

НАПРЯМ 6. КРИМІНАЛЬНО-ПРАВОВА ПОЛІТИКА УКРАЇНИ В КОНТЕКСТІ АДАПТАЦІЇ ДО ACQUIS ЄС: ПРОТИДІЯ ТРАНСНАЦІОНАЛЬНІЙ ЗЛОЧИННОСТІ ТА ЗАБЕЗПЕЧЕННЯ ІНСТИТУЦІЙНОЇ БЕЗПЕКИ РЕГІОНІВ

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TRIAL FOR WAR CRIMES IN UKRAINE: INSIGHT INTO INDIVIDUAL CASES

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It is now the fifth year since the Russian Federation launched an illegal and unjustified aggressive war against Ukraine on February 24, 2022, carrying out a full-scale invasion of Ukrainian territory.

Since the start of Russia's war of aggression against Ukraine, numerous credible reports have documented the commission of core international crimes and atrocity crimes in Ukraine¹ – crimes that continue to this day. To support the prosecution of Russia's war crimes and crimes against humanity, the EU has taken a number of measures:

- 1) a joint investigation team within Eurojust (March 2022)
- 2) the collection of war crimes data within Europol (March 2022)

¹ For example, Report of the Independent International Commission of Inquiry on Ukraine to the UN General Assembly (A/80/497). (2025) Available at: <https://www.ohchr.org/en/hr-bodies/hrc/iicir-ukraine/reports/report-independent-international-commission-inquiry-ukraine-un-general-assembly-a80497>; Ukraine: Escalating Russian Attacks on Civilians (2025). Available at: <https://www.hrw.org/news/2025/05/22/ukraine-escalating-russian-attacks-civilians>

- 3) the EU advisory mission in Ukraine (April 2022)
- 4) a crimes evidence database at Eurojust (February 2023)
- 5) a taskforce within Europol to help identify suspects (September 2023)².

In this abstract there will be examined 3 case studies from Ukrainian national courts dealt with the cases of convictions of persons for committing war crimes on Ukrainian territory. The analytical method is used as main method for the study of legal sources, encompassing the analysis of legal acts, judicial practice and case law.

Case No.1.

On May 12, 2023, the Irpin Town Court of Kyiv Region issued a verdict against servicemen of the Armed Forces of the Russian Federation. They were charged under Part 1 of Article 438 of the Criminal Code of Ukraine regarding violations of the laws and customs of war. The charges relate to events in Bucha in March 2022, where Russian soldiers illegally detained and tortured a Ukrainian citizen. A civilian did not participate in hostilities, did not have any weapons or any other instruments or means that could justify cruel treatment.

The court established that defendants detained the unarmed victim near his home. They bound his hands with plastic clamps, blindfolded him with tape, and beat him with rifle butts and legs, inflicting bodily injuries. The victim was subsequently held hostage in a captured apartment without food, water, while being subjected to psychological pressure and threats.

The guilt was confirmed with the detailed testimony of the victim and witnesses, forensic medical examinations documenting the injuries, and investigative experiments. The victim was able to identify the defendants from photographs. Additionally, mobile network data confirmed the presence of defendants' phones in the Kyiv region during the occupation.

The court applied the Criminal Code of Ukraine alongside major instruments of international humanitarian law. The verdict referenced violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War³. To justify the crime as a war crime, the court referred to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia⁴.

² Russia's war against Ukraine: the fight against impunity (2026). Available at: <https://www.consilium.europa.eu/en/policies/fight-against-russia-impunity/>

³ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva (1949). Available: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

⁴ More detailed information: International Criminal Tribunal for the former Yugoslavia (1993–2017). Available at: <https://www.icty.org/>

The court's verdict is as follows: all accused servicemen of the Armed Forces of the Russian Federation were found guilty of committing a criminal offense under Part 1 of Article 438 of the Criminal Code of Ukraine. All defendants received sentences ranging from 11 to 12 years of imprisonment⁵.

Case No.2.

On August 8, 2022, the Desniansky District Court of Chernihiv. issued a verdict against serviceman of the Armed Forces of the Russian Federation for committing a war crime against the civilian population of Ukraine. The case concerns actions carried out during the armed aggression of the Russian Federation against Ukraine, specifically the deliberate shelling of a residential multi-storey building in Chernihiv on February 26, 2022, as part of a military operation crossing the state border from the Republic of Belarus. The accused, serving in the T-72B tank crew as a gunner under the command of the battalion commander, knowingly participated in the attack on a civilian object, fully aware of the unlawful nature of the order, which violated international humanitarian law.

The court established the accused's guilt based on extensive evidence, including witness testimonies, expert reports, and procedural experiments. Witness No.1 described observing the aftermath of the tank attack, identifying the accused as the perpetrator and confirming the military origin of the assault. Witness No.2 confirmed the presence of the tank near her residence and the firing at a civilian building. Witnesses No.3 and No.4 verified the physical damage to the apartments and collected shrapnel from a 125-mm high-explosive fragmentation round type ZVOF36, confirming that the target was not of military significance. Expert conclusions established that the total material damage amounted to UAH 918,662.45, and measurements confirmed the trajectory and angle of the shot from the tank to the residential building. The accused himself admitted his actions and confirmed his status as a serviceman of the Russian Armed Forces.

The legal qualification of the offense was based on Part 1 of Article 438 of the Criminal Code of Ukraine, which criminalizes violations of the laws and customs of war. The court considered international law, including the Additional Protocol I to the Geneva Conventions of August 12, 1949⁶, the

⁵ Case № 367/3477/22 (2023) of the Irpin Town Court of Kyiv Region. Available at: www.reyestr.court.gov.ua

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977). Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

Hague Regulations of 1907 on the laws and customs of war on land⁷, and relevant provisions regarding the protection of civilian objects and non-combatants. The court emphasized that orders from a commander are only lawful if they are within the scope of authority and do not contradict national law or violate human rights. Civilian buildings cannot be attacked or bombarded, and the accused had no reasonable grounds to believe the targeted building was used for military purposes.

The court also took into account mitigating and aggravating circumstances, noting that the accused demonstrated sincere remorse, cooperated with the investigation, and had dependents, while the severity of the crime, as a violation of the laws and customs of war, its threat to peace, security, and international order, required a strict sanction. The court rejected the defense that the accused was merely following orders, considering that compliance with illegal commands does not exempt responsibility.

As a result, the court found serviceman of the Armed Forces of the Russian Federation guilty under Part 1 of Article 438 of the Criminal Code of Ukraine and sentenced him to ten years of imprisonment, with the term calculated from the moment of actual detention. Procedural costs for forensic expertise totaling UAH 25,065.04 are to be recovered from the accused in favor of the state, and physical evidence, including 9 pieces of 125-mm ammunition, is to be destroyed after the verdict enters into legal force. The judgment reflects both the established factual circumstances of the war crime and the application of national and international law to ensure accountability for violations of humanitarian norms during armed conflict⁸.

Case No.3.

The Khortytsky District Court of Zaporizhzhia examined a criminal case against 4 defendants, all citizens of Ukraine, who were charged with committing a particularly criminal offense under Part 2 of Article 28 and Part 1 of Article 438 of the Criminal Code of Ukraine. The charges arose from their participation in actions classified as war crimes, directed against the peace, security of humanity, and the international legal order.

They were accused of organizing and participating in unlawful activities within an illegal law enforcement structure. The prosecution alleged that the defendants, acting in concert and by prior agreement, engaged in criminal

⁷ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague (1907). Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>

⁸ Case No. 750/2891/22 (2022) of the Desniansky District Court of Chernihiv. Available: www.reyestr.court.gov.ua

conduct that included obstructing public order, unauthorized exercise of authority, and violations of international law norms during the period of armed conflict. The case involved extensive investigative materials, including electronic correspondence, photographic evidence, organizational charts, and financial documents, which were formally submitted as part of the prosecution's case.

During the trial, the court evaluated the evidence presented by the prosecution, which collectively demonstrated the guilt of all four defendants. Key evidence included the following:

1) Electronic Communication: messages retrieved from the Telegram account linked to accused persons indicating coordinated operational instructions. These messages demonstrated the defendants' active involvement in directing and authorizing the passage of vehicles, including a VAZ-2106, under circumstances indicative of organized unlawful control.

2) Official Documentation: materials such as personnel charts and payroll records linked accused persons to recognized positions of authority within the illegal organization. The court noted that these documents corroborated the defendants' roles and responsibilities, establishing both intent and the hierarchical command structure utilized in committing the offenses.

3) Photographic Evidence: photos of damage to transportation infrastructure, including railway tracks, were introduced, evidencing acts that disrupted civil and military operations. The images were used to confirm the defendants' awareness and orchestration of illegal activities.

4) Prior Convictions: the court considered prior convictions of two accused persons by the same district court in 2024 for serious offenses. These prior judgments were relevant in determining the defendants' capacity for rehabilitation and the necessity of additional punitive measures.

The court noted that procedural documents, including warrants, announcements, and records of investigative actions, while submitted by the prosecution, were not evaluated as evidence of guilt because they did not directly pertain to proving or disproving the elements of the charged offense.

Considering several factors (severity of the crime, group conspiracy, special consideration of ranks and positions, cumulative sentencing for defendants with prior convictions for serious crimes) in determining the appropriate punishment:

1) Person No.1: sentenced to 12 years of imprisonment, deprivation of the rank of Police Major, and deprivation of the right to hold official positions in public authorities, local self-government, and positions associated with public services for 3 years.

2) Person No.2: sentenced to 12 years of imprisonment, deprivation of the rank of Senior Police Lieutenant, and deprivation of the right to hold official positions in public authorities, local self-government, and positions associated with public services for 3 years.

3) Person No.3: sentenced to 20 years of imprisonment (including partial attachment of unserved prior sentences), deprivation of the special rank of Internal Service Sergeant and military rank of Sergeant, deprivation of the right to hold positions in state authorities, law enforcement, and public service agencies for 15 years, and confiscation of all property.

4) Person No.4: sentenced to 20 years of imprisonment (including partial attachment of unserved prior sentences), deprivation of the ranks of Senior Police Sergeant and Sergeant of the Judicial Guard Service, deprivation of the right to hold positions in law enforcement, state authorities, and local self-government for 15 years, and confiscation of all property⁹.

Conclusions.

The mentioned three examples of case studies prove that despite the evidentiary problems, Ukrainian courts are coping with the task of convicting persons who committed war crimes on Ukrainian territory. However, in order to convict war-triggers of a crime of aggression, a special tribunal must be established.

⁹ Case No 337/4647/24 (2025) of the Khortytskyi District Court of Zaporizhzhia. Available: www.reyestr.court.gov.ua