdicts of the second stage are of higher quality. They contain less of a general description of the situation that preceded the international armed conflict on the territory of Ukraine.

## REFERENCES TO INTERNATIONAL TREATIES

All analysed verdicts contain references to international treaties and sources of IHL. First of all, this is done to describe the peculiarities of certain elements of the crime under Article 438 of the Criminal Code, such as the victim, who must belong to the civilian population and be protected by the IHL, the subject of violation of the laws and customs of war (combatant), contextual circumstances, etc.

All of the analysed verdicts contain references to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Protocol Additional of 8 June 1977 to the Geneva Conventions of 12 August 1949, concerning the protection of civilian victims of international war (Protocol I). At the same time, almost all verdicts contain references to specific articles of these international documents that are violated by the convicted person (e.g., verdict of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23, Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23.

**Verdicts also analyse sources of international criminal law:**

– The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (the verdict of the Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22);

– Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly resolution No. 3452 (XXX) of 9 December 1975 (the verdict of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23);

– Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces (the verdict of the Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23).

– Regulations concerning the Laws and Customs of War on Land, which is an appendix to the Convention (IV) respecting the Laws and Customs of War on Land of

18 October 1907 (verdicts of the Zavodskyi District Court of Zaporizhzhia of 2 January 2024 in case No. 332/441/23, Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23, Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23).

Despite positive aspects of references to IHL and ICL in the verdicts, it is necessary to pay attention to certain shortcomings that occurred in the analysed court decisions:

– the lack of an indication of specific articles of the source of IHL, the violation of which is imputed to the convicted person (verdicts of the Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22, Borodianka District Court of Kyiv Oblast of 11 December 2023 in case No. 367/3635/22);

– the absence of reference to any source of IHL (the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 8 December 2023 in case No. 369/358/23).

The verdict of the Obolonskyi District Court of Kyiv of 6 March 2024 in case No. 367/3486/22 assesses the decision of the prosecution, which in the guilty verdict referred to the violation of the Rome Statute of the ICC by the prosecution. According to the experts, the reference to this Statute should be excluded from the wording of the indictment, since on the day of the verdict, in accordance with the requirements of paragraph 32 of Article 85 of the Constitution of Ukraine, the law on ratification of the Rome Statute of the ICC was not adopted, given that the said Statute is not an international treaty, the consent to be bound by the Verkhovna Rada of Ukraine, and therefore, by virtue of the requirements of Art. 9 of the Constitution of Ukraine, part 1 of Article 3, part 1 of Article 6, part 1 of Article 8 of the Criminal Code and part 1 of Article 9 of the CPC, Article 19 of Law No. 1906-IV, its provisions are not subject to application by the judicial authorities of Ukraine in the administration of justice.

**Forms of violations of the laws and customs of war**:

1) ill-treatment of civilians:

– aggressive verbal intimidation, demonstration of firearms, pointing them at the victim, firing shots at the victim (e.g., verdicts of Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23, Borodianka District Court of Kyiv Oblast of 11 December 2023 in case No. 367/3635/22);

– unlawfully depriving civilians of liberty and threats of murder by means of physical violence (the verdict of the Chernihiv District Court of Chernihiv Oblast on 10 January 2023 in case No. 748/2272/22);

– ill-treatment of civilians, namely torture and degrading treatment of civilians and other violations of the laws and customs of war – illegal detention (unlawful detention) of a civilian (the verdict of the Chernihiv District Court of Chernihiv Oblast of 11 December 2023 in case No. 748/3990/23);

– illegal detention, abduction and arbitrary detention of a civilian, use of violence against a civilian, ordering such actions (e.g., verdicts of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23[22], Chernihiv

[22] The above actions were committed against a minor victim

District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23[23], Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23[24]);

– illegal detention and infliction of physical injuries to the victim, combined with the intentional murder of the latter (e.g., the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23);

– intentional murder of a civilian (e.g., verdicts of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23, Ichnia District Court of Chernihiv Oblast of 25 March 2024 in case No. 733/961/23, Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23[25]);

– attempting to violate the laws and customs of war, combined with intentional murder (the verdict of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23). The text of this verdict shows that the accused, as well as other service members under his command, first opened fire on a car carrying two Ukrainian citizens, civilians who initially left the car after the attack but later returned to it. Service members of the Russian Armed Forces, including the accused, when they saw two civilians near the car, used an autocannon that was the armament of the combat vehicle and fired at two civilians, resulting in gunshot wounds to the male victim, while the female victim remained unharmed and managed to escape. Service members of the Russian Armed Forces approached the roadway where the car was located, next to which the victim was lying, and observing that the latter gave no signs of life and believing him to be dead, they carried the victim to the roadside and dumped him into a ditch on the side of the road. These actions were classified under part 2 of Art. 15 – part 2 of Art. 28, part 2 of Art. 438 of the Criminal Code. However, this qualification is doubtful, as the accused, together with other service members of the Russian Armed Forces, committed a complete violation of the laws and customs of war (part 1 of Art. 438 of the Criminal Code);

– an attack on and intentional murder of an AFU service member who had put out of action and ceased to participate in hostilities; illegal detention of a civilian and torturing them to obtain a confession of cooperation with the AFU (the verdict of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23);

– degrading treatment of civilians, seizure of civilian property not caused by military necessity, ordering the illegal deprivation of liberty of a civilian victim (the verdict of the Obolonskyi District Court of Kyiv of 6 March 2024);

illegal detention and subsequent deportation (expulsion) of a citizen of Ukraine on the basis of an illegal decision of the illegally established "courts of the Republic of Crimea" under the legislation of the Russian Federation, under the occupation of part of the territory of Ukraine, namely the Autonomous Republic of Crimea and the city of Sevastopol (the verdict of the Desnianskyi District Court of Kyiv of 05 April 2024 in case No. 754/3227/23);

---

[23] These actions were committed against 368 victims

[24] This verdict also included another violation of the laws and customs of war, such as the destruction of civilian property not caused by military necessity. However, the wording of the prosecution does not mention this part of the defendants' illegal actions

[25] The court excluded from the charges references to the defendant committing a crime on the grounds of jealousy towards another service member of the Russian Armed Forces, nor the defendant committing the criminal offence while intoxicated, as unproven

- rape, the use of physical and moral coercion, including intimidation through threats of physical violence against civilians (verdict of the Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024 in case No. 650/1870/23);

2) ordering

– forcible dispersal of civilians participating in a protest in the temporarily occupied territory, using firearms, ammunition and special means, which resulted in various physical injuries, physical pain and mental suffering to the civilian population (the verdict of the Suvorovskyi District Court of Odesa of 30 October 2023 in case No. 523/8377/23);

– the tank gunner-operator to fire two direct tank gunshots with high-explosive fragmentation shells at the building of the inpatient hospital building, which was executed (the verdict of the Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23);

– the illegal detention and deprivation of liberty of a journalist, mayor, and city council secretary (the verdict of the Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23);

– the commission of acts that violate the laws and customs of war under international treaties ratified by the Verkhovna Rada of Ukraine, combined with intentional murder (the verdict of the Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22);

3) the theft of civilian property not caused by military necessity (part 1 of Art. 438 of the Criminal Code) (e.g., verdicts of the Brovary City and District Court of Kyiv Oblast of 23 October 2023 in case No. 361/6545/22, Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22).

4) making a decision to deport a citizen of Ukraine from the temporarily occupied territory. This form of violation of the laws and customs of war took place according to the verdict of the Desnianskyi District Court of Kyiv of 5 April 2024 in case No. 754/3227/23.

At the same time, the qualification of the judge's actions only under Art. 438 of the Criminal Code contradicts the legal positions of the Supreme Court and indicates the incompleteness of the qualification of the convicted person's actions. Given the legal conclusions of the Supreme Court, provided, in particular, in the resolutions of the Supreme Court of 27.10.2021 in case No. 759/7443/17 and of 21.12.2022 in case No. 759/5737/17, the actions of a former judge who continued to administer justice in the temporarily occupied territory on behalf of the Russian Federation, having made an illegal decision after her appointment to this position to detain and subsequently deport (expel) a citizen of Ukraine on the basis of an illegal decision of the illegally created "courts of the Republic of Crimea" under the legislation of the Russian Federation (verdict of the Desnianskyi District Court of Kyiv of 05.04.2024 in case No. 754/3227/23), who by 15.03.2022 (entry into force of the Law of Ukraine of 03.03.2022 No. 2108-IX "On Amendments to Certain Legislative Acts of Ukraine on the Establishment of Criminal Liability for Collaboration Activities") voluntarily joined the court of the occupying state, subsequently violating the laws and customs of war, should be qualified in the aggregate - part 1 of Art. 111 (high treason in the form of defection to the enemy) and under the relevant part of Art. 438 of the CC.

## CONSIDERATION OF MITIGATING AND AGGRAVATING CIRCUMSTANCES

When sentencing convicts, the courts took into account the following aggravating circumstances:

– The commission of a crime by a group of persons by prior conspiracy (e.g., verdicts of the Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22, Zavodskyi District Court of Zaporizhzhia of 2 January 2024 in case No. 332/441/23, Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23).

In most verdicts, the qualification referred to part 2 of Art. 28 of the Criminal Code (e.g., verdicts of the Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22, Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23). This indicates a double consideration of the same circumstance by the convict.

In some verdicts, where factual circumstances of the case show that the violation of laws and customs of war was committed by both the convict and other unidentified members of the enemy military, but the legal qualification of the convict was carried out only under part 1 or 2 of Art. 438 of the Criminal Code, the punishment did not take into account the aggravating circumstance of committing a crime by a group of persons by the prior conspiracy (e.g., the verdict of the Chernihiv District Court of Chernihiv Oblast of 10 January in case No. 748/2272/22);

– The commission of a crime using the conditions of martial law (e.g., verdicts of the Brovary City and District Court of Kyiv Oblast of 23 October 2023 in case No. 361/6545/22, Suvorovskyi District Court of Odesa of 30 October 2023 in case No. 523/8377/23, Suvorovskyi District Court of Odesa of 31 January 2024 in case No. 523/6894/23).

In the verdict of the Chernihiv District Court of Chernihiv Oblast of 22 April 2024 in case No. 748/4474/23, when imposing the sentence, taking into account provisions of part 2 of Art. 67 of the Criminal Code, the court considered the fact that the crime was committed under martial law to be an aggravating circumstance for both accused. In the opinion of the court, the use of martial law as an aggravating circumstance means that the guilty person uses the most unfavourable time for society, difficult circumstances and conditions in which society finds itself to facilitate itself in the commission of a criminal offence. The direct object of the criminal offence under part 1 of Art. 438 of the Criminal Code is peace and international legal order in the field of war and armed conflicts, violation of the laws and customs of war. Therefore, if the offence is committed during a time of war, it is unnecessary to recognise the commission of a crime using martial law as an aggravating circumstance. Our country was invaded by Russian troops on 24 February 2022. On the same day, the President of Ukraine signed Decree No. 64/2022, "On the Imposition of Martial Law in Ukraine".

As provided for in the verdict of the Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23, the court did not find the existence of such an aggravating circumstance as the commission of a crime under martial law. The commission of a crime in the context of an armed conflict is, in fact, similar to the commission of a crime under martial law and is a qualifying circumstance; therefore, there are no grounds for its consideration as an aggravating circumstance.

- Committing a criminal offence on the grounds of racial, national, religious hatred or discord or on the grounds of sexual orientation (e.g., the verdict of the

Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23);

– Committing a crime in a generally dangerous manner (verdicts of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23, Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23, Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22);

– Committing a criminal offence against the elderly (verdicts of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23, Chernihiv District Court of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22);

– Committing a criminal offence against minors (verdicts of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23, Chernihiv District Court of Chernihiv Oblast of 25 March 2024 in case No. 748/4122/23, Chernihiv District Court of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22).

– Committing the offence repeatedly (verdicts of the Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23, Ichnia District Court of Chernihiv Oblast of 25 March 2024 in case No. 733/961/23, Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23, Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23).

Although some aggravating circumstances are mentioned in the text of the verdict, they were not taken into account by the courts when sentencing.

In the verdict of the Obolonskyi District Court of Kyiv of 6 March 2024 in case No. 367/3486/22, although the court mentioned the fact that the service member of the Russian Armed Forces was in a state of intoxication when committing the criminal offence, it was not taken into account by the court when imposing a sentence as an aggravating circumstance.

Some verdicts do not specify whether any mitigating or aggravating circumstances were taken into account (the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23) or determine that no mitigating and aggravating circumstances were established (e.g., verdicts of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23).

According to the verdict of the Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23, the aggravating circumstance of committing a criminal offence with particular cruelty was not confirmed. The investigated evidence did not prove that the guilty party, having deprived the victim of her life, caused her particular physical (by inflicting a large number of physical injuries, tortures, torment, etc.) suffering.

According to the verdict of the Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23, the court took into account only mitigating circumstances, namely the accused's sincere repentance and active assistance in solving the crimes. No aggravating circumstances were taken into account. Although the Russian service member was charged under part 2 of Art. 28, part 2 of Art. 438 of the Criminal Code (violation of the laws and customs of war under international treaties ratified by the Verkhovna Rada of Ukraine, namely cruel ill-treatment of civilians combined with intentional murder committed by a group of persons by prior conspiracy and part 2 of Art. 28, part 1 of Art. 438 of the Criminal Code, as a violation of the laws and customs of war under international treaties ratified by the Verkhovna Rada of Ukraine, committed repeatedly by a group of persons by prior conspiracy).

## PUNITIVE MEASURE IMPOSED ON CONVICTED PERSONS

Based on the analysis of punitive measures imposed under Art. 438 of the Criminal Code, courts determined the sentence for convicted persons in different ways, taking into account the general principles of sentencing.

According to part 1 of Art. 438 of the Criminal Code, the term of imprisonment is usually chosen from the top scope of the sentence (starting from the median sentence of 10 years and ending with the maximum sentence of 12 years).

Such imprisonment term for all forms of violations of the laws and customs of war was chosen in 23 verdicts sentencing convicts for committing a crime under part 1 of Art. 438 of the Criminal Code[26].

At the same time, courts are guided by the imposition of imprisonment in the maximum amount provided for by part 1 of Art. 438 of the Criminal Code.

In 14 verdicts, a sentence of 12 years of imprisonment was imposed (e.g., verdicts of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23.

In six verdicts, convicts were sentenced to imprisonment for the median term of the sentence provided for by the article (10 years) (e.g., the verdict of the Borodianka District Court of Kyiv Oblast of 11 December 2023 in case No. 367/3635/22).

Five verdicts sentenced convicts to 11 years of imprisonment (e.g., the verdict of the Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22, Prymorskyi District Court of Odesa of 20 May 2024 in case No. 522/6292/23).

When sentencing servicemen of the Russian Armed Forces found guilty of violating the laws and customs of war combined with premeditated murder, the courts proceeded from the possibility of choosing the type of punishment between imprisonment for a certain term and life imprisonment, as provided for in the sanction of part 2 of Article 438 of the Criminal Code.

Six verdicts sentenced the convicts to life imprisonment (e.g., verdicts of the Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23, Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23).

Two verdicts imposed a sentence of 15 years of imprisonment (e.g., the verdict of the Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23), one verdict imposed a sentence of 14 years of imprisonment (the verdict of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23).

In some verdicts, the courts sentenced those convicted of summary of crimes. For instance, the verdict of the Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23 imposed a sentence for a summary of crimes. A service member of the Russian Armed Forces was convicted under part 2 of Art. 28, part 1 of Art. 438 and part 2 of Art. 28, part 2 of Art. 438 of the Criminal Code. He was sentenced to 8 years of imprisonment under part 2 of Art. 28, part 1 of Art. 438 and 11 years of imprisonment under part 2 of Art. 28, part 2 of Art. 438 of the Criminal Code. The sentence of imprisonment for a term of 12 years was determined by a partial

[26] This indicator refers exclusively to those verdicts that convicted individuals only under Art. 438 of the Criminal Code, except in cases where the sentence was imposed for a summary of offences.

combination of sentences for the convicted person for a summary of criminal offences.

By the verdict of Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23, the sentence was imposed on two convicts for a summary of crimes. The first convict was found guilty of committing crimes under part 1 of Art. 438, part 2 of Art. 28, part 1 of Art. 438 of the Criminal Code. He was sentenced to 10 years of imprisonment under part 1 of Art. 438 of the Criminal Code, and 12 years of imprisonment under part 2 of Art. 28, part 1 of Art. 438 of the Criminal Code. Based on part 1 of Art. 70 of the Criminal Code, this convict was sentenced to 12 years of imprisonment for the summary of crimes by way of absorption of a less severe punishment by a more severe one; the second convict was found guilty of committing criminal offences under part 2 of Art. 28, part 1 of Art. 438 of the Criminal Code, and sentenced to 12 years of imprisonment.

## THE GROUNDS FOR OPENING CRIMINAL PROCEEDINGS UNDER ARTICLE 438 OF THE CRIMINAL CODE

Some verdicts consider the grounds for opening criminal proceedings under Article 438 of the Criminal Code and entering information about the crime into the URPTI (Unified Register of Pre-trial Investigations). Such grounds were the following:

– the report of the inspector of the Main Department of the National Police on the notice from the 102 service about the shelling of a car by the Russian Federation's military, about a woman who was evacuated and a man who was seriously injured and remained near the car in the territory not controlled by the AFU (the verdict of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23);

– a statement about the commission of a crime by a journalist of "the Ukrainian Information Service" media outlet with an attachment in the form of a flash drive containing the recording of the moment of the murder of Ukrainian citizens by the accused (containing information about the fact and place of the criminal offence) (the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23);

– information on the ukr.net website with the news saying, "In a village near Chernihiv, invaders held more than 150 people in the school basement" (the verdict of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23).

## EVIDENCE

The evidence used to prove the guilt of a person convicted of the crime under Art. 438 of the Criminal Code depends on the specifics of the physical element of the committed crime, and the totality of evidence is sufficient to ascertain the presence of signs of violation of the laws or customs of war in the actions of the accused.

The testimony of the victim(s), witness(es), or accused is the classical evidence in the criminal proceedings under Art. 438 of the Criminal Code.

Such evidence as the testimony of the accused is used in situations when the criminal proceedings were considered in the presence of the accused, i.e., not as part of the in absentia procedure (e.g., the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23).

According to the verdict of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023, in case No. 748/3888/23, the legal representative of the minor victim taken captive as a hostage by service members of the Armed Forces of the Russian Federation was questioned.

According to the verdict of the Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23, one of the pieces of evidence in the criminal proceedings was the victim's statement.

As a source of evidence in criminal proceedings under Art. 438 of the Criminal Code, **physical evidence** was presented, which, according to the verdicts, included:

– flash drives containing the recording of the moment when the crime was committed by the accused and unidentified persons (e.g., the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23);

- photocopies of documents belonging to service members of the Armed Forces of the Russian Federation (military cards, passports) (the verdict of the Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23), as well as to the convicted citizens of Ukraine (passport of a citizen of Ukraine, taxpayer identification number, travel passport of the citizen of Ukraine (e.g., the verdict of the Desnianskyi District Court of Kyiv of 5 April 2024 in case No. 754/3227/23);

- photocopies of documents belonging to service members of the Armed Forces of the Russian Federation (military cards, passports) (the verdict of the Bakhmach District Court of Chernihiv Oblast 0f 25 January 2024 in case No. 728/665/23);

– documents confirming the victim's right of ownership of the property stolen by service members of the Armed Forces of the Russian Federation (registration certificate for the stolen vehicle) (the verdict of the Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23);

- photocopies of other documents belonging to service members of the Armed Forces of the Russian Federation (algorithm of actions for the tank commander's alarm, exposure dose registration card (the verdict of the Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23);

During the trial, courts of the first instance directly examined **the following protocols of investigative (search) actions** conducted in criminal proceedings under Art. 438 of the Criminal Code:

– photographic line-up records (e.g., verdicts of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23, of the Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/ 2381/22, of the Brovary City and District Court of Kyiv Oblast of 23 October 2023 in case No. 361/6545/22);

– record of voice identification of the accused by audio recording (the verdict of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23));

– protocols of investigative experiments (e.g., verdicts of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23, Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23);

– crime scene inspection records (e.g., verdicts of the Ichnia District Court of Chernihiv Oblast of 25 March 2024 in case No. 733/961/23, of the Borodianka District Court of Kyiv Oblast of 19 April 2024 in case No. 939/2083/23);

– coroner's inquest records (e.g., the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23);

– forensic sampling record (buccal epithelium – saliva) (the verdict of the Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23);

– report on the inspection of physical evidence (e.g., verdicts of Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23, Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23);

– reports on temporary access to belongings and documents, which allowed obtaining information from mobile carriers and recording it on optical discs (the verdict of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23);

– report on the inspection of audio files and video recordings proving the violation of the laws and customs of war by a specific service member (e.g., the verdict of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23).

To prove guilt in committing the crime falling under Art. 438 of the Criminal Code, the courts also examined **electronic evidence**, including social media pages belonging to accused service members of the Armed Forces of the Russian Federation and/or their relatives, which helped identify the accused and obtain other data about them (e.g., mobile phone numbers, location during the trial), official websites of the Ministry of Defence of the Russian Federation, publications on Russian websites, etc. (e.g., verdicts of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23, Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23, Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23, Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024 in case No. 650/1870/23). In addition, the source of evidence included data on the convict from the automatic "Russian Passport" system of the Federal Migration Service of the Russian Federation.

In the verdict of the Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024 in case No. 650/1870/23, the accused was identified using specialized OPEN SOURCE INTELLIGENCE tools and services, and the charges were based on the certificate of verification of the convict's identity using the OSINT search system.

**The conclusion of forensic examinations** served as a source of evidence according to 24 verdicts analysed. Thus, during the pre-trial investigation, the following types of examinations were conducted with their conclusions directly examined by the courts:

– forensic medical examination, which established the degree of severity of bodily injuries (e.g., verdicts of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23, Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23) or the cause of the victim's death (e.g., verdicts of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23, Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 39/2083/23) (a total of 16 verdicts);

– forensic commodity examination, which established the value of the stolen property (e.g., the verdict of the Romny City and District Court of Sumy Oblast of 18

October 2023 in case No. 585/2381/22) or forensic transport and commodity examination, which determined the market value of a car that was fired upon (e.g., verdicts of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23, Ichnia District Court of Chernihiv Oblast of 25 March 2024 in case No. 733/961/23) (a total of 6 verdicts);

- forensic examination of weapons, which examined ammunition, weapons and the circumstances of their use (for example, the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23) (a total of 8 verdicts);

– forensic explosive technical examination of ammunition (e.g., the verdict of the Trostianets District Court of Sumy Oblast dated 14 February 2024 in case No. 588/1363/23) (a total of 3 verdicts);

– forensic photo-technical, portrait and holographic examination of images (the verdict of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23);

– forensic examination of audio and video recordings, according to which words and phrases in the sound recording were spoken by one person (the verdict of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23);

– judicial transport and technical examination, which studied the vehicle (the verdict of the Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23);

– forensic fire technical examination, which established the causes of fire (the verdict of Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23);

- forensic molecular and genetic examination, which established that a woman can be the biological mother of an unidentified genetically male person whose bone fragment was examined in the expert's opinion (e.g., the verdict of the Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/ 23) (2 verdicts);

- psychological examination, which established the capability of the accused to realise the real content of their own actions, fully regulate them and predict their consequences (the verdict of Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23);

– complex forensic examinations (the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23

– a complex forensic computer technical examination and examination of video and audio recordings, which examined video recorders and revealed data storage media containing video recordings which established the fact of murder of two civilians and identified persons who committed the specified crime; verdict of the Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23 – complex judicial explosive technical, fire technical, transport commodity examinations and examination of weapons) (2 verdicts).

In addition, **written documents** were used as sources of evidence in criminal proceedings falling under Art. 438 of the Criminal Code. These included, for instance,

such important evidence as documents containing intelligence information related to:

– the presence of a military unit where a service member serves and which, at the time of the commission of the violation of the laws and customs of war, was present in the territory of Ukrainian settlement occupied by the Armed Forces of the Russian Federation (namely by a specific unit of the Armed Forces of the Russian Federation), as well as about their crossing of the state border of Ukraine (e.g., verdicts of the Romny District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22, Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22) (11 verdicts);

– the convict's crossing of the state border of Ukraine (e.g., verdicts of the Zavodskyi District Court of Zaporizhzhia of 2 January 2024 in case No. 332/441/23, Borodianka District Court of Kyiv Oblast of 11 December 2023 in case No. 367/3635/22) (10 verdicts);

- persons taken captive, including the accused (the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23) or about the lack of information regarding the captivity of a service member of the Armed Forces of the Russian Federation (e.g., the verdict of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23) (3 verdicts).

*Other written documents* that were used as evidence in specific criminal proceedings under Article 438 of the Criminal Code:

- materials of an internal investigation, based on which a decision was made to consider the death of a service member as death while on military duty, which occurred in the combat setting and was related to the defence of the Motherland but was not due to the commission of a crime or an administrative offence by the service member, their actions whilst under the influence of alcohol or drugs or their intentional self-harm (the verdict of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23);

- the order of the commander of the military unit, which excluded the injured service member from the personnel rosters of the military unit and established the death as a death while on military duty (the verdict of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511 /23;

- notification of the Main Administration of the State Service of Ukraine on Food Safety and Consumer Protection, which states that the conditions of keeping people in the basement during the occupation by the Russian Federation violated the requirements of health legislation, posing a threat to the health and life of people and future generations, as well as the threat of the emergence and spread of infectious diseases and mass non-infectious diseases (poisoning) among the population (the verdict of the Chernihiv District Court of Chernihiv Oblast dated 11 March 2023 in case No. 748/1278/23);

- notification of the oblast hydrometeorology centre regarding the air temperature regime: within the period from 3 March to 30 March 2022, the weather was frosty, which created additional dangerous conditions for staying in the unheated school basement (the verdict of the Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case no. 743/380/23);

- notification of the village council stating that in March 2022, 8 people died in the territory of the settlement where the crime was committed, while one person died in March 2021 (the verdict of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23);

– a response signed by the secretary of the Coordination Headquarters for the Treatment of Prisoners of War, according to which the enemy prisoner of war was handed over to the aggressor state (the verdict of the Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22);

- a response of the journalist of the SLIDSTVO.INFO investigative journalism agency, which demonstrates that journalists of the agency drafted a list of service members of the Armed Forces of the Russian Federation, which was published on the official Internet resource of the State Administration of the Ministry of Defence of Ukraine and allowed journalists to identify the convict. Journalists also established that this service member had a page on the VKontakte social network; they found photographs which probably depicted the service member of the Armed Forces of the Russian Federation (the verdict of the Obolonskyi District Court of Kyiv of 6 March 2024 in case No. 367/3486/22).

### SPECIAL PROCEDURE OF CRIMINAL PROCEEDINGS (special pre-trial investigation and special trial (in absentia)

In one criminal proceeding, the pre-trial investigation and the trial were conducted in the presence of the accused (the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23). According to the verdict of the Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23, the pre-trial investigation and the trial were conducted in the presence of the accused.

Verdicts analysed the following elements of the special procedure of criminal proceedings:

- establishing that the crime charged against the accused and their conduct fell under the requirements of Part 2 of Art. 297-1 of the CPC (e.g., verdicts of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23, Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23);

- notice of suspicion of committing a crime falling under Art. 438 of the Criminal Code, translation of the suspicion into Russian, which was published in the Government Courier (Uriadovyi Kurier) newspaper (e.g., verdicts of the Suvorovskyi District Court of Odesa of 31 January 2024 in case No. 523/6894/23, Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23);

In addition, in the verdict of the Obolonskyi District Court of Kyiv of 6 March 2024 in case No. 367/3486/22, the sending of a notice of suspicion from an official phone to a mobile phone used by the service member of the Armed Forces of the Russian Federation using the Telegram mobile app served as a guarantee to ensure the procedure of special proceedings. This was confirmed by screenshots from the TELEGRAM mobile app, as evidenced by the images showing that the notice of suspicion was sent using the mentioned app. Summonses for this service member of the Armed Forces of the Russian Federation to appear before the investigator were serviced using the same method. According to the verdict of the Desnianskyi District Court of Kyiv of 5 April 2024, the court directly examined the reports on sending court

summonses to the email of the Yevpatoriia City Court of the Autonomous Republic of Crimea with the proof of service, i.e., to the place of work of the accused judge.

The verdict of the Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22 states that the court directly examined the record of delivery of a notice of suspicion and summonses for questioning, which show that the investigator of the Office of Investigations of the Main Administration of the Security Service of Ukraine in Kyiv and Kyiv Oblast sent a scanned copy of a notice of suspicion and summonses to appear before the Office of Investigations of the Main Administration of the Security Service of Ukraine in Kyiv and Kyiv Oblast for questioning as a suspect in Ukrainian and Russian (translation) to the email used by the service member of the Armed Forces of the Russian Federation;

- the ruling of the investigating judge on granting permission to conduct a special pre-trial investigation against the accused (e.g., verdicts of the Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23, Suvorovskyi District Court of Odesa of 31 January 2024 in case No. 523/6894/23);

- the fact of the publication of summonses for the service member of the Armed Forces of the Russian Federation on the official website of the Prosecutor General's Office and, at the trial stage, on the official website of the court of the first instance, as well as in the nationwide mass media, i.e., under the "Announcements" section of the Government Courier (Uriadovyi Kurier) newspaper (e.g., verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23, Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23);

- the fact of the court's taking measures to summon the accused to ensure access to justice, due to which the latter was summoned to each court hearing in accordance with the procedure established in Art. 323 of the CPC. Summonses were published in the Government Courier (Uriadovyi Kurier) newspaper and under the "Announcements: Court Summons" section of its electronic version on the website https://ukurier.gov.ua/uk/about/, as well as on the official website of the court of the first instance (e.g., the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23, Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23);

- exercise of the rights of the suspect (accused) by their defence counsel, who received the necessary procedural documents and reviewed the materials of criminal proceedings following the requirements of Part 4 of Art. 46, Art. 42, Clause 8 of Part 2 of Art. 52 of the CPC and Part 2 of Art. 297-5 of the CPC. It was also determined that the accused's counsel took the following active measures aimed at the defence of the accused: participation in the questioning of victims and the examination of evidence, drew the court's attention to the role of the accused in the committed criminal offence, spoke in debates and denied the punitive measure proposed by the prosecutor (e.g., verdicts of the Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23, Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23).

### SETTLEMENT OF CIVIL LAWSUITS

Civil claims for compensation for non-pecuniary and/or pecuniary damage to the victim were filed in criminal proceedings under Art. 438 of the Criminal Code.

Accordingly, civil lawsuits were resolved by verdicts. These were verdicts of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23, Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23, Kyiv-Sviatoshyn District Court of Kyiv Oblast of 8 December 2023 in case No. 369/358/23, Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23, Dzerzhynskyi District Court of Kharkiv 2 April 2024 in case No. 588/1363/23, Brovary City and District Court of Kyiv Oblast of 23 April 2024 in case No. 361/488/23, Prymorskyi District Court of Odesa of 20 May 2024 in case No. 522/6292/23 (7 verdicts).

In six verdicts, civil claims for compensation for non-pecuniary and/or pecuniary damage were filed against the convicts.

In the verdict of the Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23), a civil lawsuit was filed against the Russian Federation.

All civil lawsuits were settled by verdicts, with full settlement by five verdicts and partial settlement by two verdicts (verdicts of the Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 588/1363/23), Prymorskyi District Court of Odesa of 20 May 2024 in case No. 522/6292/23).

Thus, based on the verdict of the Dzerzhynskyi District Court of Kharkiv dated 2 April 2024 in case No. 588/1363/23, the claim of the civil plaintiff (the mother of the woman who died due to the violation of the laws and customs of war) for compensation for relevant pecuniary damage was dismissed since the court hearing did not prove that such pecuniary damage was inflicted. At the same time, this court verdict satisfied the civil plaintiff's claim for compensation for non-pecuniary damage of UAH 1,000,000.

**The following evidence was taken into account by the court to prove the infliction of non-pecuniary damage:**

– the victim's testimony, according to which she was inflicted mental suffering because, for a long time, she had not known anything about the fate of her brother, whose car was fired at by the accused and another service member of the Armed Forces of the Russian Federation (Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23);

– the conclusion of the forensic medical examination, according to which the victim was inflicted serious injuries due to the firing of his car (Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23);

– certificate of the MSEC (Medical and Social Expert Commission) on assigning the victim, who suffered serious injuries due to the shooting at his car, a disability category III for life (Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23);

– medical records related to the long-term treatment of the victim, who was inflicted serious injuries due to the shooting at his car (the verdict of the Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23).

The following evidence was taken into account by the court to prove the infliction of pecuniary damage:

– conclusions of expert examinations proving damage to the victim's car by explosives (Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23);

– a copy of the certificate for the car that was damaged due to the shooting by service members of the Armed Forces of the Russian Federation, proving the legal

ownership of the specified car by the victim, the civil plaintiff (Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23);

– conclusion of the examination on determining the value of the property damaged due to the illegal actions of service members of the Armed Forces of the Russian Federation (verdicts of the Krasnohrad District Court of Kharkiv Oblast in case No. 611/229/23, Trostianets District Court of Sumy Oblast dated 14 February 2024 in case No. 588/1363/23).

At the same time, according to the verdict of the Novozavodskyi District Court of Chernihiv of 26 October 2023, case No. 751/1303/23, neither contains an evaluation of evidence confirming the extent of non-pecuniary damage inflicted to the victim nor provides the reasons of the court's conclusion about compensation for the extent of non-pecuniary damage claimed by the victim[27]. The same applies to the verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 8 December 2023 in case No. 369/358/23.

According to the verdict of the Trostianets District Court of Sumy Oblast of 14 February 2024, in case No. 588/1363/23, the victim was a legal entity – Trostianets City Hospital of the Trostianets City Council. Referring to the European Convention on State Immunity, adopted by the Council of Europe on 16 May 1972, and the UN Convention on Jurisdictional Immunities of States and Their Property, adopted by Resolution 59/38 of the General Assembly on 2 December 2004, the court established that the sovereign judicial immunity of the civil defendant as guaranteed by the Law of Ukraine "On Private International Law" does not apply to the Russian Federation in this criminal proceeding, since the state does not have the right to invoke immunity in cases related to the infliction of damage to health or life or damage to property, if such damage was fully or partially caused to the territory of the state of the court, and the person who inflicted the damage was in the territory of the state of the court at the time of infliction. The court stated that mutual recognition of the state's sovereignty is a necessary condition for observing this principle. Therefore, when the Russian Federation denies Ukraine's sovereignty and commits armed aggression against it, it is not obligated to respect and observe its sovereignty.

Referring to Art. 1173 of the Civil Code, the court stated that a mandatory condition for holding the defendant liable for the damage inflicted is establishing the illegality of their actions in accordance with the provisions of the applicable substantive law. Such illegal actions consisted in the fact that the defendants, who were service members of the Armed Forces of the Russian Federation, inflicted damage to the property of the civilian plaintiff; therefore, the Russian Federation as a belligerent party is liable for the damage inflicted due to the violation of the laws and customs of war by service members of the Russian Armed Forces.

### APPEALING VERDICTS UNDER ART. 438 OF THE CRIMINAL CODE

During the second stage of monitoring verdicts falling under Art. 438 of the Criminal Code, ten appellate court rulings were processed.

At the time of preparing this report, appeals against five verdicts were pending in appellate Appeals were mainly filed by the defence. Only in two cases verdicts of the courts of the first instance were appealed by the prosecutor: the verdict of the

[27] Non-pecuniary damage in the amount of UAH 2,000,000 was compensated by the verdict to the sister of a civilian who died as a result of violation of the laws and customs of war by the service member of the Armed Forces of the Russian Federation.

Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 and the verdict of the Poltava Court of Appeal of 21 September 2022 in case No. 535/244/22. The latter verdict was also appealed by the defence.

In most cases, appellate courts adopted a decision to dismiss the appeal and uphold the verdicts of the courts of the first instance. Only by the ruling of the Dnipro Court of Appeal of 21 February 2024. in case No. 522/3868/23, the verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 was changed in so far as it related to the sentencing of the convicted, while the rest was upheld.

In one case, before the end of the appeal review, both the defence (with the agreement of the accused) and the prosecution abandoned the appeals and filed respective statements. The Poltava Court of Appeal closed the criminal proceedings because the defence counsels abandoned appeals with the consent of the accused and the prosecutor.

**Demanding to change the verdict of the court of the first instance, in their appeal, the appellants provided the following arguments:**

– excessive severity of the sentence imposed on the convict (rulings of the Chernihiv Court of Appeal of 2 November 2022 in case No. 554/3954/22, Chernihiv Court of Appeal of 28 September 2023 in case No. 751/3261/22, Chernihiv Court of Appeal of 1 May 2024 in case No. 748/3511/23);

– misapplication of the law of Ukraine on criminal liability by the court of the first instance – a formal reference to the article and non-application of the applicable law (non-imposition of a cumulative sentence – Part 4 of Article 70 of the Criminal Code) (ruling of the Dnipro Court of Appeal of 21 February 2024 in case No. 522/3868/23);

– founding the court decision on a number of contradictory evidence (rulings of the Chernihiv Court of Appeal of 1 May 2024 in case No. 748/3511/23, Sumy Court of Appeal of 18 October 2023 in case No. 588/1009/22).

Demanding to reverse the verdict of the court of the first instance and to acquit the convict, the appellants provided the following arguments in their appeals:

– The evidence presented to the court does not prove the guilt of the convicted beyond a reasonable doubt (rulings of the Sumy Court of Appeal of 4 December 2023 in case No. 588/1072/22, Kyiv Court of Appeal of 26 December 2023 in case No. 366/2363/22, Sumy Court of Appeal of 11 March 2024 in case No. 588/1122/23). In particular, the appeal considered by the Sumy Court of Appeal (case No. 588/1072/22) stated that there was no evidence of the commission of a criminal offence by a prior conspiracy of a group of persons;

– No evidence of crime falling under Art. 438 of the Criminal Code has been proven in the actions of the convict (rulings of the Kyiv Court of Appeal of 10 July 2023 in case No. 753/14148/21, Sumy Court of Appeal of 4 December 2023 in case No. 588/1072/22). In particular, the appeal of the defence counsel considered by the Sumy Court of Appeal (case No. 588/1072/22) stated that there was no mental element in the committed crime – convicts were not aware of the building being a hospital, and hence a civilian facility, the one considered by the Kyiv Court of Appeal (case No. 366/2363/22) stated that in the court hearing the prosecutor did not prove that the convict was familiar with international laws and customs of war, which excludes the mental element in a crime under Part 1 of Art. 438 of the Criminal Code;

– inaccuracy of the prosecution's claims (ruling of the Kyiv Court of Appeal of 10.07.2023 in case No. 753/14148/21);

– inadmissibility of evidence serving as a basis for prosecution (ruling of the Kyiv Court of Appeal of 10 July 2023 in case No. 753/14148/21);

- the need to qualify the actions of the convict not under Art. 438 of the Criminal Code, but under articles of the Special Part of the Criminal Code, which provide for liability for "ordinary" crimes (e.g., crimes against life and health of a person, crimes against property) (rulings of the Kyiv Court of Appeal of 26 December 2023 in case No. 366/2363/22, Chernihiv Court of Appeal of 22 January 2024 in case No. 751/1303/23);

– founding the charges on assumptions (the ruling of the Chernihiv Court of Appeal of 4 December 2023 in case No. 748/1599/23);

– incomplete finding of facts in the case (the ruling of the Chernihiv Court of Appeal of 22 January 2024 in case No. 751/1303/23);

– conducting the pre-trial investigation and the trial in absentia, which violates the rights guaranteed to the accused, in particular, the right to defence (rulings of the Chernihiv Court of Appeal of 4 December 2023 in case No. 748/1599/23, Sumy Court of Appeal of 11.03.2024 in case No. 588/1122/23).

**Adopting rulings on the dismissal of appeals and upholding the verdicts of courts of the first instance, courts of appeal proceed from the following:**

| **Argument in the appeal** | **Justification by the court of appeal of consideration of the argument in the appeal** |
|---|---|
| **Excessive severity of the sentence imposed on the convict** | *The ruling of the Chernihiv Court of Appeal of 2 November 2022 in case No. 554/3954/22:*<br>- Violation of the laws and customs of war poses a global threat to world law and order and the peaceful coexistence of people.<br>– A building was destroyed, which was in no way a specific military objective.<br>- The mitigating circumstances do not reduce the degree of culpability of the convict to the extent that would make it possible to conclude the severity of the sentence of 10 years of imprisonment imposed by the court of the first instance.<br>- The fact that the accused admitted his guilt, as well as his conduct during the pre-trial investigation, were taken into account by the court of the first instance, which served as a basis for non-imposition of the maximum term as determined by the sanction in Part 1 of Article 438 of the Criminal Code.<br>- The lack of civil lawsuits from victims does not indicate the absence of damages in criminal proceedings.<br>- The accused's status as a custodian of two minor children was taken into account by the court of the first instance when |

| | |
|---|---|
| | imposing a sentence. The defence counsel does not refer to circumstances when the status of a parent of two children reduces the degree of social danger of the act committed by the convict, when his children live with their mother in a warm apartment in another state, while victims and their children are left homeless in winter and require significant financial costs for the restoration.<br><br>*The ruling of the Chernihiv Court of Appeal of 28 September 2023 in case No. 751/3261/22*:<br><br>- The increased public danger of the committed crime in view of the wild and barbaric conduct of the accused within the context of the modern world, which cannot be acceptable in the 21st century and nullifies all the achievements of modern civilization in the field of peace and humanity of peoples.<br><br>- Illegal actions of the convict characterise him as a person devoid of any moral principles, compassion, or conscience and testify to his disregard for the norms of not only international law but also human coexistence, a complete devaluation in his mind of the lives of other people and a contemptuous attitude towards both physical and moral suffering of other people. |
| **Founding a court decision on a number of contradictory pieces of evidence** | *The ruling of the Sumy Court of Appeal of 18. October 2023 in case No. 588/1009/22*:<br><br>- Certain inconsistencies in the description of the appearance of the accused do not affect the proof of his guilt if consistent evidence were given by three victims who directly pointed to the accused as the person who committed the crime, and his identity was established based on the reliably discovered passport and military card of a service member of the Armed Forces of the Russian Federation. |
| **The evidence provided to the court does not prove the convict's guilt beyond a reasonable doubt.** | *The ruling of the Sumy Court of Appeal of 4 December 2023 in case No. 588/1072/22*:<br><br>- The evidence indicates that there was a collision between the accused since they were members of the crew of the same tank, with one of them being directly subordinated to the other. Therefore, the decision to shoot and its immediate execution was obvious and could only be made as a result of their mutual agreement, regardless of when that agreement appeared.<br><br>*The ruling of the Kyiv Court of Appeal of 26. December 2023 in case No. 366/2363/22*:<br><br>- The convict, being a service member of the Armed Forces of the Russian Federation, which occupied the settlement, was aware that he was committing violent acts against a civilian, thereby violating the norms of IHL. There are no reasons to believe that his actions were not intentional and were not aimed at violating the laws and customs of war. |

| | |
|---|---|
| | *The ruling of the Sumy Court of Appeal of 11 March 2024 in case No. 588/1122/23*:<br>- It has been established with certainty that the convict is a service member of the Armed Forces of the Russian Federation.<br>- At the time when the convict committed the crime for which he was convicted, the norms of the Convention on the Protection of the Civilian Persons in Times of War of 12 August 1949 applied to service members of the Armed Forces of the Russian Federation. |
| **Inaccuracy of the prosecution's claims** | *The ruling of the Kyiv Court of Appeal of 10 July 2023 in case No. 753/14148/21*:<br>- It does not matter that the powers of the convict extended only to certain settlements of the Republic of Crimea and that the pre-trial investigation did not establish a specific number of persons called up for term military service in the Armed Forces and other military formations of the Russian Federation during the 11 conscription companies throughout the period of 2015–2020 and did not recognise these persons as victims. |
| **Inadmissibility of evidence:** | *The ruling of the Kyiv Court of Appeal of 10 July 2023 in case No. 753/14148/21*[28]:<br>- Concealment by the pre-trial investigation authority of the personal data of the intended recipient of the summons issued to convicts is not a basis for declaring the evidence inadmissible, which is logically explained by the fact that the specified person stays in the temporarily occupied territory and has reasonable fears about the consequences that may arise from collecting evidence against a representative of the occupation authorities of the Russian Federation.<br>– The summons was received during the performance of an assignment by an operational unit of the Security Service of Ukraine, i.e., by an authorised person from a lawful source. |
| **It has not been proven that there were elements of the crime falling under Art. 438 of the Criminal Code in the actions of the convict.** | *The ruling of the Sumy Court of Appeal of 4 December 2023 in case No. 588/1072/22*[29]**:**<br>– The accused could not but realise that the building they approached on a tank was a civilian facility – a hospital, the attacks on which are prohibited under the IHL. This was evidenced by several facts: white flags with a red cross were placed on the hospital building and at the entrance to the hospital territory; a road sign was placed near the school to warn that there was a medical facility ahead; there was an |

[28] The defence indicated that the summons was redacted (the information on the intended recipient in the upper left corner was deleted), and its procedural origin was unknown.

[29] In the appeal, the defence stated that there was no mental element in the crime falling under Art. 438 of the Criminal Code – the convicts were not aware that the building was a hospital and hence, a civilian facility.

| | |
|---|---|
| | ambulance with the appropriate markings of a medical vehicle near the emergency room; on the hospital building, at the level of the fifth floor, there was an inscription "Trostianets City Hospital" with a sign of a cardiogram. |
| **The need to qualify the actions of the convict not under Art. 438 of the Criminal Code, but under articles of the Special Part of the Criminal Code, which provide for liability for "ordinary" crimes.** | *The ruling of the Kyiv Court of Appeal of 26. December 2023 in case No. 366/2363/22***:**<br>- The arguments of the appeal about the presence of a profit motive in the misappropriation of the victim's property and the purpose of inflicting harm to the victim's health are not based on the materials of the criminal proceedings, which excludes the possibility of reclassifying his actions as crimes against property or health.<br>*The ruling of the Chernihiv Court of Appeal of 22 January 2024 in case No. 751/1303/23*:<br>- While performing a combat mission on the territory of Ukraine, the pilot certainly knew about the armed invasion of another state and his belonging to the Russian military that was carrying out such an invasion into Ukraine.<br>- The ejected pilot from the downed enemy plane of the Russian Federation did not deny that he had bombarded the area using the coordinates, shot at the victim, and was the pilot of the downed Su-34 and a service member of the Armed Forces of the Russian Federation.<br>The victim was a Ukrainian. He did not belong to any armed formations, so he did not directly support the party to the conflict. At the time the illegal actions were performed by the accused, the victim was wearing civilian clothes. Therefore, the victim was a civilian of the other party resisting the military invasion and did not have any items that could cause physical harm to health.<br>- In the sense of the norms of international law, while performing a combat mission, the service member of the Armed Forces of the Russian Federation, in his capacity as a member of the personnel of the Armed Forces of the party to the conflict, the head of the aviation attack and tactical training unit and a senior pilot, was a combatant.<br>- It was the accused who killed the victim with a shot from a firearm. |
| **Founding the prosecution on the assumptions** | *The ruling of the Chernihiv Court of Appeal of 4 December 2023 in case No. 748/1599/23*[30]:<br>- The identities of the accused were established during the course of an investigative experiment in which the victim took part. |

[30] In the appeal, the defence asserted that the prosecution's assumption was based on the fact that the convicts, whom the victim called by different names rather than their real names, committed the actions specified in the indictment and on the fact that such a person existed.

| | |
|---|---|
| | - During the photographic line-up, the victim and the witness recognised the person who committed the crime among the persons whose photos were presented.<br><br>- Identities of the accused were established through social media, where one of them had a different name, and the main profile image pictured passports of citizens of the Russian Federation; opening a social media profile allows one to determine that its owner is a service member of the Russian Federation.<br><br>- As communicated by the acting commander of a military unit, battalion tactical groups from a separate motorised rifle brigade, in which military service members of the Armed Forces of the Russian Federation serve, may be involved in the commission of war crimes in the territory of the settlement.<br><br>- The mobile phone number of the convict, recorded by the mobile carrier on 24 February 2022, was established. The Armed Forces of the Russian Federation were on their way from the border further into Ukraine.<br><br>- The defence believes that the fact that the victim and the witness call the accused by a different name and patronymic does not refute the circumstances proved by the prosecution; the motives why the convict called himself by a different name, why he called himself by a different name when creating a social media profile, are not facts to be proven in criminal proceedings. |
| **Conducting the pre-trial investigation and the trial in absentia violates the rights guaranteed to the accused, in particular, the right to defence.** | *The ruling of the Chernihiv Court of Appeal of 4 December 2023 in case No. 748/1599/23*:<br><br>– In the materials of the proceedings, there are numerous documents to prove the timely and proper summons of the convict to appear before the investigator (prosecutor) and the court, notifications sent to him regarding his rights and obligations, the announced suspicion, the indictment and the motion of the special court proceedings, which indicate that the convict could be reasonably aware of the initiation of the criminal proceedings against him, received or should have received the announced suspicion, relevant summonses and the indictment (notice of suspicion, notice of change of previously announced suspicion), had the opportunity to be informed of all his rights, including the right to defence and the right of access to justice.<br><br>- No other effective and accessible mechanism for informing a person suspected or accused of committing a war crime has yet been created at the legislative level.<br><br>- The accused was notified of the suspicion in the manner provided for serving notices in compliance with the requirements of Part 8 of Art. 135, Part 1 of Art. 278 of the CPC. Taking into account the requirements of the CPC, as soon as |

| | |
|---|---|
| | the notice is published in the nationwide mass media and on the official website of the Prosecutor General's Office, a person is considered to have been duly notified of the suspicion of committing a criminal offence.<br><br>*The ruling of the Sumy Court of Appeal of 11 March 2024 in case No. 588/1122/23*:<br><br>- The court took measures to provide the convict with legal protection and notify him of both the progress of the pre-trial investigation and of summonses to appear before the courts in two instances. In particular, the summonses addressed to the convict were published on the official websites of the District Court, the Sumy Court of Appeal and the Prosecutor General's Office, as well as in the nationwide mass media – the Government Courier (Uriadovyi Kurier) newspaper.<br><br>- The defence of the accused was implemented by the defence, in particular, by submitting a complaint to the court of appeal; the defence had no restrictions in reviewing materials of the criminal proceedings, submitting statements, motions, including evidence, which they consider essential for the proper establishment of the facts in the case. |

## CASSATION APPEAL OF VERDICTS

The verdict of the Darnytskyi District Court of Kyiv of 24 April 2023, by which a citizen of Ukraine was convicted under Part 1 of Art. 438 of the Criminal Code, and the ruling of the Kyiv Court of Appeal of 10 July 2023, which upheld this sentence (case No. 753/14148/21), was appealed to the Criminal Court of Cassation of the Supreme Court.

In the cassation appeal, the defence stated that the court had not proved the personal involvement of the convict in coercing civilians to serve in the Armed Forces of the Russian Federation. Coercion as a qualifying feature of a committed criminal offence had to be proven by factual evidence in criminal proceedings – physical or psychological influence on persons by the convict by applying physical force, threats, physical violence, infliction of moral or material damage.

The Criminal Court of Cassation of the Supreme Court agreed with the positions of the courts of previous instances during the consideration of criminal proceedings regarding the violation of laws and customs of war (Part 1 of Article 438 of the Criminal Code), which are provided for by international treaties declared as binding by the Verkhovna Rada of Ukraine, by coercing persons being under protection to serve in the armed forces of the occupying state, which is the Russian Federation.

The Criminal Court of Cassation of the Supreme Court indicated that the following is evident from the appealed court decisions: the courts established that the accused, holding the positions of "senior assistant military commissar" and "military commissar", was guided by the provisions of the Russian Federal Law "On Military Duty and Military Service".

In addition, the courts of previous instances established that the summons signed by the accused indicated his obligation to appear before the military enlistment office for the meeting of the draft commission, which indisputably indicates that the

intended recipient of this summons had no other choice, as failure to appear at the military enlistment office would be considered as evasion of military service. In such cases, the accused, being fully aware that these persons were protected by the Geneva Convention, personally initiated coercive measures prescribed by the legislation of the occupation authorities.

The accused not only signed draft notices for summoning the civilian population to meetings of draft commissions but also participated in the mentioned meetings, which discussed the search and notification of persons being allegedly subject to conscription for military service in the Armed Forces of the Russian Federation. In addition, this court noted that the accused personally appealed to the head of the city administration appointed by the occupation authorities with a request for assistance in searching for draft evaders and serving them draft notices.

Also, the verdict of the Trostianets District Court of Sumy Oblast of 1 March 2023 and the ruling of the Sumy Court of Appeal of 18 October 2023, which upheld this verdict, were appealed to the Criminal Court of Cassation of the Supreme Court.

In the cassation appeal, the defence stated that courts of previous instances misapplied the law of Ukraine on criminal responsibility, and the sentence imposed on the convict (10 years of imprisonment) did not correspond to the degree of severity of the committed criminal offence and the identity of the convict, since, in the opinion of the defence, Art. 75 of the Criminal Code (Exemption from Serving a Sentence with Probation) should have been applied to the convict.

The opening of cassation proceedings of the Criminal Court of Cassation of the Supreme Court was refused because the courts of previous instances, when assigning a coercive measure to the convict, took into account the degree of severity and specific circumstances of the crime committed (which is considered grave in accordance with Art. 12 of the Criminal Code), data on the identity of the offender as well as the absence of any mitigating and aggravating circumstances. In addition, Art. 75 of the Criminal Code provides for the possibility of exempting a person from the sentence, provided that the court has imposed a sentence in the form of imprisonment for a term of no longer than five years. However, this type of sentence was imposed on the convict but in a larger scope – 10 years; hence, Art. 75 of the Criminal Code could not be applied.

**Appendix 1**

## QUESTIONNAIRE
## FOR MONITORING COURT PROCEEDINGS
## IN WAR CRIME CASES

**I. Overview:**
*(please answer all questions)*

| | |
|---|---|
| **Full name of the monitor** | |
| **Name of the court** | |
| **Date and time of the court hearing** (scheduled and actual) | |
| **Proceedings number** | |
| **Full name of the accused** | |
| **Full name of the public prosecutor** | |
| **Full name of the defence counsel (selected personally / appointed through FLA (Free Legal Aid)** | |
| **Indictment articles** | |
| **Has the hearing schedule been drafted?** If so, does it accurately reflect all hearings, and has it been posted publicly (e.g., on the electronic information resource, bulletin board in court) or made easily accessible to the public? Please provide details. | |
| **Is the trial open?**<br><br>If not, was the trial closed during the entire court proceeding or its separate part (closed court hearing)?<br><br>Please indicate the reasons for closed court proceedings. Was an appropriate explanation of the reason provided?<br><br>Did the court consider less stringent measures to protect the relevant interests when deciding on a closed trial? | |
| **Did the court hearing take place?** | |

| | |
|---|---|
| If the trial was postponed, please indicate the reasons and the period of postponement. | |

**II. The right to a public hearing**
(please provide open answers to all questions)

| № | Question. | Answer. |
|---|---|---|
| 1. | Were members of the public admitted to the court hearing? Was anyone denied access? | |
| 2. | Were there any restrictions on public admission to the courtroom after the start of the court hearing?<br>If so, what were they? Were these reasonable? | |
| 3. | Were media representatives allowed in the courtroom?<br>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)?<br>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?<br>Did the court have the opportunity to allocate a larger courtroom (if the courtroom was too small)? | |
| 5. | Did the trial take place in the judge's office? | |

**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. | Was the judge considering the case continuously present during the court hearing? In case there was a panel of judges, was it duly composed? | |
| 8. | Did anyone (political actors, parties to the proceedings, etc.) make threatening statements against the judiciary in relation to the outcome of the case? | |
| 9. | Did anyone make any allegations of corruption or undue influence on the judges in the case during the hearing? | |

| | | |
|---|---|---|
| 10. | 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)*

| | | |
|---|---|---|
| 11. | Was the prosecution present at the court hearing? | |
| 12. | Was the defence present at the court hearing? | |
| 13 | Was the prosecution notified in advance of the time and place of the court hearing? | |
| 14. | Was the defence notified in advance of the time and place of the court hearing? | |
| 15. | Did any party request a postponement of the court hearing due to the overlay? If so, was the request approved? | |
| 16. | Was the accused informed of their right to defence? (if in absentia, please indicate it in the answer) | |
| 17. | Was the defence provided with the opportunity to review the materials of the criminal proceedings provided this request was made?<br>If not, what were the reasons?<br>Was any information removed or redacted? If so, what were the reasons? | |
| 18 | Was the defence given the opportunity to cross-examine the witness during the trial? Did the presiding judge withdraw the question, and if so, what were the reasons? | |
| 19. | Were there any claims made during the proceedings (or are there any indications) suggesting that the prosecution has suppressed the evidence exculpating the accused? If so, please provide the details. | |
| 20. | Did the defence have the necessary time to prepare its position on the prosecution's evidence? | |
| 21. | Are there any indications suggesting that witnesses of the prosecution or defence were under pressure? If so, please provide the details. | |
| 22. | Did the accused have the opportunity to consult with their defence counsel in confidence, and were they given a reasonable time to do so? | |

| | | |
|---|---|---|
| 23. | 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)?<br>Were their meetings confidential (without any video or audio recording)? Was the time during which the defence counsel had the right to communicate with their client limited? | |
| 24 | Were there any signs indicating that the defence counsel was clearly indifferent or unqualified to represent the accused? | |
| 25. | Was the trial conducted in absentia? If so, what were the reasons? Were there measures that, if taken, would ensure the presence of the accused? What was the procedure for summoning applied in the criminal proceedings (serving a summons, sending it by mail, email or facsimile, summoning by telephone, telegram or other methods)? | |
| 26. | In the case of a trial in absentia, was the council of the accused present, and did they have the opportunity to cross-examine the prosecution witnesses or to present arguments on behalf of the accused? | |
| 27. | In the case of a trial in absentia, were there any signs of any obstacles for the accused to challenge verdicts passed in their absence? Has the court decision been appealed? | |

**V. The equality of arms**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 28. | Was the motion filed by the defence or the prosecution rejected without due substantiation? | |
| 29. | Do the defence and prosecution have equal procedural opportunities to prove their position? If not, please provide comments. | |
| 30. | Does the defence have the same opportunity as the prosecution to take procedural actions (request an expert examination, demand expert testimony, question witnesses, etc.)? | |

**VI. The presumption of innocence and the burden of proof**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 31. | Does the court make statements during the trial that demonstrate bias against the accused prior to passing the verdict? | |

| | | |
|---|---|---|
| 32. | Does the trial look like the one requiring the defence to prove their innocence? | |
| 33. | Has anyone (judiciary officials, other governmental officials, etc.) made public statements treating the accused as guilty of the crimes before the court decision? | |
| 34. | Has the accused reported torture or ill-treatment during the pre-trial investigation without due investigation? If so, were their complaints considered? Were they taken into account by the court and the prosecution? | |
| 35. | Are there any indications suggesting that the accused has been bribed, threatened or lured into confessing guilt? | |
| 36. | Is the testimony of one of the accused the only evidence leading to the conviction of the accused in the case? | |
| 37. | Did the court take into account the testimony of the accused, which was made in their capacity as witnesses without being provided information as to their rights as the suspect/accused? | |
| 38. | Did the court take into account documents indicating unsuccessful negotiations within the plea agreement when establishing guilt? | |

**VII. The right not to witness against oneself and the right to silence at trial**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 39. | Was the accused duly informed of their rights? | |
| 40. | Does the court remind the accused of their rights during the proceedings, if required? | |
| 41. | Did the court consider the silence of the accused as a sign of guilt? | |
| 42. | Were the ethical rules of conduct followed by the court, prosecution and defence when concluding the plea agreement? | |

**VIII. Right to the reasonable duration and efficiency of the trial**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 43. | Specify the start date of criminal proceedings (entering information into the Unified State Register of Court Decisions).<br>Specify the end date of criminal proceedings (if the proceedings are ongoing, please indicate this). | |
| 44. | Are there any indications of violation of the terms of the pre-trial investigation or trial in the criminal proceeding? If so, what? | |
| 45. | Are there indications that the defence purposefully protracts proceedings? | |
| 46. | Are there indications that the presentation of expert or other evidence takes an unreasonably long time and the court does not seek to expedite this? | |
| 47. | Are there indications that the court does not manage proceedings effectively (e.g., court staff consistently failing to send out summons and case documents within the statutory deadlines, or the court repeatedly calling too many witnesses to testify on a given day, etc.)? If so, please provide the details. | |
| 48. | Does the court take due measures to ensure the presence of critical witnesses who are unwilling or unable to come to court (e.g., reviews the service of summonses, fines and/or protects them, etc.)? | |
| 49. | Does the court take disciplinary actions against the parties, members of the public, etc., for contempt of court according to the law? | |

**IX. The right to an interpreter**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 50. | Has the accused been provided with a professional and independent interpreter if they do not understand the language of the proceedings? | |
| 51. | Is the accused provided with court documents translated into a language they understand? If yes, please specify. | |
| 52. | Does the defence speak a language that the accused understands best? | |

**X. Right to liberty and security of person**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 53. | 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? | |
| 54. | 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?<br>Enter information from the Unified State Register of Court Decisions on this issue (references to relevant court decisions).<br>Indicate the time of detention during the pre-trial investigation/trial. | |
| 55. | Are the verdicts passed in terms of the imposed sentence commensurate with the duration of the detention of the accused?<br>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. The right to a public and reasoned judgement**
*(please provide open answers to the questions)*

| | | |
|---|---|---|
| 56. | Was the judgement pronounced publicly? | |
| 57. | In the event of a guilty verdict, does the applied sentence correspond to the limits set by law? | |
| 58. | If there were mitigating or aggravating circumstances in the case, were these taken into account? | |

| **Additional comments from the monitors:** |
|---|
| |

**Appendix 2**

## QUESTIONNAIRE FOR ANALYSING COURT DECISIONS IN WAR CRIMES CASES

| ANALYSIS CRITERIA | ANALYSIS OF A COURT DECISION |
|---|---|
| Names of monitors | |
| Date accepted | |
| Region | |
| Case No. | |
| Public prosecution authority | |
| Court | |
| Qualification | |
| The subject matter of the trial | |
| Reference to the Unified State Register of Court Decisions | |
| Representatives of the accused (FLA or not) | |
| Were the court hearings open? | |
| Were members of the public admitted? | |
| Are media representatives allowed in the courtroom? | |
| Were court hearings held in absentia? | |
| Were parties notified of the hearings? | |
| Has the accused been informed of their right to defence? | |
| Has an attorney been appointed through FLA? | |
| Were the materials of the criminal case provided to the accused? (Were messages about the possibility of reviewing them sent to the accused)? | |
| Has the accused reported torture or ill-treatment during the investigation stage without due investigation?<br><br>If so, did the court take this into account? | |
| Are there any indications suggesting that the accused has been bribed, threatened or lured into confessing guilt? | |

| | |
|---|---|
| Was the accused duly informed of their rights? | |
| Has the accused been provided with a professional and independent interpreter if they do not understand the language of the proceedings? | |
| Has a preventive measure been chosen for the accused? If so, which one? | |
| Does the qualification of actions correspond to the circumstances of the case? | |
| Are there reasons to believe that the qualification of actions is incorrect? (If so, what are they)? | |
| Has any evidence been found to be inadmissible or improper? If so, which ones, and what was the basis? | |
| Are any other violations of the CPC observed when the court decision is passed? If so, what are they? | |

**Appendix 3**

## LIST OF COURT DECISIONS UNDER ART. 438 OF THE CRIMINAL CODE OF UKRAINE, WHICH WERE ANALYSED DURING THE FIRST AND SECOND STAGES OF MONITORING

1. Verdict of the Sloviansk City and District Court of Donetsk Oblast of 1 June 2017 in case No. 243/4702/17. URL: https://reyestr.court.gov.ua/Review/66885637

2. Verdict of the Sloviansk City and District Court of Donetsk Oblast of 15 December 2021 in case No. 243/6186/20. URL: https://reyestr.court.gov.ua/Review/101948384; Ruling of the Dnipro Court of Appeal of 17 May 2023. URL: https://reyestr.court.gov.ua/Review/110937958#

3. Verdict of the Solomianskyi District Court of Kyiv of 23 May 2022 in case No. 760/5257/22. URL: https://reyestr.court.gov.ua/Review/104432094; Ruling of the Kyiv Court of Appeal of 29 July 2022. URL: https://reyestr.court.gov.ua/Review/105669005

4. Verdict of the Kotelva District Court of Poltava Oblast of 31 May 2022 in case No. 535/244/22. URL: https://reyestr.court.gov.ua/Review/104531363; Ruling of the Poltava Court of Appeal of 21 September 2022. URL: https://reyestr.court.gov.ua/Review/106448411

5. Verdict of the Oktiabrskyi District Court of Poltava of 9 June 2022 in case No. 554/3925/22. URL: https://reyestr.court.gov.ua/Review/104701812

6. Verdict of the Oktiabrskyi District Court of Poltava of 13 June 2022 in case No. 554/3864/22. URL: https://reyestr.court.gov.ua/Review/104739440

7. Verdict of the Oktiabrskyi District Court of Poltava of 13 June 2022 in case No. 554/3954/22. URL: https://reyestr.court.gov.ua/Review/104731235; Ruling of the Chernihiv Court of Appeal of 2 November 2022. URL: https://reyestr.court.gov.ua/Review/107069742

8. Verdict of the Shevchenkivskyi District Court of Kyiv of 3 August 2022 in case No. 761/14035/22. URL: https://reyestr.court.gov.ua/Review/106643372

9. Verdict of the Desnianskyi District Court of Chernihiv of 8 August 2022 in case No. 750/2891/22. URL: https://reyestr.court.gov.ua/Review/105614689; Ruling of the Chernihiv Court of Appeal of 2 November 2022. URL:https://reyestr.court.gov.ua/Review/107069742

8. Verdict of the Novozavodskyi District Court of Chernihiv of 31 August 2022 in case No. 751/2961/22. URL: https://reyestr.court.gov.ua/Review/105986768

11. Verdict of the Solomianskyi District Court of Kyiv of 26 September 2022 in case No. 760/4174/22. URL: https://reyestr.court.gov.ua/Review/106808179

12. Verdict of the Novozavodskyi District Court of Chernihiv of 2 November 2022 in case No. 751/2659/22. URL: https://reyestr.court.gov.ua/Review/105614689; Ruling of the Chernihiv Court of Appeal of 23 March 2023. URL: https://reyestr.court.gov.ua/Review/110415036

13. Verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 17 November 2022 in case No. 369/9950/22. URL: https://reyestr.court.gov.ua/Review/107577110

14. Verdict of the Bobrovytsia District Court of Chernihiv Oblast of 24 November 2022 in case No. 729/574/22. URL: https://reyestr.court.gov.ua/Review/107481395

15. Verdict of the Bobrovytsia District Court of Chernihiv Oblast of 25 November 2022 in case No. 729/592/22. URL: https://reyestr.court.gov.ua/Review/107503138

16. Verdict of the Podilskyi District Court of Kyiv of 19 December 2022 in case No. 758/14216/21. URL: https://reyestr.court.gov.ua/Review/108048620

17. Verdict of the Kotelva District Court of Poltava Oblast of 23 December 2022 in case No. 535/2922/22. URL: https://reyestr.court.gov.ua/Review/108042992

18. Verdict of the Kotelva District Court of Poltava Oblast of 26 December 2022 in case No. 535/2100/22. URL: https://reyestr.court.gov.ua/Review/108302451

19. Verdict of the Chernihiv District Court of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22. URL: https://reyestr.court.gov.ua/Review/108302451#

20. Verdict of the Chernihiv District Court of Chernihiv Oblast of 12 January 2023 in case No. 748/1773/22. URL: https://reyestr.court.gov.ua/Review/108357178; Ruling of the Chernihiv Court of Appeal of 6 April 2023. URL: https://reyestr.court.gov.ua/Review/110071819

21. Verdict of the Darnytskyi District Court of Kyiv of 30 January 2023 in case No. 753/23311/21. URL: https://reyestr.court.gov.ua/Review/108861126; Ruling of the Kyiv Court of Appeal of 2 May 2023. URL: https://reyestr.court.gov.ua/Review/110709640

22. Verdict of the Chernihiv District Court of Chernihiv Oblast of 17 February 2023 in case No. 748/1824/22. URL: https://reyestr.court.gov.ua/Review/109074116

23. Verdict of the Trostianets District Court of Sumy Oblast of 1 March 2023 in case No. 588/1009/22. URL: https://reyestr.court.gov.ua/Review/109272987; Ruling of the Sumy Court of Appeal of 18 October 2023. URL: https://reyestr.court.gov.ua/Review/114842547; Ruling of the panel of judges of the Third Chamber of the Criminal Court of Cassation in the Supreme Court of 18 October 2023. URL: https://reyestr.court.gov.ua/Review/116704925 (the cassation proceedings were denied)

24. Verdict of the Dzerzhynskyi District Court of Kharkiv of 2 March 2023 in case No. 638/1343/23. URL: https://reyestr.court.gov.ua/Review/109334224

25. Verdict of the Chernihiv District Court of Chernihiv Oblast of 8 March 2023 in case No. 748/22/23. URL: https://reyestr.court.gov.ua/Review/109438873

26. Verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 27 March 2023 in case No. 369/7906/22. URL: https://reyestr.court.gov.ua/Review/109824184

27. Verdict of the Darnytskyi District Court of Kyiv of 28 March 2023 in case No. 753/2458/22. URL: https://reyestr.court.gov.ua/Review/110157736

28. Verdict of the Desnianskyi District Court of Chernihiv of 11 April 2023 in case No. 750/6470/22. URL: https://reyestr.court.gov.ua/Review/110135338

29. Verdict of the Makariv District Court of Kyiv Oblast of 20 April 2023 in case No. 370/179/23 https://reyestr.court.gov.ua/Review/110354341

30. Verdict of the Darnytskyi District Court of Kyiv of 24 April 2023 in case No. 753/14148/21 URL: https://reyestr.court.gov.ua/Review/110409601; Ruling of the Court of Appeal of Kyiv Oblast of 10 July 2023. URL: https://reyestr.court.gov.ua/Review/113698929; Ruling of the panel of judges of the

Third Chamber of the Criminal Court of Cassation in the Supreme Court of 28 February 2024. URL: https://reyestr.court.gov.ua/Review/117442733 (decisions of the first instance and appellate courts were upheld)

31. Verdict of the Ichnia District Court of Chernihiv Oblast of 26 April 2023 in case No. 733/923/22. URL: https://reyestr.court.gov.ua/Review/110482776; Ruling of the Chernihiv Court of Appeal of 26 July 2023. URL: https://reyestr.court.gov.ua/Review/112456514

32. Verdict of the Chernihiv District Court of Chernihiv Oblast of 27 April 2023 in case No. 734/2129/22 https://reyestr.court.gov.ua/Review/110482938; Ruling of the Chernihiv Court of Appeal of 9 August 2023. URL: https://reyestr.court.gov.ua/Review/112760946

33. Verdict of the Trostianets District Court of Sumy Oblast of 9 May 2023 in case No. 588/1072/22. URL: https://reyestr.court.gov.ua/Review/110714705; Ruling of the Sumy Court of Appeal of 4 December 2023. https://reyestr.court.gov.ua/Review/115635407

34. Verdict of the Irpin City Court of Kyiv Oblast of 12 May 2023 in case No. 367/3477/22. URL: https://reyestr.court.gov.ua/Review/110824305

35. Verdict of the Zhovtnevyi District Court of Kryvyi Rih of the Dnipropetrovsk Oblast of 15 May 2023 in case No. 212/4028/22. URL: https://reyestr.court.gov.ua/Review/110845948

36. Verdict of the Chernihiv District Court of Chernihiv Oblast of 24 May 2023 in case No. 748/655/23. URL: https://reyestr.court.gov.ua/Review/111050241

36. Verdict of the Chernihiv District Court of Chernihiv Oblast of 29 May 2023 in case No. 748/727/23. URL: https://reyestr.court.gov.ua/Review/111139770

38. Verdict of the Podilskyi District Court of Kyiv of 15 June 2023 in case No. 758/16427/21. URL: https://reyestr.court.gov.ua/Review/111764865

39. Verdict of the Ivankiv District Court of Kyiv Oblast of 28 June 2023 in case No. 366/869/23. URL: https://reyestr.court.gov.ua/Review/111894270

40. Verdict of the Ivankiv District Court of Kyiv Oblast of 28 June 2023 in case No. 366/2363/22. URL: https://reyestr.court.gov.ua/Review/111986970; Ruling of the Kyiv Court of Appeal of 26 December 2023. URL: https://reyestr.court.gov.ua/Review/116158551

41. Verdict of the Ripky District Court of Chernihiv Oblast of 17 July 2023 in case No. 751/3261/22. URL: https://reyestr.court.gov.ua/Review/112364078; Ruling of the Chernihiv Court of Appeal of 28 September 2023. https://reyestr.court.gov.ua/Review/113807470

42. Verdict of the Chernihiv District Court of Chernihiv Oblast of 1 August 2023 in case No. 748/1991/22. URL: https://reyestr.court.gov.ua/Review/112559865

43. Verdict of the Brovary City and District Court of Kyiv Oblast of 15 August 2023 in case No. 361/6215/22. URL: https://reyestr.court.gov.ua/Review/112819115

44. Verdict of the Chernihiv District Court of Chernihiv Oblast of 28 August 2023 in case No. 748/1599/23. URL: https://reyestr.court.gov.ua/Review/113102312; Ruling of the Chernihiv Court of Appeal of 4 December 2023. URL: https://reyestr.court.gov.ua/Review/115390958

45. Verdict of the Trostianets District Court of Sumy Oblast of 30 August 2023 in case No. 588/1122/23. URL: https://reyestr.court.gov.ua/Review/113106427; Ruling of the Sumy Court of Appeal of 11 March 2024. URL: https://reyestr.court.gov.ua/Review/117964366

46. Verdict of the Chernihiv District Court of Chernihiv Oblast of 14 September 2023 in case No. 748/855/23. URL: https://reyestr.court.gov.ua/Review/113458684

47. Verdict of the Industrialnyi District Court of Dnipropetrovsk of 2 October 2023 in case No. 202/3594/23. URL: https://reyestr.court.gov.ua/Review/113875389

48. Verdict of the Chernihiv District Court of Chernihiv Oblast of 11 December 2023 in case No. 748/3990/23. URL: https://reyestr.court.gov.ua/Review/115639014

49. Verdict of the Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23 https://reyestr.court.gov.ua/Review/114042300; Ruling of the Dnipro Court of Appeal of 21 February 2024. URL: https://reyestr.court.gov.ua/Review/117199185

50. Verdict of the Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22. URL: https://reyestr.court.gov.ua/Review/114246483

51. Verdict of the Brovary City and District Court of Kyiv Oblast of 23 October 2023 in case No. 361/6545/22. URL: https://reyestr.court.gov.ua/Review/114340568

52. Verdict of the Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23. URL: https://reyestr.court.gov.ua/Review/114511607; Ruling of the Chernihiv Court of Appeal of 22 January 2024. URL: https://reyestr.court.gov.ua/Review/116467305

53. Verdict of the Suvorovskyi District Court of Odesa of 30 October 2023 in case No. 523/8377/23. URL: https://reyestr.court.gov.ua/Review/114705146

54. Verdict of the Komunarskyi District Court of Zaporizhzhia of 22 November 2023 in case No. 333/2316/23. URL: https://reyestr.court.gov.ua/Review/115263819 (**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"**)

*Appealed to the Court of Appeal.*

*55. Verdict of the Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23. URL: https://reyestr.court.gov.ua/Review/115421876; Ruling of the Chernihiv Court of Appeal of 21 February 2024. URL: https://reyestr.court.gov.ua/Review/117239611*

*56. Verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23. URL: https://reyestr.court.gov.ua/Review/116083621*

*Appealed to the Court of Appeal.*

*57. Verdict of the Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23. URL: https://reyestr.court.gov.ua/Review/115464004*

*58. Verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 8 December 2023 in case No. 369/358/23. URL: https://reyestr.court.gov.ua/Review/116101034*

*59. Verdict of the Borodianka District Court of Kyiv Oblast of 11 December 2023 in case No. 367/3635/22. URL: https://reyestr.court.gov.ua/Review/115543640. Appealed to the Court of Appeal (left without motion and returned for deficiency elimination)*

*60. Verdict of the Zavodskyi District Court of Zaporizhzhia of 2 January 2024 in case No. 332/441/23. URL: https://reyestr.court.gov.ua/Review/116072492*

*61. Verdict of the Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23. URL: https://reyestr.court.gov.ua/Review/116176015*

*62. Verdict of the Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23. URL: https://reyestr.court.gov.ua/Review/116539533*

*63. Verdict of the Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23. URL: https://reyestr.court.gov.ua/Review/116622634*

*Appealed to the Court of Appeal.*

*64. Verdict of the Suvorovskyi District Court of Odesa of 31 January 2024 in case No. 523/6894/23. URL: https://reyestr.court.gov.ua/Review/116791581*

*65. Verdict of the Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23. URL: https://reyestr.court.gov.ua/Review/116968500*

*Appealed to the Court of Appeal.*

*66. Verdict of the Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23. URL: https://reyestr.court.gov.ua/Review/117304451*

*67. Verdict of the Obolonskyi District Court of Kyiv of 6 March 2024 in case No. 367/3486/22. URL: https://reyestr.court.gov.ua/Review/117778018*

*68. Verdict of the Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22. URL: https://reyestr.court.gov.ua/Review/117558621*

*69. Verdict of the Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23. URL: https://reyestr.court.gov.ua/Review/117537510*

*Appealed to the Court of Appeal.*

*70. Verdict of the Chernihiv District Court of Chernihiv Oblast of 25 March 2024 in case No. 748/4122/23. URL: https://reyestr.court.gov.ua/Review/117864445*

*71. Verdict of the Ichnia District Court of Chernihiv Oblast of 25 March 2024 in case No. 733/961/23. URL: https://reyestr.court.gov.ua/Review/117894180*

*72. Verdict of the Suvorovskyi District Court of Odesa of 27 March 2024 in case No. 523/224/23. URL: https://reyestr.court.gov.ua/Review/117988682*

*73. Verdict of the Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23. URL: https://reyestr.court.gov.ua/Review/118097896*

*74. Verdict of the Desnianskyi District Court of Kyiv of 5 April 2024 in case No. 754/3227/23. URL: https://reyestr.court.gov.ua/Review/118166721*

*75. Verdict of the Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23. URL: https://reyestr.court.gov.ua/Review/118220618*

*76. Verdict of the Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23. URL: https://reyestr.court.gov.ua/Review/118372054*

*77. Verdict of the Chernihiv District Court of Chernihiv Oblast of 22 April 2024 in case No. 748/4474/23. URL: https://reyestr.court.gov.ua/Review/118552526*

*78. Verdict of the Brovary City and District Court of Kyiv Oblast of 23 April 2024 in case No. 361/488/23. URL: 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")**

*79. Verdict of the Prymorskyi District Court of Odesa of 20 May 2024 in case No. 522/6292/23. https://reyestr.court.gov.ua/Review/119124094* **Information is prohibited for disclosure under paragraph four of part one of Article 7 of the Law of Ukraine "On Access to Court Decisions")**

*80. Verdict of the Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22. URL: https://reyestr.court.gov.ua/Review/118781560*

*81. Verdict of the Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024 in case No. 650/1870/23. URL: https://reyestr.court.gov.ua/Review/118734665*

*82. Verdict of the Chernihiv District Court of Chernihiv Oblast of 2 May 2024 in case No. 748/2091/23. URL: https://reyestr.court.gov.ua/Review/118771999*

**At the second stage of monitoring, the following were processed:**

**Verdicts of the following courts of first instance**:

1. Chernihiv District Court of Chernihiv Oblast of 2 May 2024 in case No. 748/2091/23. URL: https://reyestr.court.gov.ua/Review/118771999
2. Chernihiv District Court of Chernihiv Oblast of 4 December 2023 in case No. 748/3888/23. URL: https://reyestr.court.gov.ua/Review/115421876
3. Chernihiv District Court of Chernihiv Oblast of 10 January 2023 in case No. 748/2272/22. https://reyestr.court.gov.ua/Review/108302451#
4. Chernihiv District Court of Chernihiv Oblast of 11 March 2023 in case No. 748/1278/23. URL: https://reyestr.court.gov.ua/Review/117537510
5. Chernihiv District Court of Chernihiv Oblast of 11 December 2023 in case No. 748/3990/23 https://reyestr.court.gov.ua/Review/115639014
6. Chernihiv District Court of Chernihiv Oblast of 16 April 2024 in case No. 748/1665/23. URL: https://reyestr.court.gov.ua/Review/118372054
7. Chernihiv District Court of Chernihiv Oblast of 22 April 2023 in case No. 748/4474/23. URL: https://reyestr.court.gov.ua/Review/118552526
8. Chernihiv District Court of Chernihiv Oblast of 25 March 2024 in case No. 748/4122/23. URL: https://reyestr.court.gov.ua/Review/117864445
9. Chernihiv District Court of Chernihiv Oblast of 29 January 2024 in case No. 748/3511/23. URL: https://reyestr.court.gov.ua/Review/116622634
10. Bakhmach District Court of Chernihiv Oblast of 25 January 2024 in case No. 728/665/23. URL: https://reyestr.court.gov.ua/Review/116539533
11. Ichnia District Court of Chernihiv Oblast of 25 March 2024 in case No. 733/961/23. URL: https://reyestr.court.gov.ua/Review/117894180
12. Kulykivka District Court of Chernihiv Oblast of 28 February 2024 in case No. 743/380/23. URL: https://reyestr.court.gov.ua/Review/117304451
13. Novozavodskyi District Court of Chernihiv of 26 October 2023 in case No. 751/1303/23. URL: https://reyestr.court.gov.ua/Review/114511607
14. Desnianskyi District Court of Kyiv of 5 April 2024 in case No. 754/3227/23. URL: https://reyestr.court.gov.ua/Review/118166721

15. Obolonskyi District Court of Kyiv of 6 March 2024 in case No. 367/3486/22. URL: https://reyestr.court.gov.ua/Review/117778018
16. Solomianskyi District Court of Kyiv of 11 March 2024 in case No. 760/10793/22. URL: https://reyestr.court.gov.ua/Review/117558621
17. Borodianka District Court of Kyiv Oblast of 11 December 2023 in case No. 367/3635/22. URL: https://reyestr.court.gov.ua/Review/115543640
18. Borodianka District Court of Kyiv Oblast of 9 April 2024 in case No. 939/2083/23. URL: https://reyestr.court.gov.ua/Review/118220618
19. Brovary City and District Court of Kyiv Oblast of 23 April 2024 in case No. 361/488/23. URL: 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")**
20. Brovary City and District Court of Kyiv Oblast of 23 October 2023 in case No. 361/6545/22. URL: https://reyestr.court.gov.ua/Review/114340568
21. Kyiv-Sviatoshyn District Court of Kyiv Oblast of 6 December 2023 in case No. 370/380/23. URL: https://reyestr.court.gov.ua/Review/116083621
22. Kyiv-Sviatoshyn District Court of Kyiv Oblast of 8 December 2023 in case No. 369/358/23. URL: https://reyestr.court.gov.ua/Review/116101034
23. Kyiv-Sviatoshyn District Court of Kyiv Oblast of 9 January 2024 in case No. 369/3120/23. URL: https://reyestr.court.gov.ua/Review/116176015
24. Velyka Oleksandrivka District Court of Kherson Oblast of 29 April 2024 in case No. 650/1870/23. URL: https://reyestr.court.gov.ua/Review/118734665
25. Dzerzhynskyi District Court of Kharkiv of 2 April 2024 in case No. 638/4210/23. URL: https://reyestr.court.gov.ua/Review/118097896
26. Kyivskyi District Court of Kharkiv of 30 April 2024 in case No. 953/7767/22. URL: https://reyestr.court.gov.ua/Review/118781560
27. Krasnohrad District Court of Kharkiv Oblast of 6 December 2023 in case No. 611/229/23. URL: https://reyestr.court.gov.ua/Review/115464004
28. Zavodskyi District Court of Zaporizhzhia of 2 January 2024 in case No. 332/441/23. URL: https://reyestr.court.gov.ua/Review/116072492
29. Komunarskyi District Court of Zaporizhzhia of 22 November 2023 in case No. 333/2316/23. URL: https://reyestr.court.gov.ua/Review/115263819 (**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"**
30. Prymorskyi District Court of Odesa of 20 May 2024 in case No. 522/6292/23. https://reyestr.court.gov.ua/Review/119124094 **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")**
31. Suvorovskyi District Court of Odesa of 30 October 2023 in case No. 523/8377/23. URL: https://reyestr.court.gov.ua/Review/114705146
32. Suvorovskyi District Court of Odesa of 31 January 2024 in case No. 523/6894/23. URL: https://reyestr.court.gov.ua/Review/116791581

33. Romny City and District Court of Sumy Oblast of 18 October 2023 in case No. 585/2381/22. URL: https://reyestr.court.gov.ua/Review/114246483
34. Trostianets District Court of Sumy Oblast of 14 February 2024 in case No. 588/1363/23. URL: https://reyestr.court.gov.ua/Review/116968500
35. Saksahanskyi District Court of Kryvyi Rih of Dnipropetrovsk Oblast of 10 October 2023 in case No. 522/3868/23) https://reyestr.court.gov.ua/Review/114042300

**Rulings of the courts of appeal:**

1. Chernihiv Court of Appeal of 28 September 2023 in case No. 751/3261/22. URL: https://reyestr.court.gov.ua/Review/113807470
2. Chernihiv Court of Appeal of 4 December 2023 in case No. 588/1122/23. URL: https://reyestr.court.gov.ua/Review/115390958
3. Chernihiv Court of Appeal of 22 January 2024. URL: https://reyestr.court.gov.ua/Review/116467305
4. Chernihiv Court of Appeal of 21 February 2024. URL: https://reyestr.court.gov.ua/Review/117239611
5. Kyiv Court of Appeal of 10 July 2023 in case No. 753/14148/21. URL: https://reyestr.court.gov.ua/Review/113698929
6. Kyiv Court of Appeal of 26 December 2023 in case No. 366/2363/22. URL: https://reyestr.court.gov.ua/Review/116158551
7. Sumy Court of Appeal of 18 October 2023 in case No. 588/1009/22. URL: https://reyestr.court.gov.ua/Review/114842547
8. Sumy Court of Appeal of 4 December 2023 in case No. 588/1072/22. URL: https://reyestr.court.gov.ua/Review/115635407
9. Poltava Court of Appeal of 21 September 2022 in case No. 535/244/22. URL: https://reyestr.court.gov.ua/Review/106448411
10. Dnipro Court of Appeal of 21 February 2024. URL: https://reyestr.court.gov.ua/Review/117199185

**Decisions of the following courts of cassation:**

1. Resolution of the panel of judges of the Third Chamber of the Criminal Court of Cassation in the Supreme Court of 28 February 2024 in case No. 753/14148/21. URL: https://reyestr.court.gov.ua/Review/117442733

2. The ruling of the panel of judges of the Third Chamber of the Criminal Court of Cassation in the Supreme Court of 18 October 2023 in case No. 588/1009/22. URL: https://reyestr.court.gov.ua/Review/116704925

Information on three verdicts under Art. 438 of the Criminal Code is prohibited from being made public in accordance with paragraph 4 of part 1 of Art. 7 of the Law of Ukraine "On Access to Court Decisions" (verdicts of the Komunarskyi District Court of Zaporizhzhia of 22.11.2023 in case No. 333/2316/23, the Prymorskyi District Court of Odesa of 20.05.2024 in case No. 522/6292/23, the Brovarskyi City District Court of Kyiv Region of 23.04.2024 in case No. 361/488/23).