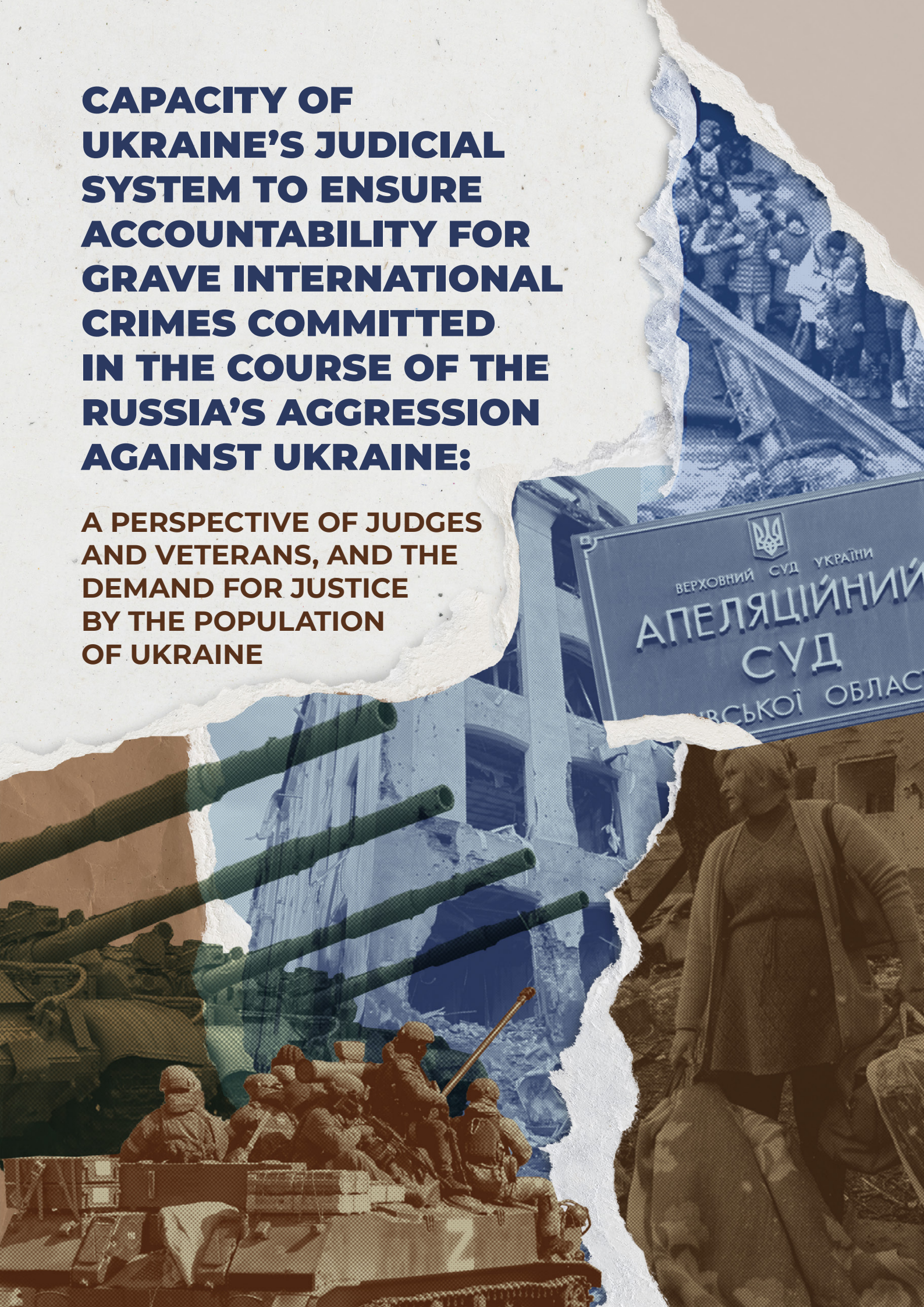
CAPACITY OF UKRAINE'S JUDICIAL SYSTEM TO ENSURE ACCOUNTABILITY FOR GRAVE INTERNATIONAL CRIMES COMMITTED IN THE COURSE OF THE RUSSIA'S AGGRESSION AGAINST UKRAINE:

A PERSPECTIVE OF JUDGES AND VETERANS, AND THE DEMAND FOR JUSTICE BY THE POPULATION OF UKRAINE



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CONTENTS

RELEVANCE OF THE RESEARCH

In the conditions of the ongoing international armed conflict with the Russian Federation since 2014 and as a result of the new phase of Russian aggression in February 2022, thousands of international crimes have been committed on Ukrainian territory. Ensuring an effective investigation of the vast majority of these crimes is a task to be undertaken by the national law enforcement system and the justice system. Only as of April 2023, the Office of the Prosecutor General of Ukraine reported about 80,000 investigations opened into alleged international crimes since February 2022.[1] Tens of thousands more criminal cases are being considered by law enforcement officers and courts as a result of Russia's occupation of the Crimean Peninsula and parts of the Donetsk and Luhansk regions since 2014.

The inevitability of punishment for every crime is one of important components of building peace and restoring the rights of victims. Their effective investigation requires significant resources and a necessary level of competence among the investigators, experts, prosecutors, and judges. The events of the war in Ukraine and its consequences in the form of numerous crimes attract the attention of both the international community and Ukrainian society. In this regard, among other things, the question as to the capacity of the state to satisfy the demand of the Ukrainian society for justice is a pertinent one, as well as to develop both a capable national justice system under conditions of war and cooperation with international justice mechanisms in the situation of Ukraine.

Solving these problems requires a set of measures aimed at legislative changes, building professional capacity of the legal community, extensive educational work on the development of justice under the conditions of an ongoing war and overcoming its consequences, etc. In addition, it is extremely important to consider the perspective and demand for justice of the people, in particular, witnesses and survivors when developing the architecture of justice, otherwise proposed models may remain unsustainable and unaccepted by Ukrainian society.

Understanding the radically new operating conditions for the justice system, the aggravation of the existing problems within the system and the large number of criminal cases awaiting law enforcement agencies and courts, Ukrainian Legal Advisory Group (ULAG) in cooperation with the Ukraine 5AM Coalition, together with partners Association for the Development of Judicial Self-Government of Ukraine, Institute for Peace and Common Ground NGO, Prostir Mozhlyvostey NGO and the sociological group Rating have initiated and participated in a series of studies with the aim of analysing the main challenges and the overall potential of the national justice system to ensure fair justice for the most serious crimes committed during the international armed conflict in Ukraine.

1 https://www.gp.gov.ua/

In the framework of the research, the results of several studies are summarised: the results of a series of national polls "Legal protection for victims of Russia's war crimes", conducted by the sociological group Rating (September and December 2022); a qualitative research of the perceptions of problems and opportunities for justice system in regards to the most serious international crimes as seen by the judges, carried out by ULAG, the Institute for Peace and Common Ground NGO, and the Association for the Development of Judicial Self-Government of Ukraine (ADSG); research conducted by the Prostir Mozhlyvostey NGO to determine the attitude of veterans towards the establishment and development of a special justice mechanism in order to process effectively the most serious crimes committed as a result of the aggression of the Russian Federation against Ukraine.[2]

The goal of this research was to analyse the main challenges and the overall potential of the national justice system to ensure fair justice for grave crimes related to armed conflict, which will meet international standards of due process, as well as to propose recommendations for solving existing problems. Research includes work with target professional groups (judges), groups of veterans, as well as national public polls.

International experience demonstrates that the justice systems of conflicting states usually face challenges overcoming which requires new solutions because existing approaches and mechanisms are no longer effective. Such situations require developing special justice mechanisms.

In addition, there are certain principles and standards that should be incorporated into the operation of any justice system, regardless of the specific solution or model. For example, in the context of the judiciary, there are Bangalore Principles of Judicial Conduct: independence, impartiality, integrity, propriety, equality, competence, and diligence.[3] The research, in particular, is an attempt to verify the extent to which the state provides the conditions under which compliance with these standards is a feasible task for the judicial system of Ukraine, under the conditions of war.

The information obtained during the research may be useful for the development of an accountability mechanism for grave crimes likely to have been committed in the context of the armed conflict and for finding ways/areas to strengthen the potential of the existing justice system in Ukraine.

There is no ready-made universal model of such a mechanism today. When developing its design elements, experts should consider the national context, the opinion of the judicial community, and their experience. They should also identify strengths and weaknesses of

2 Report on the research about the veterans attitude regarding the creation and development of a special justice mechanism based on the consequences of the most serious crimes that happened due to the aggression of the Russian Federation https://pm.in.ua/wp-content/uploads/2023/02/Dodatok-3.-Zvit-doslidzhennya-dokumentuvannya.pdf

3 Bangalore Principles of Judicial Conduct, The Hague, 2022, https://www.un.org/ru/documents/decl_conv/conventions/bangalore_principles.shtml

the justice system and existing needs, minding generally recognised principles and standards.

The research aims to analyse and collect the opinions of the judicial community in order to prevent the risk of accountability mechanism which national judges will be a part of, being developed without their participation and their contributions. Also, within this analysis, the perspective and key demands vis-a-vis justice and accountability mechanisms from the Ukrainian public are presented.

The research results can be useful for individual judges and bodies of judicial self-government, Ukraine's MPs, international experts, representatives of national and international non-governmental organisations, as well as representatives of the expert community working within the legal dimension of the armed conflict in Ukraine.

RESEARCH METHODOLOGY AND TOOLS

The purpose of the research is to analyse the main challenges and the overall potential of the national justice system to ensure fair justice in cases related to international crimes committed as a result of the armed aggression of the Russian Federation., and to formulate recommendations to address existing challenges, minding international standards of due process and public expectations of fairness and justice in the aftermath of war.

Research tasks

1. To analyse individually and compare the experience of judges in conflict-related court cases of international crimes between 2014 and the time of the research, as well as their experience following the full-scale invasion in February 2022. In particular:
   - timeliness and quality of administration of justice; independence and impartiality of the justice system;
   - knowledge and ability to apply international humanitarian and criminal law (hereinafter – IHL and ICC, respectively);
   - quality of the governing law; personal aspects of justice administration, including the judges' own safety, the specifics of justice administration in areas close to the occupied territories ("grey zones"), possible bias, stigmatisation and the consequences of decision adoption in such cases.
2. To analyse public and available data, as well as respondents' views on the capacity of the justice system, taking into consideration the challenges and scale of events and crimes after February 2022.
3. To provide recommendations on strengthening the capacity of the justice system to administer justice for international crimes.
4. To compare the results of national polls with the perception of the judicial community, and the position of veterans regarding accountability mechanism following the Russian aggression against Ukraine.

Hypotheses / Research problems

Before conducting research, in order to confirm or deny existing problems and challenges, the researchers formulated the following research problems:

1. Ukrainian legislation is not responsive to the needs and demands for justice under the conditions of war and does not meet the standards of international humanitarian and criminal law;
2. there is insufficient level of knowledge and understanding among the prosecutors and judges regarding the application of the principles and norms of international humanitarian and criminal law, the difference in the standards of international criminal law and national criminal procedural legislation;
3. there is a lack of adequate security measures for judges, especially those who work in close proximity to the temporarily occupied territories, or who have relatives and other social ties in non-government controlled (NGC) territories;
4. The institutional capacity of the justice system is low: insufficient number of judges in general, high level of workload for judges including non-conflict cases, pressure from public and authorities;
5. The population of the country is primarily oriented towards the punishment of the guilty in its demands for the justice system and can demonstrate a relatively high level of readiness to participate in court proceedings.

The target audience of the research is judges from all regions of Ukraine from any court instances who had experience in court proceedings related to crimes committed in the context of armed conflict, as well as judges who have not yet been involved in such cases; Ukraine's MPs; international experts, representatives of national and international non-governmental organisations; representatives of the expert community working on the legal issues of the armed conflict in Ukraine.

Research methods and tools

To achieve the research goal, individual in-depth interviews and focus groups were conducted with judges, including those who have experience in similar court proceedings and those who have not yet been involved in such trials. Namely: 14 in-depth interviews with judges of the Supreme Court, judges of the first and appellate instances; 3 focus groups of 5-6 judges each with and without experience in court proceedings related to international crimes. The judges for conducting in-depth interviews and focus groups were chosen according to the principles of specialisation, territoriality and court instance, with the aim of covering judges with and without experience in handling such cases, most of Ukrainian regions, and every level of court instances; the format was hybrid (online/offline). Participation of judges in focus groups and in-depth interviews was anonymous, their answers were summarised and analysed without identifying each individual respondent.

A separate tool of data collection during the research was obtaining information and various statistical data on the judicial processes of reviewing such cases, the sentences passed, the number of judges and judge vacancies in the country, etc., and other informa-

tion. Such information was obtained by sending requests to the State Judicial Administration of Ukraine, the Supreme Court, the High Qualification Commission of Judges, the Supreme Council of Justice of Ukraine and individual courts.

In addition, the research presents the data from two independent public opinion polls conducted by the sociological group "Rating". Audience: the population of Ukraine aged 18 and older in all regions, except for the temporarily occupied territories of the Republic of Crimea, the city of Sevastopol, certain districts of the Donetsk and Luhansk regions, as well as territories with no Ukrainian mobile coverage at the time of the poll. The results were weighted using current data from the State Statistics Service of Ukraine. The sample is representative in terms of age, gender and type of settlement. Sample size: 2000 of respondents. Survey method: CATI (Computer-Assisted Telephone Interviews). The error of representativeness of the research with a confidence probability of 0.95: less than 2.2%.

Also, the research results of the veterans' perspective on establishment and development of an accountability mechanism were included in the report. The research was implemented by the Prostir Mozhlyvostey NGO. During its preparation, the authors conducted 4 focus groups (1 group contained up to 10 people) and 20 in-depth interviews with veterans, servicemen, volunteers, and participants of combat operations of the Russian-Ukrainian war 2014-2023, who live/serve in all regions, except temporarily occupied territories. This study was not part of a specific focus of this report. However, during its preparation, the research teams agreed on the toolkit and research tasks, which allowed for the integration of the obtained data herewith.

The report based on the results of the research on the attitude of veterans towards the establishment of an accountability mechanism for addressing the consequences of the grave crimes as a result of the Russian aggression can be found in Ukrainian on the official website of the Prostir Mozhlyvostey NGO. https://pm.in.ua/veterany-pragnut-spravedlyvosti-2/[4]

Timeline of the research

The research covered the period from February 2014 to December 2022. Focus groups and in-depth interviews took place during September - December 2022. National opinion polls were conducted in September and December 2022, respectively. Processing of the obtained information was carried out during January-March 2023.

Limitations of the methodology and special aspects of the research

The research was conducted during the ongoing international armed conflict in Ukraine. Its aim was to assess the institutional component of the potential of the justice system

4 Report of the Prostir Mozhlyvostej NGO, https://pm.in.ua/wp-content/uploads/2023/02/Dodatok-3.-Zvit-doslidzhennya-dokumentuvannya.pdf

to ensure justice for international crimes. Existing objective limitations for conducting a full study were taken into consideration. Among the main ones:

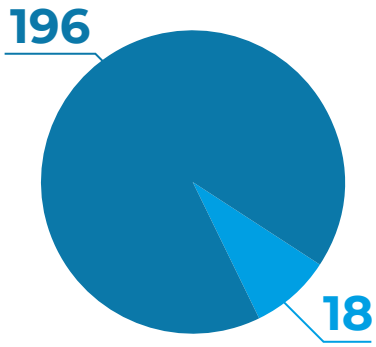
- limited research periods/existing deadlines;
- online format, which does not inspire trust during focus groups and in-depth interviews;
- judicial precedents vis-à-vis the application of substantive or procedural law were not studied;
- limited access to information in connection with martial law and inaccessibility of the Unified State Register of Court Decisions, as well as limited access to other information on the websites of state institutions, which was previously publicly available;
- severe emotional state and ongoing stress of the participants and their close relatives, potentially the experience of internal displacement or risks to life and health.

PRELIMINARY RESEARCH RESULTS

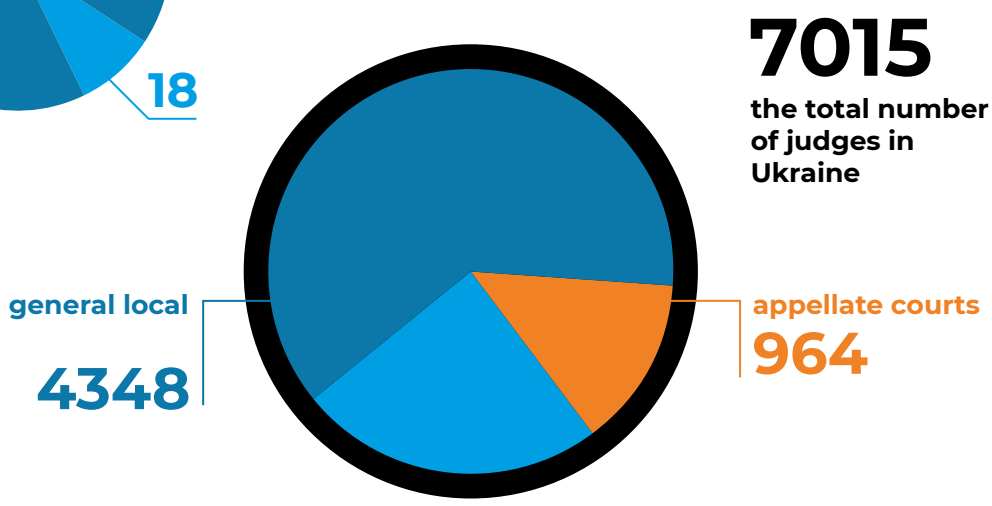
1 Analysis of responses to information requests

The information was obtained by sending requests for public information to the State Judicial Administration of Ukraine, the Supreme Court, the High Qualification Commission of Judges of Ukraine, and the Supreme Council of Justice of Ukraine. A total of 4 requests were sent from the Ukrainian Legal Advisory Group. In total, 6 responses to requests were received.

Number of Judges



The number of full-time judges of the Supreme Court is **196,** the number of vacant positions is **18**.



The State Judicial Administration emphasises that the total number of judges in Ukraine is set at 7,015 (of which 4,348 and 964 are in general local and appellate courts, respectively). In turn, *de facto* the available number is insufficient, as there are only 4,971 of them, 3,137 in general local courts and 500 in appellate courts.

Statistics and Workload

the Criminal Court of Cassation considered

In 2021

7894
criminal cases, of which
2666
were in substance

In 2022

3697
cases were considered
1461
of them – in substance

In addition, the total number of cases under Article 438 of the Criminal Code of Ukraine pending in courts during 2020-2021 is 11. Verdicts were handed down in three such cases since 2014, for low-level perpetrators, 2 of which were in absentia.

Secondment of Judges

The Supreme Court indicates that the number of seconded judges (including those from temporarily occupied territories) is 450.

At the same time, as per the data from the Supreme Council of Justice, starting in April 2022, a decision was made to second 453 judges from temporarily occupied territories and territories where hostilities were taking place.

The State Judicial Administration notes that a total of 494 judges were seconded.
In turn, the High Qualification Commission of Judges of Ukraine received a decision on seconding 401 persons.

Regarding the relocation of judges from the occupied territories, according to several local general and appellate courts that responded to requests, there were no judges who refused to relocate from the temporarily occupied territories.

From the provided official answers, it can be concluded that the work of justice system management bodies (High Qualification Commission of Judges[5], Supreme Council of Justice) which until recently had been *de facto* blocked, in particular due to the ongoing judicial reform, lacks necessary effectiveness and efficiency. One of the consequences is the impossibility of ensuring the speedy selection of judges to local and appellate courts. Courts authorised to consider cases related to war crimes are two thirds empty. Practice and experience of court proceedings on war crimes is almost non-existent.

5 On 1 June 2023 the Supreme Council of Justice appointed 16 members of the High Qualification Commission of Judges having unblocked its work: https://news.liga.net/en/politics/news/izbrany-chleny-vysshey-kvalifikatsionnoy-komissii-sudey-eto-odno-iz-trebovaniy-es

2 Results of in-depth interviews and focus groups with judges of various court instances

2.1. Particulars and a Course of Adaptation and Capacity of the Justice System to Work under the Conditions of a Full-Scale Russian Invasion against Ukraine

According to the majority of the interviewed judges, the justice system was not ready for the challenges caused by the full-scale invasion of the Russian Federation against Ukraine in the first months. Court hearings were almost never held due to the absence of judges, victims and other parties.

Currently, the justice system has reached the level of the pre-war workload. In turn, in the administration of justice, today's justice system faces challenges that slow down the court proceedings on war crimes. Such challenges can be divided into general and those which depend on the professional training of judges to consider such a category of cases.

Technical and Management Challenges

Most of the respondents at the time of the research referred to the regular interruptions of internet access in courts, as a result the courts lacked the opportunity to hold court hearings online.

Due to the impossibility to continue court hearings during air raid alerts for security reasons, court hearings are postponed and the schedule of hearings changes. In addition, the courthouses are not equipped with bomb shelters, so during the period of air raid alerts, when the buildings get locked, employees are forced to leave the buildings, if there is no shelter nearby, they are forced to stay in the entryways or parking lots nearby, which is very dangerous.

In addition, the judges report, there is a formal obstacle to the administration of justice in respect of those living in non- government-controlled territories. For example, in order to participate in the court session online, they need to get authorised using an electronic signature.

In cases where persons from the temporarily occupied territories wanted to participate in the legal process remotely, the system did not allow them to do so, as this requires Ukrainian means of identification (for example, a PrivatBank electronic identification key), which do not work in the territories outside of the Ukraine government-controlled areas.

The judges noted the potential benefit if a system of fully remote justice was to be introduced (so that the judge could hold a court hearing without being directly on a court's

premises) as due to a constant shelling in some regions, there are instances, when judges have no possibility to go to work for months.

Quotes:

- *Problems with the internet, air raid alerts, and we cannot hold a court hearing.*
- *When there were massive shellings, we stopped a little, but there are no major changes. Somehow it all turned into a new kind of normal. Many people do not respond to air raid alerts, they sit and work.*
- *Our court stopped working due to a man-made disaster. That is the lack of heating, running water, gas and electricity. It is impossible to ensure access to justice in the absence of electricity and other things.*
- *In the context of these challenges, the analysis of the JUSTTALK team "Court proceedings in the conditions of blackouts and missile attacks" may also be useful.*[6]

Management's Adaptation to the New Conditions

Respondents noted the fairly effective actions of the judicial and legislative branches of the government in responding to challenges and threats caused by the full-scale Russian invasion in ensuring the proper functioning of the courts. The existing experience of organising the work of courts in Donetsk and Luhansk regions since 2014, adaptation to the work of courts under quarantine restrictions since 2020 was used as the basis for the introduced changes.

At the same time, these changes were not always speedy, timely, and systematic, mostly it was a continuation of practices of sporadic response. For example, there was no prior preparation and distribution of evacuation plans, recommendations or instructions for the judges in the conditions of a full-scale invasion and active hostilities.

Quotes:

- *Me and all of my colleagues did not expect this, we were not prepared for such a turn of events. The justice system was not ready in general. No instructions were developed on what we should do, there was no preparation. The problems faced by the judicial system were getting solved and are still being solved, we closed the gaps on the go, and not very successfully.*
- *Everything stopped for us, we didn't work for about a month, nobody went to work. I understand no one knew what to do. Prosecutor's Office, law enforcement agencies — there was chaos. Motions, remands, extensions — they come to court, the court is closed. Well, there was communication over the phone. But some people went abroad, some were in another region, some moved away.*

6 Court proceedings in the conditions of blackouts and missile attacks: analysis by JustTalk, 26.01.2023, https://justtalk.com.ua/post/sudochinstvo-v-umovah-blekautiv-i-raketnih-atak-analiz-justtalk

- *I believe we worked very quickly, unlike in 2014. ...Amendments to the legislation were made very quickly, part of the powers of the Supreme Council of Justice were given to the Chairman of the Supreme Court, and people were dispatched quite quickly, taking into account where the need for the judges was, and where people settled; the judges' wishes were taken into account as well.*
- *You cannot criticise our parliament, they worked very well, it was a surprise for me, so many issues were under review for years, but here they got together and solved them.*
- *You know, a system or a country, it can never be fully prepared for the war. And for sure, this is a question of whether a system wants to adapt to new conditions, and you know, when there is a desire and a goal, then all goals get achieved.*
- *This is the adjustment for the whole court. Not only for me as a judge, but for the whole court. It was very difficult, no one knew how to work, how it would happen, how many pieces of equipment were needed, how many IT people were needed, everything was new.*
- *That is, when the war began, somehow, it is not clear how, the order was given that it was necessary to leave Kherson urgently. And, for example, for those who left in April — everything was okay, but those who left in May — they were fired... And how was this order communicated, yes? No deadlines were set — during which time a person should leave Kherson, so far as it was possible.*

Changes in the Structure and Number of Cases Brought before Courts

On the 8th-9th month of the full-scale invasion, judges note, there was a significant change in the number of cases and the dynamics of their influx. Thus, there is an increase in the law-enforcement function of the police as a result of active work to counter potential subversive operations, the operation of check points and patrolling during curfew hours; as a result, the number of administrative cases has increased. At the same time, procedural changes, massive displacement of the population, and a general change in the established lifestyle of the population led to a decrease in the number of civil lawsuits brought to court. Participants of the study noted the maintenance of the general statistics on criminal cases, but their consideration now has significant procedural and administrative challenges.

Quotes:

- *They began to patrol the streets more actively at checkpoints and saw something they had not seen before. That is, their focus was to look for saboteurs, but they discovered a lot of administrative offences...*
- *The number of administrative offences was overwhelming. And there are parties to trial who went abroad, simply ran away, so the cases are delayed. For example, there are victims, but there are no accused. Or there are parties who went to serve in the army.*

- *In terms of general criminality, the situation has not changed significantly: people continue to steal.*
- *The number of civil cases has decreased a lot. If we were talking about thousands of cases when we were working, now about 200 are brought before the court in a month, and we process them anyway. This is 5 times lower than before.*

Consequences of Problems with Funding and Staffing, Organisation of Other Processes of Administering Justice

The respondents note that they face a significant level of underfunding and human resource shortage in the face of a full-scale Russian invasion and the development of the justice system in a qualitatively different context.

These factors call into question courts' ability to consider ongoing cases, not to mention a large number of war crime cases that are new to most of the justice system.

In addition, due to their heavy workload, judges indicate they do not have enough time for training and improving their knowledge in the court proceedings related to the international crimes.

Procedural and organisational problems in the court proceedings block the process in general or lead to a significant delay and complications in the administration of justice. These circumstances are quite often not taken into account at the level of judicial management, so courts and other trial participants develop their own adaptation practices.

This also applies to the constant delay in hearings as a result of shelling and blackouts, and restrictions on the work of convoys and their delivery of accused. Such conditions to some extent contribute to the legitimisation of the limitation on public trials, and they also make relevant the need for them allow remote court proceedings. The actual "nullification" of the work of certain judges and the transfer of their cases led not only to a significant case overload of others, but also created significant procedural challenges. As a result, in essence, such cases have to be re-examined.

Sofiia Danyliv, *judge of the Bila Tserkva city district court of the Kyiv region, Doctor of Laws, member of the ADSG*

At the same time, at the moment, there has been some progress in resolution of the mentioned problem towards overcoming it, given that on 13.01.2023, the Verkhovna Rada has already registered a draft law No. 8358 "On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Economic Procedure Code of Ukraine and Other Legislation Regarding the Administration of Justice during Martial Law or a State of Emergency and the Settlement

of Disputes with the Participation of a Judge." The draft law proposes to expand the scope of application of written proceedings in courts of all jurisdictions during a martial law or a state of emergency and the consideration of cases without having parties to the trial physically in court for the hearings, based on the available case files (written proceedings), which will strengthen a security component during the consideration of cases in courts for all parties in the trial process, including judges, court staff, al and other participants.

At the same time, the right of the parties to participate in court hearings in a remote format through appropriate means of communication with the court is envisaged.

In addition, on February 17, 2023, at a meeting of the Cabinet of Ministers of Ukraine, draft law No. 7042 was approved "On Amendments to Certain Legislative Acts Regarding Digitalisation of Court Proceedings and Improvement of Injunctive Proceedings in Civil Court Proceedings", which proposes to introduce changes to a number of legislative acts that will allow for remote proceedings.

In particular, the introduction of conducting court proceedings in a video conference mode outside the court premises using own technical means in the manner determined by the procedural law, under martial law or a state of emergency in the event of circumstances that cause a threat to life, health and safety of a judge.

The adoption of these draft laws will allow the courts to implement effective mechanisms for the timely court trials in martial law conditions and the restoration of jurisdiction of cases in those courts from which they were temporarily transferred for review to other judges, which in fact led to the backlog of certain courts.

Quotes:

- *We work with limited resources, it is clear that the state always has little resources. Well, it is important to create conditions for providing funding. State budget for the next year includes funding of courts, as in staff and judges' salaries. This is a combined remuneration of 50%. What does this mean? It is impossible to reduce judges' salary, it is fixed by a special law and it cannot be altered. So we have to cut 50% of payments only at the expense of the staff.*
- *It is simply impossible to notify the parties about the case, there are no stamps, no envelopes.*
- *There are problems with the delivery of those who are currently in custody, convoys struggle to deliver them. The pre-trial detention centres themselves ask to use video conferences in order not to transport these people for the sake of their safety and the convoy's safety.*
- *I am assigned 16 criminal cases and 40 administrative cases per day. Which means that is the number of people I invite to my office. I believe this is my*

responsibility, and not all lawyers, not all parties live in the district where the court operates. They have to get there.

- *The convoy comes only twice a week, and for some reason it arrives after lunch. And judge has very little time to review the case with the accused.*
- *What changed at the beginning was that cases slowed down a lot as a result of the aggression, some stopped. Some people got enlisted, we had to change lawyers and put them on the wanted list.*
- *We take files from Kherson courts and transfer them to other courts, criminal cases that have been pending for years; witnesses were questioned. Let's say they were at the final stage. They do not deal with the cases on the spot they take away hundreds, thousands of case files and send them to another court. That court has its own caseload. But it receives hundreds of new case files, starts a case from the beginning and then the original court's activities are restored, but the decision that was made is not retroactive. That court was "nulled" in essence, so yes, but the new cases are brought before the court. And that court, which was already backlogged, they transferred these cases there, so that court considers its own cases and the cases from another court, all over again.*
- *Who will go to this court when it is necessary to redo the actions already taken by another court. And this is in general the situation all over Ukraine. That is, our jurisdiction changes more than once, it is changed in dozens of courts.*

The Full-Scale Invasion Exacerbated an Inconsistency of Ukrainian National Legislation

The judges note that the full-scale invasion widened the gap between the legislative initiatives and the real state of affairs and established courts' practice. Changes related to the adaptation of the justice system to the threats and consequences of the full-scale invasion in the context of administration were noted as positive.

Instead, changes to criminal law and/or criminal procedural law were noted as rather inconsistent and chaotic, which further complicated courts' operational activities. During focus groups and interviews, participants noted that some provisions of criminal legislation have undergone changes more than 6-7 times, so judges do not always work with current provisions, they may also apply transitional provisions that are no longer in force. In addition, in the crisis conditions, the legislative gaps that existed before also revealed, according to some respondents, manipulation and non-compliance with the existing justice standards at the domestic level. For example, the Art. 615 of the Criminal Procedure Code ("Special regime for pre-trial investigation and extension of detention periods during court proceedings in conditions of war, state of emergency or in the area of anti-terrorist operation or measures to ensure national security and defence, repelling and deterrence of the armed aggression of the Russian Federation and/or other states against Ukraine") began to be actively used by prosecutors, even in cases where investigating judges could exercise their powers without limitations. Unjustified application of this provision calls

into question the admissibility of evidence collection process carried out on the basis of respective prosecutor's resolutions.

The Quality of the Work of Law Enforcement Agencies in the Investigation of War Crimes

Respondents are unanimous in their comments regarding the low level of quality of the received indictments. Despite 9 years of ongoing armed conflict, the national law enforcement system was not ready to investigate this category of cases. Most of the investigators of the National Police of Ukraine and the Security Service of Ukraine lack training and expertise to work with this category of cases. In view of this, during the pre-trial investigation, investigators make a significant number of procedural errors, in particular, in cases brought before the court after the full-scale invasion.

Among main problems are a citing of or a reference to irrelevant conventions, international documents and even international institutions (for example, the practice of including documents of the League of Nations was mentioned) are made; reference made to conventions without specifying the provisions, thereby shifting this responsibility to the court, etc. In addition, the practice that has been forming since 2014, when cases with an agreement on the minimum possible punishment under the conditions of guilty plea reached with the person accused of crimes against national security are sent to the courts, is still ongoing. Accordingly, it affects the quality of preparation and participation in the court proceedings. It is still quite a common approach for the prosecution to rely on open-source materials as the main evidence, which does not constitute sufficient or admissible evidence under the current legislation of Ukraine.

Judges consider the pre-trial investigation to be the key stage in terms of foreseeing acquittals or convictions. In view of the restrictive wording of the provisions of the criminal procedural legislation of Ukraine, the admissibility of evidence may be questioned due to the insufficient work of the investigators. In turn, this will contribute to acquittals in those cases that seem to have all the grounds for prosecution, but the evidence basis is too weak, or during its collection not all procedural requirements were met.

The judges see a solution to the situation in the form of professional training for the prosecutor's office personnel and law enforcement agencies. In addition, there is a request to reduce the formalistic approach of procedural legislation through legislative changes.

In addition to the above, during the interview, one of the judges reported instances where law enforcement agencies brought detainees to the court session for arraignment with bags over their heads and forced them to kneel while waiting for the court hearing. Even during the hearing, itself, the law enforcement officers refused to remove these bags. So judges report instances of human rights violations and breach of guarantees provided by international law by the law enforcement officers, who justify it by the wartime.

For the veteran community, it was the previous period of court proceedings on war crimes (2014-2022) that played a key role in forming a negative, cumulative, and prejudiced

attitude towards the quality of law enforcement representatives` work. At the same time, it is worth noting that this relationship was formed not directly by the war crimes cases, but by accompanying national criminal offences proceedings, in particular, they mention investigations into collaboration in the eastern regions. Such cases were actively covered in the mass media and, from the point of view of veterans, "ended in nothing, not with the sentences that were expected or stipulated by the law (for example, the case of Nelya Shtepa, the former mayor of Sloviansk)".[7]

Quotes:

- *The quality of these indictments is very low. They are not written out as they should be. They can list 5 or 6 conventions in the indictment... Let the court sort it out, you know.*
- *That's why I have a bad impression with regards to the quality... I get the impression the charges are simply brought against those who are easier to deal with: those who got caught, who are the most defenceless, who have neither the desire nor the resources to defend themselves against the charges.*
- *As a judge, I understand that in order for justice to be served, the pre-trial investigation of these crimes must work. This is first and foremost. That is, if the evidence is not collected there, then no matter how much a judge studies IHL, then there is no need to study IHL, but rather to conclude – there is either no evidence, or the evidence is inadmissible. Therefore, if it works, the focus should not be on the judges, but on the pre-trial investigation.*
- *But as far as I am concerned, when talking with my colleagues, either something gets misunderstood, or it is actually intended that way: the indictments consist of several pages and they start with how the League of Nations was created, there is a listing of a huge number of references to regulatory and legal acts, while sometimes you read and you cannot understand where is the indictment, which the prosecutor considers proven. There, in the process of communication with the representatives of the prosecution, we ask why are there references to a huge number of acts dating back to the 1950s? The answer is that we have instructions from the Prosecutor General's Office that this is how it should be.*
- *For example: "In February 2014, an armed conflict of an international nature continues." The court does not have the right to establish these circumstances. The court must establish the specific actions of the specific defendants, the presence or absence of a crime... and then the very content of the verdict looks like some kind of a scientific paper, an essay, and we lose the importance of the verdict and the document, which should contain a specific indictment of which the servicemen are accused.*
- *And you understand that after such a verdict you will be crucified. Everyone will curse you. It's not scary in the sense that it's emotionally scary. It's scary*

7 https://pm.in.ua/wp-content/uploads/2023/02/Dodatok-3.-Zvit-doslidzhennya-dokumentuvannya.pdf

because the society is somewhat ignorant. And the prosecution sometimes works so badly that every time you have an acquittal, you're just facing pitchforks.

Anastasiia Mykhalchenko, *judge of the Industrial District Court of the city of Dnipro, ARSSU*

In my opinion, when deciding on the balance between the publicity of war crimes trials and the interests of national security, judges should consider that normally trials should be held in public (be open), but the public may not be allowed to participate in oral hearings in the interests of national security in a democratic society. At the same time, it should also be taken into account that, in general, the European Court of Human Rights found it admissible not to conduct an open hearing in certain categories of cases, but with a reference to one or more grounds specified in paragraph 1 of Article 6 of the Convention.

Regarding society's right to the truth and obtaining this truth from court decisions, it should be noted that, unlike oral hearings, the right to have a court decision "announced publicly" is not subject to any exceptions, stated in the text of paragraph 1 of Article 6 of the Convention, but the European Court of Human Rights in the decision Lamanna v. Austria noted that it may be sufficient if court decisions are not announced in full and not at every stage of the proceedings.

In addition, judgments can be publicly announced and put in the Register of Judgments after a certain period of time, for example one year after the end of martial law. (example – ECtHR verdict in the case of Lamanna v. Austria - the decision of the national court was published 6 years after its adoption. The European Court of Human Rights did not see this as a violation.)

The form in which a court decision is published must be evaluated taking into account the peculiarities of court proceedings and the interests of national security.
In addition, as an alternative to publication in the register of court decisions, I propose to prescribe by the law the possibility to access the court decision for all those who wish to. In fact, this right is already enshrined in Part 1 of Article 27 of the Criminal Procedure Code of Ukraine, which stipulates that no one can be limited in the right to receive information from the court about the date, time and place of the trial and about the court decisions made therein, except in cases established by law.

Focus on Quantitative Indicators by Investigative Authorities

According to the respondents, law enforcement agencies operate under the system of quantitative assessment of the quality of work. And the level of public demand and a certain dependence of the media on the compliance of law enforcement agencies with this demand exacerbates the problem of the quality of preparation and conduct of investiga-

tions. The existing system of punishment and the expectation for courts to automatically support submitted indictments only institutionalises these practices.

The low quality of indictments and general performance during the judicial process by law enforcement officials leads to the institutionalisation of errors in criminal justice, directs the aggression of society to the judicial system and lays the foundation for international institutions to consider conflict-related justice as one that does not meet the justice standards.

Quotes:

- *Their focus needs to be not on quantity, but on quality. It is better to have less cases, but of better quality. So that this system, which, unfortunately, has remained and exists, the system of indicators, can somehow be overcome and work better. Let there be fewer proceedings, but they will meet the criteria; as for the procedural, then it's compliance with the procedural mechanism, as well as aspects of proving that there`s a crime.*
- *After the first acquittal, 3 or 4 prosecutors did not greet me for a month... Not only the prosecutor who attended the hearing had to write an explanatory note on my acquittal, but the whole group... They held two meetings after I ruled acquittal.*
- *They say (one of the regional heads of the National Police), "I am sorry, but you realise that we have a numerical performance system." Our problem is that the police, the prosecutor's office, as sad as it may sound, they take one step towards the European Union with two feet standing in the Soviet system. Sorry for this directness. But this is based on my own experience, on the example of one city, one court.*
- *Because in my life there were acquittals in Donetsk. It was a shock for the prosecutors how is it so that the judge passes an acquittal. How? Well, just like that. Because, I am sorry, but you cannot have 300 rounds in your pocket. This cannot be, what is the evidence?*

At the same time, part of the respondents considers this situation through the lens of shared responsibility between the court and law enforcement agencies. In particular, the low willingness of judges to acquit was mentioned, even under conditions of doubts about the relevance of the evidence, as well as the existing practice of long consideration of such verdicts by the courts of appeal, the (un)willingness of judges to act in accordance with public demand, and the insufficient level of competence of the judges.

Quotes:

- *The root of the problem is the lack of competences and knowledge. They (judges) don't want it, they are not interested. Preventive punishment – fine, we'll consider it because, well, we'll consider it. The decision that needs to be made — it is clear what it has to be, because it cannot be different in the context of war. Revolutionary expediency.*

- *All this stretched out in time only thanks to the fact that the judges covered it all up. They were approving it all and the situation was not visible. Everything is okay, it did not rise at the grassroots level. And if at least one judge refused and wrote that there is such a problem, I think that this decision would immediately go to the top, it would be read and within a few days these changes would be made. The judges swallowed it all.*
- *Even if we are wrong, the situation in the country still requires such a decision.*
- *We have developed a natural practice: the indictment should be more or less substantiated, and then the court will sort it out on the merits. The standard here is very low. Judges do not dig deep into these concepts when they arise in pre-trial proceedings. These fragments are compiled, then they are combined into a case — a criminal proceeding. But when the matter will be dealt with in substance, everything will come out, shoot out.*
- *Because judges of the first instance do not have the time to deeply study the issue of correlation, what does a specific word mean in the article 438 (of Criminal Code), while taking into account what is stated in the Geneva Conventions, the Rwanda Tribunal and so on. The judge of the first instance will not deal with this, it is not their task.*

Approaches to Communication with Society during the Court Proceedings on War Crimes

It is important to note that a large number of research participants have certain reservations and a critical perception of society in general, its role, and attempts to pressure the court through public opinion (directly or indirectly). Consequently, it is important to take into account existing mutual biases and communication practices.

Some of the respondents do not see the need for direct, empowering communication with society, even during consideration of cases related to the aftermath of the war, which are of significant public interest. Judges note that a qualitatively written court decision is sufficient to convey the necessary information to interested parties. And in fact, the low level of involvement in interaction with the media and participation in public communication, according to the respondents, is a safeguard for the impartiality and neutrality of the court when considering war crimes and cases related to the aftermath of the war.

Quotes:

- *I am a judge and I believe my main channel of communication is my decision. When I make a decision, it has to have clarifications that answer all the questions raised in the proceedings. This is the main channel of communication.*
- *Judges must learn to communicate through their decisions. To write clear, convincing rulings. And all the rest – all the PR departments – this is very much an auxiliary channel of communication. They should be more concerned with the convenience of the court, the ease of communication on some practical aspects.*

At the same time, in some cases, respondents expressed interest in more proactive communication and even some educational work with the population regarding certain important aspects of consideration of this category of cases and potential verdicts. Responsibility for such communication would be put on several stakeholders: the state in general and its information activities; a more proactive role of the media and specialised organisations of civil society, the legal community; the court directly.

Quotes:

- *The legal community should be doing the explaining, probably. I like that... The decisions are discussed, very passionately sometimes. I actually enjoy this process. Because I don't remember if 10 years ago someone discussed the decisions of the Supreme Court, they were not interesting to anyone then. Now there is interest and it is a good indicator.*
- *Society should be told, probably not by the judiciary, that war crimes are unacceptable, this should be the work of state representatives.*
- *If a case of significant public interest is brought to the court, the judge-speaker or the press secretary of the court should make an announcement or invite citizens: "Dear residents of our district, tomorrow the court will hear a case regarding... Please come, so you may see it all." So that ordinary citizens can directly observe.*
- *If there is such a high-profile crime, there are judges-speakers in the courts. The judge-speaker must inform the public, pay attention to informing, highlight certain aspects on the website and be ready for the attention of the mass media. If the media comes, then the press secretary or judge-speaker should interact with them.*
- *The open dialogue with the judiciary is very important. In our country, it is not accepted for judges to openly say something, the publicity. We have ethics limitations, but we also have the right to freedom of expression.*

Vision for the Relationship and Implementation of International and Domestic Law during the Court Proceedings on War Crimes

For the majority of respondents, the provisions of domestic law are a priority. Certain international provisions should have a certain auxiliary role, expanding or filling gaps in national legislation and exclusively in the areas that are not regulated at the level of the Criminal Code and Criminal Procedure Code. At the same time, it should be taken into account that there are many gaps between national legislation and international law, especially in terms of standards aimed at ensuring a proper investigation and court proceedings in the area of prosecution for war crimes, which are international crimes by their nature.

Quotes:

- *We do not apply international law, especially in criminal law. We apply national law.*

- *We cannot condemn a person because there is an international consensus on certain acts. That is, we must know international law, especially where there is a direct reference to international law. But I cannot rule on the basis of international law alone. I definitely need a national law if we are talking about criminal responsibility and punishment.*
- *See, this is criminal law, there is a code, there is an article, there is deposition and there are sanctions. And we can consider the case within the limits of this sanction. Probably, we can use these principles (IHL, ICCPR) rather to reason our verdict. But we can refer to and rule upon only the national legislation.*
- *When considering cases of this category, we are guided by national legislation. And only in matters that are not settled in it, we turn to international law.*

At the same time, the issue of applying certain international jurisprudence became debatable for the participants. Some insist on active research on the practices of the ECtHR, international tribunals or even UN recommendations, which can become the basis for substantiating the court's position in the judgement. However, a number of participants also emphasise the possible negative consequences for justice from this practice, referring to a low level of familiarity of judges with the jurisprudence, and to the "trendy" use of international court decisions.

Quotes:

- *I cannot rule on the basis of international law alone. I definitely need a national law if we are talking about criminal responsibility and punishment. One can say, that there`s who knows what in the Geneva Conventions. Then there will be a terrible moment for me when I will read quotes from the tribunal for Yugoslavia and Rwanda in court decisions. This is a difficult question for me. I sometimes had the idea of forbidding to refer to the European Convention at all.*
- *Regarding, for example, internally displaced persons, I have seen that even the Supreme Court applies the UN Guiding Principles very successfully and even though the Guiding Principles are not treaty law, they are more similar to customary law and the resolution of the Parliamentary Assembly.*

Assessing the Level of Knowledge and Preparedness of Judges to Consider This Category of Cases Professionally. Professional Training and Retraining of Judges

When analysing the responses of the respondents, it is important to take into account that many of the judges, participating in polls, received specialised training in international humanitarian law and international human rights law. There is s also a number of judges, who already had experience in court proceedings on war crimes.

The responses of the participants to the block of questions regarding the readiness of the system and their colleagues to properly and professionally consider war crimes can be divided into several aspects.

The first "group" of opinions and answers mainly noted the high level of competence, readiness and desire of judges to improve their knowledge and skills. In support of this position, it was indicated these were professional lawyers with good work experience who would easily and quickly master additional necessary intake of information. Such an assessment mainly concerned knowledge of the provisions of national criminal legislation or criminal procedural legislation.

As the conversation went on, or when it came to other interview blocks, where the issue of assessing the capacity and competence of judges was raised, the same participants quite often specified and added more restrained, or even negative characteristics regarding the training of judges to consider war crimes cases.

It is worth noting that the respondents also indicated a significant interdependence of the level of professional training and proactivity of other parties to a trial as a component of due process (prosecution and defence). The equality of arms, their competence and responsible attitude towards their tasks in the trial cannot be ensured solely by the involvement of a properly trained and experienced judge.

Quotes:

- *I can say for myself that if we expect fast and high-quality justice, the justice system is not ready yet. Ask every other prosecutor. It is not only about a judge, judge is the final element. But this is a whole mechanism. Everyone should be ready. The judge will not fix this whole situation later.*
- *Now the main trend is humanitarian law, everyone has started to study it. Probably, no one really actually has the knowledge, since the Geneva Convention, protocols and other conventions were previously studied only in academies and very superficially.*
- *In my region before the war, I do not remember if there were any military crimes from the Criminal Code. Accordingly, there are certain categories such as, for example, violation of the customs of warfare, they involve recourse to international law, it is certain that judges have not studied this, there is no practice. The system does not prepare us for this, we did not touch international humanitarian law.*

Among the main requests for training and additional knowledge are issues of contextual norms, aspects that can significantly affect the interpretation of the events of the case, the relationship between national and international law, specific aspects that must be taken into account in order to minimise the risks of further potential review of these cases in international institutions.

Quotes:

- *He says "well, he crossed the border" (about a Russian serviceman during the events of the full-scale invasion). That is it, it means he committed a crime.*

Here, national legislation entered through the lens of IHL. It is necessary to understand how they relate to each other.

- *There is definitely lack of knowledge. The topic is new. We faced this and I see that judges do not even understand what can be considered by domestic courts, and what belongs to the jurisdiction of the International Criminal Court. There is no understanding of differentiation.*

Lack of knowledge and competence, against the background of growing public attention and demands, a large number of cases and a lack of opportunities for a judge to receive advice or support during preparation for a case – all that lays the foundation for improper consideration of the case, as well as non-compliance with the standards of due process.

Quotes:

- *The judges did not know how to consider it. I am telling you, it I is like "the party says "do", the judges say "yes." A procedural request came, the result of this request was obvious.*
- *Judges hear cases and they do not see the problem at all. A war crime, well, so be it. There is corpus delicti, that's all. When these cases about the selection of preventive measures started to appear, we communicated with them at the level of the court management... Well, what is the issue, everything is fine, there are no problems. Yes, I have heard about the Geneva Conventions, and what's in there, in the Geneva Convention? Geneva Convention or not. The judges here do not feel like they lack t knowledge in this category. They just do not feel it. Nothing stops them from considering cases while having no understanding.*

Despite the armed conflict that has been ongoing since 2014, the respondents consider the existing system of personnel trainings to be ineffective, as one that does not provide the necessary level of knowledge and skills to work with this category of cases. A slightly different sentiment can be seen with regards to the retraining system: the respondents note the rather prompt reaction of the National School of Judges, efforts to organise mass courses and distribute relevant educational products, both on the basis of national and international experience. Despite the active development and distribution of such courses, some participants emphasise the need for them to be more practical, and to make them less detached from the practice and working conditions of judges.

In addition to the issue of availability of training courses and their quality, the participants quite often mentioned the issue of motivation, the desire of the judges to acquire new knowledge. Respondents noted that it was common among colleagues to treat these educational courses as unnecessary not only in the framework of preparation for future proceedings, but also when directly working with war crimes cases. This is due to the fact that judges are extremely busy, lack of specialisation and, in some cases, a biased attitude towards additional education, as a manifestation of a certain "professional" weakness or recognition of one's incompetence.

Quotes:

- *Probably, no one actually has the knowledge, since the Geneva Conventions, protocols and other conventions were previously studied only in academies and very superficially.*
- *The school of judges has already developed it, the war has been going on for 8 years, there are courses on international humanitarian law, military crimes, there are courses.*
- *A problem arose and various courses began to appear promptly. Our foreign colleagues join in and share their own experience, the National School of Judges plays a very important role in this matter.*
- *Many decide this way: when I get this case, I will figure it out. For now, it does not concern me, but if the case lands we will sort it out. There are very active people who want to figure it out right now, but there are also those who don't have the time to do it right now. They have a lot of current affairs.*
- *What is the quality of the National School of Judges? The judge sits and tells his vision or the vision of his colleagues, they formed some vision of the Supreme Court . However, it is theoretical knowledge provided, the cases have not reached the point yet, they are only at the stage of the first instance. Many cases on war crimes, as far as I know, are not challenged, they remain in the first instance.*
- *Well, in general, it is not enough when it comes to international humanitarian law, if you take the School of Judges, the information is not enough. That is because they generally talk about the elements of crimes, how they differ from each other. There is no training on IHL, as far as I know... almost no one teaches it, and the attitude of colleagues is like this: "that is about the prisoners of war, why do we need those POWs, why do we need to know about it, we will figure it out ourselves."*

Perception of the Security Risks by Judges. Potential Levers of Pressure on Judges and Countermeasures

Some of the respondents, who have already worked on war crimes cases, crimes committed by servicemen of the Armed Forces of Ukraine, or with persons accused of collaboration, have already faced threats to their or their colleagues` personal safety. It is worth noting that the presence or absence of such experience had almost no influence on the identification of key threats and factors that increase them. The compiled list looks quite consensual, but the degree of influence varies significantly, depending on the personal qualities and experience of specific judges, and/or the court instance they work at.

One of the key factors increasing the danger for judges was the dominant negative perception and attitude of Ukrainian society, which is manifested both in active actions in social networks and provocations during court hearings. Respondents mostly differentiate between groups that operate in virtual and physical space.

Negative remarks and hate speech against judges and courts are quite often actively picked up by average users of social networks and receive wide support among different segments of the population. , At the same time provocations during court hearings, demonstrations and threats are most often initiated by organised groups affiliated, in the opinion of judges, with one or another party to a trial on a personal or professional level. Respondents also noted a significant shift in the current situation: society is more widely traumatised; it is easier to access weapons and weapon handling training; there is a preserved tendency of negative attitude towards the justice system in general.

The judges are united in the opinion that society's expectations regarding the results in this category of cases will not have a significant impact on the quality of court decisions and the objectivity of evidence in cases. A reason for this is that Ukraine has traditionally followed a trend of dissatisfaction with the work of judges, regardless of the decision courts made. The justice system is under permanent pressure from society. On the other hand, some judges see a greater risk of influencing the judge's objectivity in the case, when a specific judge or their relatives suffered as a result of the armed conflict.

Quotes:

- *The court will be destroyed. Direct attacks. And today this is a society that has weapons. There will be new crimes. This verdict could have a domino effect. Society must be prepared for this, properly, in a psychologically proper way, so that there is an understanding.*
- *Let us say that I, as a judge, see that there is a lack of evidence, but public does not see it. And they only see that some judge acquitted someone. And what will happen next? That judge cannot go home, because ordinary citizens can simply kill her.*
- *When the respective persons provoked an internet publication, where there were comments to give the judge 9 grams of lead, for example. I just want to note that it is one thing to acquit a corrupt official, or for theft, or something else, it is another to acquit in cases of this category, when the (accused) persons at the front line served in voluntary units. They might not even look into it, over a glass of beer or alcohol, the respective persons can provoke, and real consequences can follow, this is a more difficult situation than in other cases, even more difficult than corruption.*
- *And if we take the crimes of 2014-2015, I am now talking about our Ukrainian military personnel. They simply entered the house, shot the mother, while the body was lying there, they raped her daughter and after that there was an indictment, a criminal case, they were transferred to the X court. This X court was taken by storm by their comrades. Because a serviceman of the Armed Forces of Ukraine cannot commit such a crime. They simply disrupted court hearings there.*

Summarising, among the threats mentioned by the study participants, the following can be distinguished: 1) direct attacks on the court or individual judges, provocations and

blocking of court sessions; 2) demonstrative acts of intimidation and pressure on judges; 3) preservation of the practice of representatives of law enforcement agencies intervening into some cases; 4) pressure on relatives of judges who ended up in the territories occupied by the Russian Federation; 5) cases of individual revenge from relatives or groups/communities that supported the person, accused of committing a war crime.

Some of the respondents also mentioned certain additional factors that can lead to a more negative and aggressive attitude. For example, the judge's lack of military experience, as in when a "civilian person" sentences a military person, or gender aspects, when a sentence against a male serviceman is pronounced by a civilian female judge, or even the judge's status of an internally displaced person.

Quotes:

- *About the influence of the Security Service of Ukraine on the process, as a factor that actually started the organisation and adaptation of the court. At first, everyone is generally disoriented, then in the month of March, a security service somewhere... The reason our case is illustrative — we have an oblast court, and security services are located on our territory. And all cases related to crimes in the region, everything went through our court. They began to detain Russian POWs. They were detained, kept somewhere, criminal proceedings were instituted for illegal crossing of the border and some other article, 110 "violation of national security". Then, mass detentions were chosen for them. They were brought to our court and the system then distributed petitions to whom these detentions should be applied.*
- *That is, those judges who worked in the occupied territories — Donetsk, Luhansk. I do not know about Crimea, I have not heard anything, maybe there is someone there too. But here is the occupied territory, and they have been transferred, they are present in almost every court. Their relatives may be in the occupied territory. That is already personal. The fact that they may have some (leverage), due to the fact they reviewed such cases as part of the court, negative consequences may be applied to their relatives.*
- *Then all these comrades arrived, and I was totally blocked in the court. That is, I was blocked during the court hearing, I sat there for several hours, because they did not like the decision. It was a case of grievous bodily harm, but the man fought in the anti-terrorist operation and all his comrades came to the court, and the pressure began on the fact the judge was trying volunteers, and the judge is a civilian.*
- *The prosecutor's office openly threatened the judges of Court X, who refused to consider cases involving servicemen of the temporarily occupied territory of the "DNR". And they refused only because there were threats to their parents in Donetsk. That is, they found their parents there. That's the judges who were transferred from Donetsk. And they were openly threatened from Donetsk that if you take the case, your parents or children will be gone.*

- *There was a gallows opposite the X court. It got into the media. So tell me, please, how I, as a judge, can review a criminal case, when opposite my window stands the gallows with dummy of myself there.*

Judges mainly use declaration of self-recusal as a tool of protection, although the participants also noted that there are cases when this norm is abused. To provide physical protection and response in cases of threats, the hopes are with judicial protection. Also, from the point of view of the respondents, the court decision itself, or rather its quality and compliance with legislation and procedures, can become the main means of individual protection in most risky situations or attempts to put pressure on the court or a particular judge.

Quotes:

- *Now, the only thing a judge can insure themselves with is a legal and fair court decision, written correctly, in accordance with the law. This is the only protection — a court decision that meets all standards. If it does not meet some of it, it is already a question of being held accountable in the future.*
- *Maybe it will be necessary to organise some additional security for these judges, in case someone wants to take revenge on the judges or influence them in some way. Most likely, if the regime does not change there, in the Russian Federation, it is more likely that all these judges will be put into their database as criminals who condemn their military "for nothing".*
- *Strict compliance with the code will help to manage. It is necessary to do as prescribed in it. If the sanction of the article provides for a certain punishment, then if you are asked, you will have something to respond with: unfortunately, there is a sanction.*

Assessment of Possibility to Acquit in Cases Involving International Crimes

During the discussion of this issue, it should be taken into account that the interviewers at the first level asked the respondents about acquittals in general, and at the second stage they narrowed it down to decisions regarding the accused serviceman of the Russian Federation. It is worth noting that this did not significantly affect the course of the discussion and did not lead to a radical change in the previously voiced opinions and positions of the judges.

Another aspect of the position expressed by the research participants was the presence of several levels of perception. It can be noted that such a reaction and course of discussion turned out to be not a unique case. For the most part, participants demonstrated similar strategies when discussing dilemmatic, emotionally challenging questions. Nominally, the first dimension of answers quite often contained a declarative component, when judges noted that there is no special difference between acquittals in war crimes and other

crimes. When specified and clarified, it turned out this issue was quite complex and controversial, at certain points it was even assessed as dangerous for the judges.

Research participants declared their own readiness to pass such judgments, both at the first stage, when they focused on the basic standards and conditions of the case, and during the second round of discussions, when several levels of complications and risks from its adoption were stated (namely the acquittals regarding the soldier of the Russian Federation). Among the criteria that are the basis for rendering such a decision were voiced: sufficiency and admissibility of evidence, their relevance, absence of significant procedural violations, in the absence of evidence of involvement, in the absence of evidence of guilt, when the connection of the person's actions with the armed conflict has not been proven, etc.

Quotes:

- *I believe the criteria are always the same for all crimes. There cannot be any separate rules for war crimes. I believe that here we also assess how sufficient evidence is, its admissibility, basic standards of justice.*
- *It can be under the same or different conditions. If there is not enough evidence, or the elements of crime are not there, just like in the Nuremberg trial. There were both acquittals and convictions. And there the percentage of acquittals was quite high. It was the same in Yugoslavia, some was convicted, some was acquitted. There will definitely be acquittals.*
- *If the elements of crime are not proven, you must acquit, no matter what. It may be difficult from a media point of view, but it is a challenge for which one must prepare. In fact, playing the quiet game is much worse than commenting.*
- *If there is no evidence, then probably each of us would have to make an arbitrary decision that is subject to the requirements of the Criminal Procedure Code. If there is no evidence, please collect it.*

Full or partial non-compliance of the evidence with the stated standards, according to the judges, may lead to attempts to delay the trial in order to give time for their furhter collection and proper presentation. Under certain conditions and a high level of public pressure, it can become the basis for making a conviction in the absence of sufficient grounds. But most of the participants noted they are personally inclined to an acquittal, understanding the risks and threats.

Quotes:

- *I say for myself, if there is no evidence, then I will acquit. Maybe I will not do it as quickly, what if there is evidence, maybe I will wait there and think: maybe someone will bring something, or the prosecutors will find something. But if there is no evidence, then I will pass an acquittal, what else is there to do? How should I react?*

- *Well, I think it is going be difficult. Well, now no one will dare to acquit. Maybe later, probably yes. But no one will dare, they will delay. And I would delay as well. I would not even rule so quickly. I would wait a bit. And when there is nothing, then it is clear what to write.*
- *To be honest, based on the evidence base that was at my disposal, it was quite difficult to pass a guilty verdict. And some people even agreed to some extent and said that thank God they declared him wanted, there is no need for you to convict, because the evidence base was accumulated only from information that was in the media.*

Among the reasons that significantly affect the difficulty of ruling an acquittal for these crimes or the risk they bring, the participants note the traumatisation of society by a full-scale war and the high demand for punishments. As well as the established "Soviet" practice of not accepting acquittals by parties to the trial, the politicisation of this issue by various political and public actors.

In addition to personal danger, the respondents noted that in conditions of radicalisation of society, and low level of knowledge about the specifics of court proceedings, acquittals can become one of the arguments for considering the justice system incapable to act in a quality manner in the context of war challenges. That is how they turn into an instrument of pressure on the justice system in general, a demand for a new judicial reform, which will obviously be supported by various groups and actors.

Quotes:

- *We survived the period when there were no acquittals under the old Criminal Procedure Code of Ukraine, it was 1%, and now it is much higher.*
- *Passing an acquittal for a war crime is quite difficult, I don't know who is ready for that when you see the war outside your window and see the grief of the victims.*
- *The issue is not only the training of judges. You understand that society has great expectations. Great expectations. Acquittals — I think it is going to be a shock.*
- *We started writing the verdict (as a part of the educational game), we realised that we had an acquittal and we were scared. We actually got scared because we approached the task professionally, we were not playing with toys. We could play along with one or the other, but we really professionally began to draft the court's verdict under Article 438 (of the Criminal Code). And if it were not for confession of guilt by that person, that would be it. That would be the end of it. It was an acquittal on all counts.*
- *In reality, we are in trouble if there is no high-quality prosecution, if there is no high-quality evidence. And if the defence does a great job, in principle, this is an acquittal and you can run a judicial reform again. That's it. If you work according to the law.*

- *After the first acquittal, 3 or 4 prosecutors did not greet me for a month... It was not just one prosecutor who attended the hearing, who had to write an explanatory note on my acquittal, but the whole group... They held two meetings after I ruled acquittal.*
- *Even for this verdict in the Solomiansky court. A person received a life sentence there, and the verdict was reduced during appeal. Just take this reduction by the appeal court. Just a reduction to 15 years. How society perceived the decision of the appellate court. It was not even an acquittal, it was 15 years. And by the way, it is not known whether he will serve a prison term, or he will be exchanged.*

2.2. Architecture of Justice: Vision of Judges and the Veteran Community

The collected opinions and ideas voiced by the respondents allow us to conclude that they do not have a unified vision and understanding of a hypothetical accountability mechanism that can be used to ensure effective justice for international crimes. Varying approaches and the long course of judicial reform have led to a rather sceptical vision and attitude towards changes among judges. In addition, reforms in the past mostly did not ensure a sufficient level of involvement of judges when forming positions and discussing potential decisions and changes. Therefore, this block contains the main ideas and caveats voiced by the participants during the research.

Establishing a Separate Judicial Institution for the proceedings on War Crimes

This idea came up quite often in discussions, but the judges see a lot of organisational risks in it. For example, its implementation will require significant time and legislative changes, which are complicated by the conditions of martial law. But for some participants it is a specialised court created and operating in accordance with certain standard, that would ensure proper justice and accountability.

In addition, the institution, built by analogy to the High Anti-Corruption Court, can contribute to having a higher level of trust, in particular, taking into account the cases resulting from the events of 2022, the active participation of international partners during the launch of the court, and close monitoring of its activities and the selection of judges by the society and international experts. Also, such a model will ensure proper professional training of the judges who will handle this category of cases.

Quotes:

- *For a parallel institution you will need to create a first instance, an appellate court and a chamber in the Supreme Court, so it seems to me that it is much more work than just considering cases. I don't see the need in it.*

- *It was the same information voiced at the level of the Chairman of the appellate court, such as "You yourself realise what the situation is. They kill and rape our women there, and we will let them go." This is a priori impossible. This situation is impossible both at the level of the first instance and at the level of appellate instance. I do not see any possibility of considering this situation impartially. Unless it is some specialised court.*
- *To me, it is always expensive. And creating a separate branch at any stage of the criminal proceedings of a certain branch of authorities is a costly affair for the budget and for the state. Can we afford it — that's the question now. And the second question is whether international partners can help here. The second aspect is that all this cannot happen quickly, because the formation of any separate branch takes time, it includes some state measures, procedures that also require time and money.*
- *If there is a specialised court, society will perceive it better, they (judges) will be trained, have competences, and have the trust of society. In addition, the war crime will be considered on both sides of the conflict, as well as Ukrainian military personnel, who will be few, even 5%, but they will be there.*
- *It is very important the judge has this benefit of the doubt from the society, and that he can work normally, and not look around and think how his decision will affect him later, so that he concentrates on the essence of the case, and not on how he will protect himself and get figure something out in case of problems.*
- *What are the selection criteria, who should do this selection? Independent experts, I do not worry about this. There will be judges, I would go to this court myself. Let the international experts select and test the nominees. When the judge has passed this training, about a year, they will read a lot of literature, go to various meetings, they will be interested in this topic, so the judge will be qualified to handle these cases.*

Specialisation of Judges Within the Existing System

This idea caused almost the largest number of comments, discussions and overall support of the research participants. Given the lack of time, limited resources, and the ongoing proceedings on war crimes in Ukrainian courts, the specialisation of acting judges is the most optimal option for the participants. As an example, the existing practice of specialisation in the court proceedings on cases involving minors was mentioned. But the existing experience of the system made it possible to form a list of critical points that must be taken into account when implementing such an approach. In particular:

1. transparent and understandable selection process, among the main criteria is the existing experience (there were suggestions of terms from 5 or 10 years);
2. voluntariness and motivation of the judges themselves, their level of knowledge and competence confirmed by tests and interviews;
3. clear and transparent, prompt selection of judges;

4. involvement of representatives of international / foreign institutions in the selection and further training of candidates;
5. sufficient amount of time for consideration and work with these cases, to prevent it from becoming extra tasks for an overburdened judge;
6. security guarantees and consideration of possible risks and threats;
7. involvement of international judges with experience in handling cases on international crimes.

During the discussion of this model, there were suggestions or assumptions about the need to create specialised investigative authorities, but during the discussions they were mostly rejected by the participants.

Quotes:

- *Maybe certain courts should have a war crimes specialisation. So that there are several people who will specialise in that type of crimes. For example, like cases involving minors, there are judges who understand certain specifics of working with minors and work on these cases. If a judge has 10 years of judicial experience, he has the opportunity to consider the cases involving minors. You can do the same in this category of cases.*
- *Just legislate this specialisation. You voluntarily write an application and the specialisation and everything is determined at the meeting of judges.*
- *There should be a specialisation, so that there is time to focus on this category of cases, to train your eye and delve more, not to be distracted by other categories. So that it is taken into account when considering the workload. Then it is possible not to miss anything, to ensure efficient and speedy justice.*
- *There must be specialisation and selection for this specialisation. So that people, specifically the judge themselves, so that not so that every case is thrown to the court, but so that the judge shows a desire to consider these cases. Because they themselves assesses what they can, that he or she will not be afraid, and then there should be some selection procedure or at least an interview to check the risks or the psychological fitness or the experience of the judge.*
- *If we (the justice system) set goals here and now on working tomorrow, then this is only a specialisation of those judges who we have no. If we set the goal to increase the trust of international institutions in our system, then it should only be a selection of judges, not everyone who have been working for more than 5 years. It is possible that a judge who works for 2-3 years will be effective and motivated. Then it takes a little more time to create a qualification commission and carry out the selection.*
- *It all sounds nice in terms of specialisation within the judges' community. There is a meeting of the judges and they say "So, you will consider this". That*

is how investigative judges are elected. And the majority votes — the majority at the meeting decides who will do what. This is just taking off a sick head and putting it to a healthy one, it will not solve the problem. They just find judges to dump it on them. This knowledge does not appear by magic, a judge does not become less prejudiced. They just dumped it on them and said, "Come on, you are doing it now. It doesn't matter to you, you will retire soon. All what is left for you is resignation. It will not matter if your verdicts are overturned, or what your results will be."

- *If it is a judge who is undergoing selection, goes while motivated, writes a statement. They understand where they are going, demonstrate their qualities — personal, professional, knowledge of IHL, pass the basic criteria.*
- *Specialisation should only be for the court, the investigative authorities do not need it. I think only a judicial body is enough. There is no need to create another variant of anti-corruption system. The Security Service of Ukraine, the General Prosecutor's Office, those who are involved in this case — they are already briefed on this in principle. Yes, of course there were mistakes and misunderstandings. But we can somehow pull it together and patch it all up. In general, there is no need to create a new system.*
- *A limited number of judges need to be trained, they can handle the job, no need to load all the judges.*

A Separate International Tribunal

Among the respondents, this model caused several key reservations. Firstly, it is about the number of cases and the understanding that the international institution will not be able to, and should not, focus on the direct perpetrators of war crimes. Their focus is on ensuring justice for what was committed by the military-political leadership. Accordingly, most cases will not be considered.

Secondly, the existing practice indicates a rather large amount of time and financial resources needed to launch and ensure the work of such an institution.

Thirdly, for some of the participants, the creation of an exclusively international tribunal appears to be a recognition of the complete failure of the national justice system of which they are a part.

At the same time, the participants note the tribunal can ensure the appropriate level of impartiality and legitimacy of the decision in the eyes of the global community. Therefore, the establishment of an international tribunal is considered exclusively in a format mixed with the national justice system.

Quotes:

- *I think there must be some kind of mixed model. Because this is essentially a threat to the whole world, this war, and it is about the fact that there is a crime of aggression against Ukraine, we are the injured party. The world community*

must be involved. But this international tribunal cannot review every crime, every military serviceman, even the smallest crime when one person killed another one, because it will collapse under caseload. There must be some kind of mixed system. And the most serious crimes should be handled by the tribunal, for example, military-political persons, those who are guilty of the crime of aggression or genocide against Ukraine. And if these are the crimes that fall under the criminal code in our national system, also in relation to a certain lower command, then our system can deal with it, but with specialisation.

- *I researched the issue of tribunals, and the issue of the tribunal in Yugoslavia, how long it existed — 24 years, and it was 21 years in Rwanda. You see, this is a building, this is the maintenance of the state, there is not even such a goal - to consider them quickly. That is, people receive wages, the hearings take place. I do not want our grief to feed the officials of other countries for decades. I don't want that. I believe Ukrainian judges will review it better and faster.*

Assessment of the Possibility of Involving Foreign Specialists to the Ukrainian Justice System. Key Roles, Benefits and Caveats

When discussing the visions of justice models, the research participants raised the issue of involving representatives of foreign or international structures, citizens of foreign countries into administration of justice for war crimes committed during Russia's war against Ukraine. We have compiled the main expectations and reservations regarding the involvement of representatives of foreign countries. It is important to note that such an involvement was stipulated and mentioned during discussions of the various models, so this topic became cross-cutting.

According to respondents, the involvement and potential roles that representatives of foreign countries can play in building a justice model for Ukraine can look as follows:

- Participation in expert support and consulting, provision of training for both judges and investigative authorities;
- Involvement in the selection of judges and investigators for one or another model of justice;
- Providing consultations directly during an investigation or trial;
- Involvement of criminology experts and investigators in the investigation process;
- Involvement of foreign representatives as judges.
- The main caveats regarding the involvement of representatives of foreign countries:
- Possible communication barriers and the need to involve a large number of interpreters during the court hearings, ongoing communication between judges before/between trials, translation of case materials, etc.

- Symbolic or real loss of the country's sovereignty, demonstration to society of the inability of Ukrainian justice to ensure justice;
- The need for a significant update of the legislation, including the amendment of the Constitution, which is currently very difficult or impossible in wartime conditions;
- Lack of understanding by foreign specialists of the Ukrainian context, knowledge of criminal legislation, existing practices and institutional features of court proceedings and investigations.

Quotes:

- *Of course, there will be huge problems with communication. I have about a thousand pages of the case. I certainly will not read them all, but I have the possibility to do so. And if a French or a German judge comes, we have to translate it all.*
- *The state immediately loses its sovereignty. Immediately. If the tribunals are like this, then even in the eyes of society it will be seen that the state is unable to provide justice on its own.*
- *What will it legal basis? That's the question. Again, this should be some kind of international agreement, which the Verkhovna Rada should ratify. Well, if they go for it, no problem. This is their mandate.*
- *To what extent will this correspond to, let' us say, Article 6 of the Convention. To what extent the court will be established by law is also a question. But all the same, the Constitution is the foundation, it is the most important law. Even if an international treaty contradicts the Constitution, the Constitution will have a priority. The Constitution is the most important law of our country, if it states that it must be a citizen of Ukraine, and even if there is an international agreement, then I don't know how it will look, at least it will not look like a court established by law. We cannot change it in the wartime. The procedure there is quite complicated.*
- *I do not quite understand how this expertise will be used in view of the Laws of Ukraine, that expert opinions are guided by.*

Advantages of involving foreigners in the development and administration of Ukrainian justice:

- Minimising the threat or accusations of non-compliance with the justice standards due to the bias and lack of impartiality of exclusively Ukrainian judges;
- Ensuring additional external legitimacy of the pronounced verdicts for the international community;
- A tool for minimising security and reputational threats in the case of acquittals for representatives of the Russian Federation or convictions for the Ukrainian military;

- The possibility of attracting and using the international experience in accordance with the standards of Ukrainian judicial practice;
- A tool for international standards, as well as judicial and investigative approaches to be gradually reformed and integrated into domestic practice.

Quotes:

- *To be honest, I do not welcome all these cries about the loss of independence if some foreigner will sit with me in the collegium. I don't think it will affect my independence in any way. He will act in the same way as I do — under certain rules.*
- *There was a case where a Russian colonel was tried for ordering to shoot at peaceful neighbourhoods. I know people died there. I am a citizen of this country. They may doubt I will treat him in the same way as our military. In order to avoid such accusations foreigners can be involved who are not a part of these events, they were not in it, and they do not have such a traumatic experience.*
- *We often hear the premise about combining judges from Ukraine with foreign specialists who have relevant experience. Just as a specialised court, it seems, in Bosnia worked, if I did not mix up the country. This is long after the conflict has ended. Initially, there were three foreign judges in one panel. After a few years, two foreign and one local remained. And in 10-15 years after the conflict, these cases remained to be reviewed by local courts.*
- *I think there must be some kind of mixed model. Because this is essentially a threat to the whole world, this war, and it is about the fact that there is a crime of aggression against Ukraine, we are the injured party. The world community must be involved.*
- *I liked how representatives of international bodies participated in the formation of the High Anti-Corruption Court. I believe that this greatly contributed to the objectivity and activation of the process of formation of these bodies. Perhaps if some military courts will be formed in our country, then they will also participate here, suggesting what should be paid attention to.*
- *I was always in favour of foreign specialists, so that they would be around, to learn from them, because they have experience. We do not have such experience. And for this, of course, internationals with experience are needed. I don't want to make my blunders so that these verdicts is cancelled two years later by the Supreme Court. It will be even more terrible than if there were no verdicts at all.*
- *Let there be some kind of institution with both national judges and international experts. Gradually, however, these international experts dropped out and were replaced by national judges, as they shared their experience and developed practice together and dropped out one by one at a time. And if more work is expected, and I believe that there will be, we will continue everything with the national judges. I was always in favour of it. First of all, the responsibility*

will be distributed among everyone, and if there is a negative attitude to acquittals, well, for example, it will also be extended to the international experts, and they will take a little bit of responsibility, so this negative attitude will be extinguished in society. Because our trust in internationals is much higher, in international experts, international lawyers, much higher than trust in national judges. That's the truth.

The overwhelming majority of participants from the veteran community agreed with the need to create a justice mechanism in a hybrid format based on the following:

- the involvement of foreign specialists is necessary, but they do not know the specifics, context and other things about our country, so it is necessary to combine efforts;
- foreign specialists have a "fresh", non-biased view of the situation, as well as proven methods that will improve the work of our specialists.

Among the risks, significant financial costs for the work of such specialists were mentioned. If combined with the impossibility of finding criminals who are hiding in Russia or countries friendly to it, this practice may be ineffective.

In almost all cases, the veterans see as a positive aspect the foreign specialists' involvement in investigation and judicial review of international crimes. Among the strengths, the participants of the discussion named: dissemination of information about crimes at the international level, coverage of events around the world; involvement of the international community in these trials will contribute to the reform of the international relations system. In addition, it will allow to establish and control the necessary level of quality of justice processes, as well as create opportunities for exchange of experience on the part of foreign and Ukrainian specialists, and contribute to the growth of society trust in the work of joint groups. Also, the involvement of foreign specialists will minimise the risks of loss of neutrality and a more biased attitude towards the accused on the part of Ukrainian judges, and will reduce the threat of corruption.

3 National Poll Results as Seen by Professional Communities

In September and December 2022, the sociological group "Rating" conducted all-Ukrainian public opinion polls, which included, in particular, a number of questions regarding the administration of justice in the aftermath of the war (surveys conducted within the framework of the project of the Center for the Promotion of the Volunteer Movement "Volonter.Org" NGO[8], as well as surveys conducted within the framework of the project of the Ukrainian Legal Advisory Group NGO[9], both of which were implemented within the framework of the project "Urgent support of the EU for civil society", which is implemented by ISAR Ednannia with the financial support of the European Union).

Expert support and consultations during their preparation and processing were provided by experts and representatives of member organisations of the Ukraine 5AM Coalition.

Survey audience: the population of Ukraine aged 18 and older in all regions, except for the temporarily occupied territories of Crimea and Donbas, as well as territories where there is no Ukrainian mobile connection at the time of the poll. Separate results of these two surveys are important in the context of the research objectives.

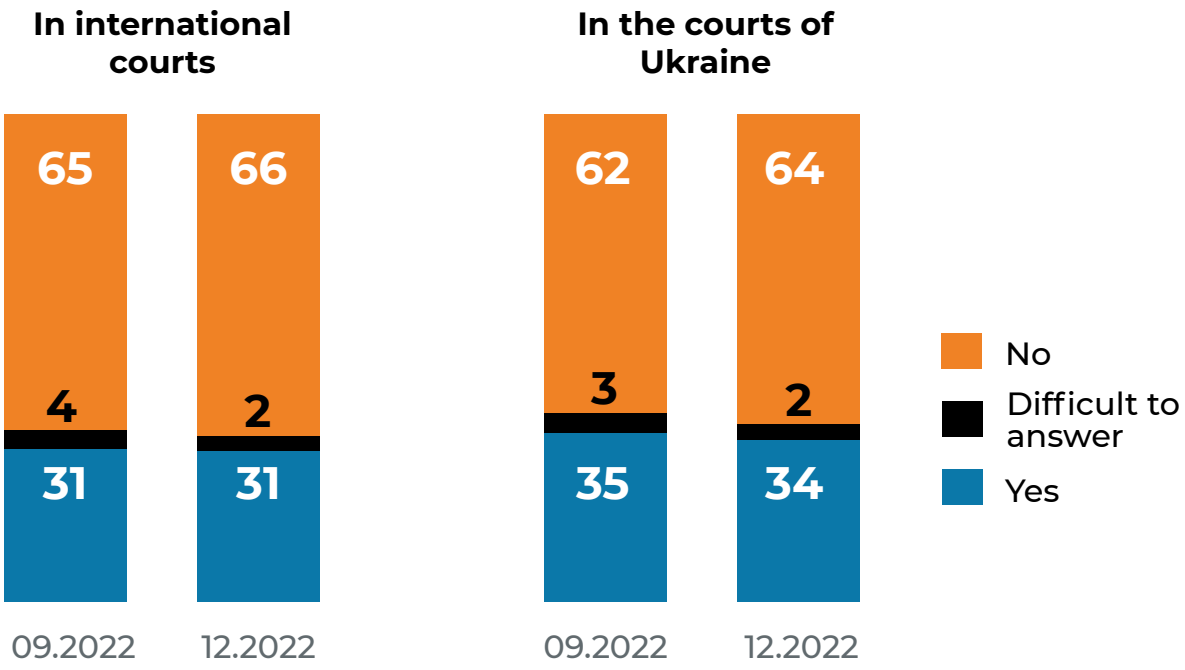
The Population Has a High Level of Interest and Motivation to Be Engaged in Justice Processes

There is a clear trend of readiness and demand for justice among Ukrainian citizens. Thus, the population is still in a certain exaltation and anticipating with regards to justice being ensured, therefore declaring a rather high level of readiness to participate in the justice process. Experts note that this level is the result of the psychological and emotional state, the dynamics of the war and the losses suffered, a somewhat simplified information campaign by the state, which mainly focuses on the ease and speed of the punishment, rather than explaining the complexities and challenges when handling this category of cases, as well as the capacity of justice system of Ukraine.

8 Results of the all-Ukrainian poll "Assessment of the damage caused by Russia's war crimes in Ukraine", September 2022, https://zmina.ua/event/yakoyi-shkody-zavdayut-voyenni-zlochyny-rosiyi-ukrayinczyam-rezultaty-opytuvannya/

9 Results of the all-Ukrainian poll "Legal protection of victims of Russia's war crimes", December 2022, https://ratinggroup.ua/research/ukraine/pravoviy_zahist_postrazhdalih_v_d_vonnih_zlochin_v_ros_23-26_grudnya_2022.html

Are you ready to personally participate in lawsuits to claim compensation for lost property/health...?

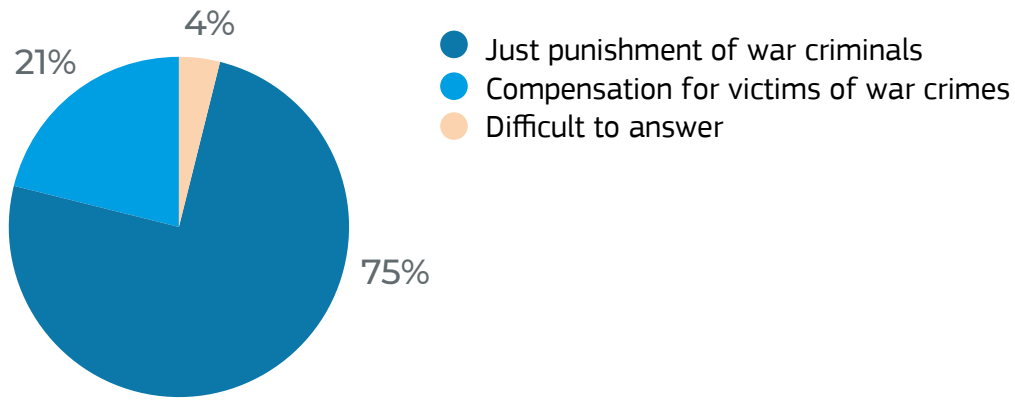


Key Expectation of the Population is Quick Punishment of the Guilty

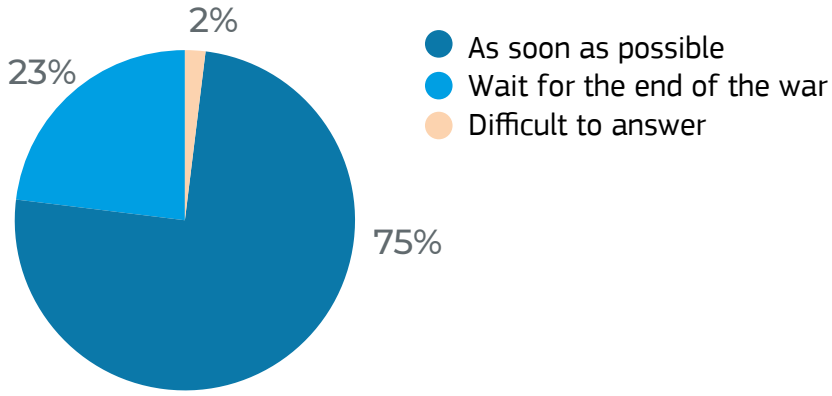
First of all, Ukrainians seek quick justice: according to the majority (75%), trials on war crimes in Ukraine should be started as soon as possible, 23% of respondents believe that it should be done after the end of the war. The first priority for the population of the country is not compensation for the damage received, but a punishment of the guilty: 75% of respondents believe the priority during justice regarding war crimes should be the fair punishment of war criminals, 21% believe the priority should be a compensation for the victims. At the same time, as shown by the results of the national poll and the survey of professional groups, the respondents primarily prefer legitimate forms of justice through the system of investigation and court proceedings. 55% are against lynching, respondents from the judicial and veteran communities have also demonstrated a high level of expectations regarding trials on war crimes in accordance with the justice standards.

The interviewed respondents, both judges and veterans, have a high level of understanding of the existing public demand. At the same time, there is an awareness of threats that non-implementation, delay or non-compliance with public perceptions of justice can become a significant factor of destabilisation and reputational risks for the country.

In your opinion, which of the following should be a priority in war crimes justice?



In your opinion, when should war crimes trials begin in Ukraine?

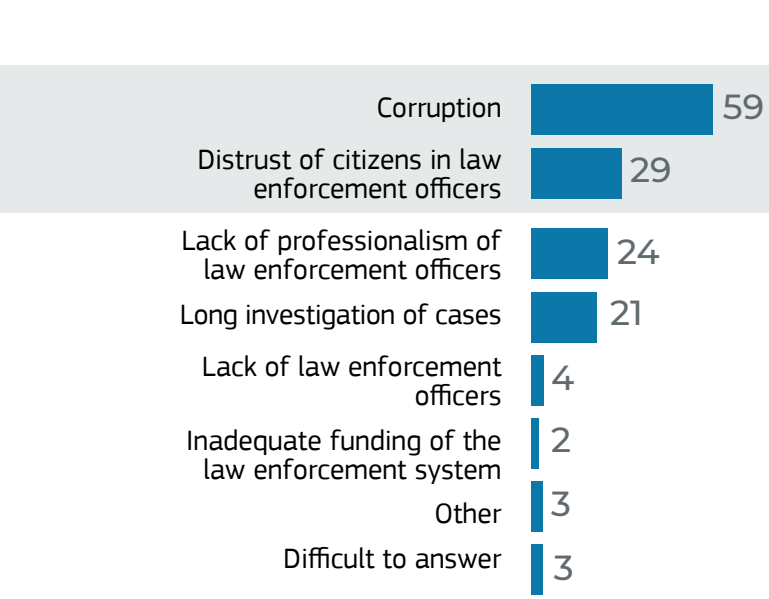


Distrust and Prejudice of the Population towards Justice System and Investigative Authorities

The majority of respondents noted that existing negative attitudes and prejudices of the society towards the court and law enforcement officers persist even during a full-scale invasion. First of all, it is about corruption and distrust of systems in general. This can become one of the main points of pressure on the court during consideration of extremely sensitive cases related to war crimes. At the same time, more than 40% of respondents believe the justice system and law enforcement system of Ukraine are effective in investigating Russia's war crimes.

What are the main reasons why you think the law enforcement system of Ukraine is inefficient?

Among those, who consider the law enforcement system of Ukraine inefficient



What are the main reasons why you think the judicial system of Ukraine is inefficient?

Among those who consider the judicial system of Ukraine ineffective

High Expectations for the Effectiveness of Special Courts Composed of National and Foreign Judges to Convict Russian War Criminals.

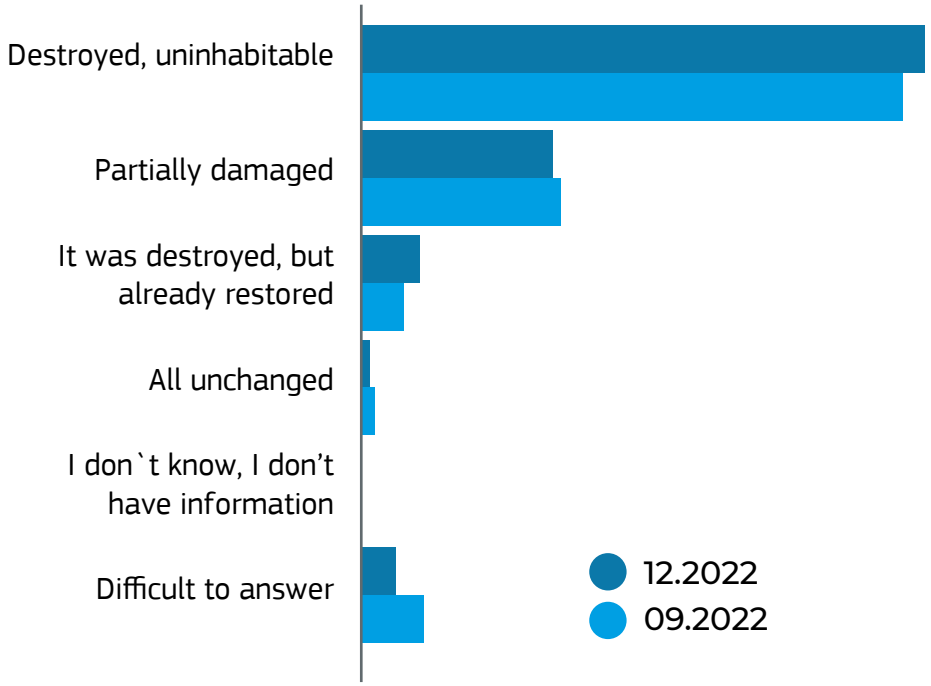
The majority of respondents believe that special courts with the participation of domestic and foreign judges will be the most effective for the trial on Russia's war crimes (65% of respondents on average). The same opinion was expressed by a part of the judges-respondents of the research during focus groups and interviews. Another 22% of those surveyed during the national poll consider international institutions effective, and 7% consider national courts effective.

Based on the previous rather significant indicators of the respondents' positive assessment of the effectiveness of the national justice system and law enforcement system in this category of crimes, it is likely that the national system, reinforced by an international element, is most likely the option that population believes will ensure justice for Russia's crimes against Ukraine.

The position of professional groups is somewhat different from society's assessments. Thus, the collected opinions and ideas voiced by the judges demonstrate the lack of a unified vision and understanding of what hypothetical mechanisms can be used to ensure effective justice for international crimes. Varying approaches, the long course of judicial

reform led to a rather sceptical perception and attitude towards changes directly among judges. The prevailing assessment of the justice system is that it is quite capable, which with some support and strengthening will be able to provide proper justice for this category of cases. Instead, the interviewed veterans mostly noted the need to use mixed options for prosecuting persons who committed crimes related to aggression in Ukraine, which involves combining the efforts of the domestic and international systems of justice and accountability. In their opinion, this will not only ensure a higher level of compliance with the justice standard, but also provide for an appropriate level of informing the world about the crimes committed by the Russian military.

Which of these mechanisms do you think would be the most effective for Russia`s war crimes trial

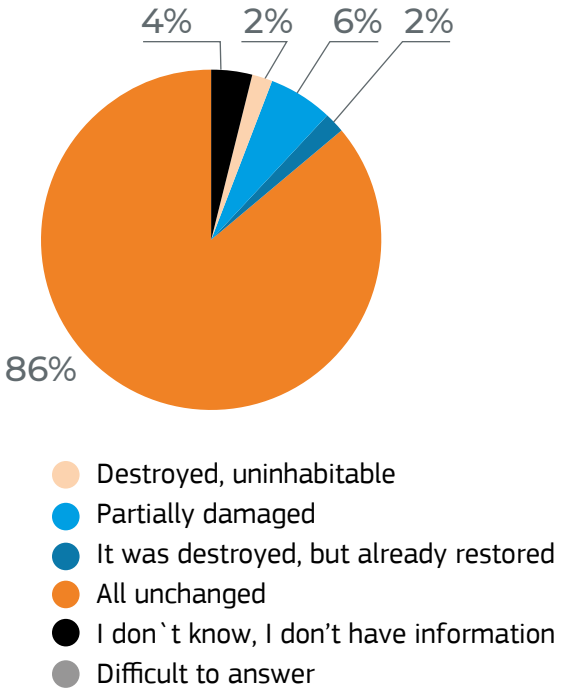


Low Accessibility of the Mechanism for Reporting Alleged Violations to the Law Enforcement Authorities

Despite a high demand for justice, demonstration of readiness to participate in the court proceedings on war crimes, the level of reporting violations to the law enforcement agencies remains extremely low.

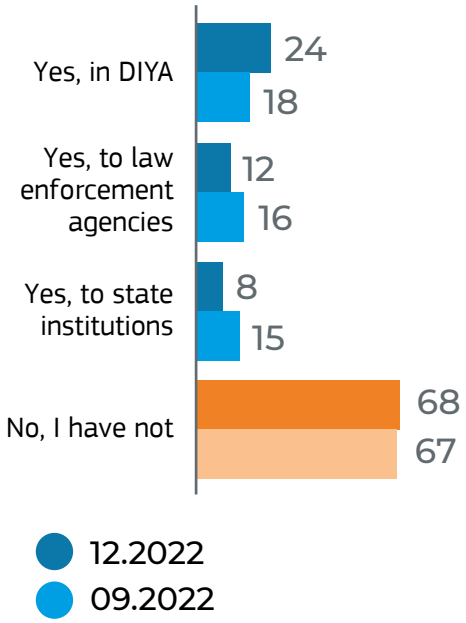
Based on the general analysis of other poll results, this may not indicate the level of trust or distrust to investigative authorities, but rather the fact that such authorities have not developed convenient and understandable tools for providing information about crimes for the population. Accordingly, the general array of crimes and damage to citizens as a result of aggression remains beyond focus of law enforcement authorities. It is important to consider that only the population in the controlled territory of Ukraine took part in the poll. It means that the available data on crimes and harm to citizens in the temporarily occupied territories will be even less accessible.

What is the current condition of your housing, where you have lived before the war?



Among those whose hounding is completely or partially damaged

Have you already filed for damage of your home?

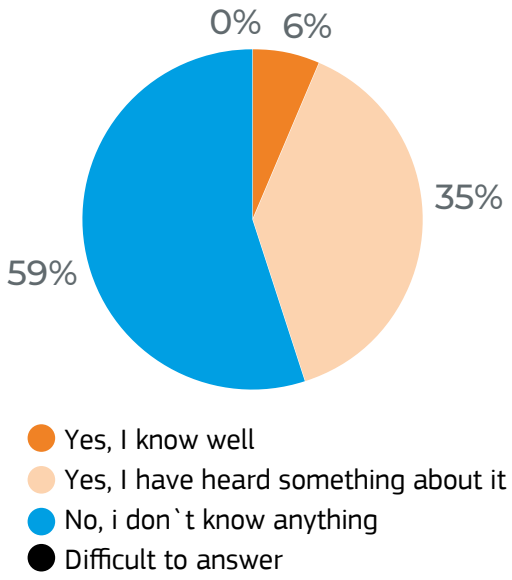


Lack of Communication and Clear Explanations from the State as to Protection of Victims' Rights

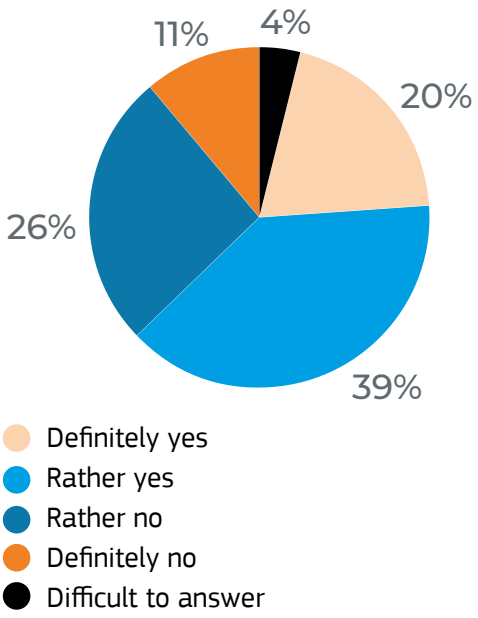
Current authorities' communication strategy regarding justice for the grave international crimes is insufficient. The indicators show that a significant part of society, which has information about potential international crimes of the Russian Federation, or is directly affected by hostilities, does not turn to investigative authorities, in particular, due to lack of information about legal protection tools.

The initiated national tv marathon and other communication tools chosen by the government mainly focus on general information and the success of the investigation, without conducting legal and educational work to explain the importance and pathways, algorithms to contacting the law enforcement agencies for the legal protection of victims. Certain categories of victims remain neglected, in particular, in anti-crisis communication. For example, families of those missing as a result of hostilities, who take a proactive position in searching for loved ones, may face a negative reaction from the authorities. At the same time, experts note that the dissatisfaction and disappointment of the victims can be used by the agents of the aggressor state to destabilise the situation in the country.

Do you know what kind of assistance is provided by the judicial authorities of Ukraine to victims of war crimes?



Would you like to learn more about the legal assistance provided by the judicial authorities of Ukraine to victims of war crimes?



Growth of General Trust to Civil Society Has Not Translated into the Same Level of Trust When Reporting Potential War Crimes

Population shows an almost identical level of trust and, accordingly, willingness to report information about war crimes, both to law enforcement officers and to civil society organisations. For respective human rights organisations, this can become a significant challenge in obtaining information and working with victims. At the same time, the diversity of the activity vectors of human rights organisations (providing legal assistance to victims, other services, etc.) can compensate for this trend.

In addition, the results of the survey refute a supposition of some representatives of law enforcement agencies and the justice system regarding excessive competition, blurring the attention of witnesses and victims, interference with investigative authorities due to the work of non-governmental organisations in documenting crimes and interviewing witnesses. After all, the level of trust and, accordingly, the respondents' appeals to both law enforcement officers and civil society organisations remains equally low. At the same time, the scale of crimes and the tasks related to their documentation are incredibly high, which may indicate the need to attract additional human resources for such work, as well as for cooperation and interaction of governmental and non-governmental sectors.

Position on the Ratification of the Rome Statute

The respondents of both the national poll and the focus groups and interviews mostly responded in favour of ratifying the Rome Statute. Thus, according to the poll, about 80% support its ratification, 4% do not support it, 17% are undecided. This idea also did not cause resistance among the military — all the participants spoke positively about the ratification of the Rome Statute in Ukraine. Ratification, according to the feedback from the interviewed veterans and military personnel, should contribute to the investigation of crimes, alignment of legislation, and accession of Ukraine to the EU.

MAIN CONCLUSIONS AND SUMMARY OF RESEARCH RESULTS

Based on the results of the conducted research, the formulated hypotheses were mostly confirmed.

Thus, according to the respondents, the legislative framework of consideration of war crimes was not adapted for application during the active phase of full-scale hostilities. Despite the prompt actions of legislators and heads of the judicial branch of government, quite often they were somewhat chaotic and uncoordinated. Mostly, the judges emphasised the systemic problems of inconsistency of national law with the norms of IHL and ICL, multiple amendments and unclear wording of the articles, which significantly complicated the judicial process. In addition, the veteran community is also fairly sceptical of court proceedings' effectiveness for the period 2014-2022. "Legislative gaps" are named as one of the main reasons for that.

Almost every focus group raised discussed the insufficient level of knowledge and understanding of the application of principles and norms of international humanitarian law and international criminal law by judges and prosecutors. In addition to the self-assessment of professional lawyers, the national poll results also confirm the voiced consideration. Thus, according to Ukrainians, the unprofessionalism of the law enforcement system (24%, the third result) and justice system (15%, the fourth result) is one of the main reasons for their ineffectiveness in dealing with war crimes. At the same time, the issues related to institutional capacity of the system are more clearly identified by the community of professional lawyers. The majority of respondents mentioned as key problems the insufficient number of judges in general, judges being overburdened with other cases, the risks of reducing the funding of the field (such as the situation when the lack of funds and administrative inconsistency led to a mass suspension of court proceedings due to lack of printing of summonses of the accused in "Urjadovy kurier").[10] Instead, both military and the general population do not identify this as a key challenge, mostly focusing on the traditional assessment of the justice system as corrupt and lacking sufficient trust from the population.

Key safety challenges were pointed out in great detail by the judges based on previous experience. which are mostly defined not as hypothetical, but as existing and those that will be exacerbated by the existing social dynamics and radicalisation of society. Unfor-

10 https://www.facebook.com/MediaInitiativeForHumanRights/posts/pfbid02hZbfonJHbgsDerpr4XNMwbJWGrz4tDJw7mi4RXjubDq57tLrHLmy5E8SJSEcpWW3l

tunately, neither the society nor the representatives of the veteran community notice the existing security vulnerability of the justice system.

The results of national polls confirm the thesis that, above all, there is a demand for punishment on the part of society. Three quarters of Ukrainians do not want to wait for the end of the war to achieve justice, but rather see the need for an immediate work by the law enforcement and justice systems. Regarding the priorities of justice, 75% are primarily focused on punishing those guilty of crimes, rather than on receiving compensation. In addition to confirming the hypotheses, certain research problems that we defined at the beginning of research, we can summarise the main results and conclusions in the following blocks.

Lack of Knowledge, Competences on the Subject of Law of Armed Conflict, and Motivation of Judges

Most of the respondents noted that despite the ninth year of the war, the system of formal education and retraining of personnel did not provide high-quality training and education programs for judges to work with cases related to the aftermath of the war and international crimes. This applies not only to judges, but also to employees of investigative authorities and the prosecutor's office. The level of knowledge of international humanitarian law remains low. Accordingly, the norms, if they are applied, are quite often not applied in accordance with the context of the cases.

In addition to the lack of effective mass training programs, the participants also noted the lack of interest and motivation of judges themselves to learn new things and deepen their knowledge in the field of the law of war. A certain effect had a "presumption of expertise", self-confidence, and lack of time. There is also a widespread approach that up until the point a judge actually receives the case of this category to work with, there is no need to master the relevant legal norms. The language barrier also becomes an obstacle, as the participants note that a significant number of documents, jurisprudence and useful learning materials on this subject are available only in a foreign language.

At the same time, a certain "fashion" for the application of international humanitarian law and international human rights law leads to incorrect implementation and attempts to integrate irrelevant norms or jurisprudence into the materials of cases or reasoning of court judgements.

Social Pressure and Prejudice Against Justice System

The respondents noted a significant increase in the urgency of the society's demands for fast and as harsh of a justice in relation to the "enemy" as possible. The limitations of the legal regime of martial law, the current dynamics of events, the absence of a large number of cases brought to the court do not yet lead to a direct manifestation of pressure on the court. But all the research participants indicate a significant level of danger, which will show itself when the court hearings and sentencing will pick up the pace.

An additional, a perpetuating aspect of this situation, besides the traumatisation of society and the losses suffered, was the desire of political actors, even representatives of investigative authorities, to politicise the situation, to demonstrate their own effectiveness of actions, which are often focused on quantitative rather than qualitative indicators. Accordingly, instead of preparing public opinion for the complexity of these trials, key authorities, political actors through the media and social networks spread the illusion of simplicity and speed of justice in the aftermath of the war. "*It is easy to administer justice in a Russian way. What I`m afraid of is for judicial system to not be used in the war of verdicts,*" says one of the survey participants.

Existing public pressure and the demand for quick punishment of Russian citizens accused of war crimes, the personal emotional involvement of judges, the lack of sufficient competence and practice create the basis and risk of court decisions not meeting the standards of justice. This, in turn, will deepen the distrust to justice on the part of both society and international partners, providing a ground for recognising the system as incapable of working with this category of cases.

Security Risks to Judges and the System in General

During the in-depth interviews and focus groups, majority of participants were quite unanimous in identifying the key existing risks that judges may face when working on war crimes. Differences were observed when discussing the degree of influence of these risks, it was mostly based on personal professional experience.

First, the physical safety risks of judges were defined. During the actual court session — the attempts to block and attack by the support groups of trial participants. The risk is also noted outside the court, where those or other persons, dissatisfied with the judge's position/decision, may try to harm his/her life or health. Most of the participants noted that they don`t have a high level of trust in the existing state security practices and are not confident about their personal safety based on it, both during court hearings and outside the court.

Secondly, there are personal reputational risks due to attempts to use media pressure on the judge, against the background of a long-term trend of distrust and negative attitude towards the justice system among the population.

Third, the importance of such cases, both for society in general and for certain political actors or representatives of investigative authorities, may incentivise them to try applying administrative pressure. Some of the respondents have already noted cases of such pressure during the court hearings related to a full-scale Russian invasion. In addition, during the period when the research was being conducted, a video interview was released on the TSN YouTube channel[11] with acting head of the Security Service of Ukraine V. Maliuk, where he directly mentioned putting pressure on the courts through covert monitoring of their activities, or through direct communication with representatives of the judicial

11 "Head of the SBU Vasyl Maliuk: Who did Medvedchuk pass? "Mole farm" in Moscow and bot farm in Kyiv, 21.12.2022, https://youtu.be/4S4DJFxesGQ

branch of government, so the judges, after a full-scale invasion, would only choose detention for suspects in crimes against national security.

Fourthly, the judges who were seconded to other courts due to the occupation of part of Ukrainian territories fall into a high level of dependence on the Chairman of the Supreme Court and the direct management of the respective court. After all, it is very quick and easy to end the secondment. Some judges also noted that this tool was already used to put pressure on seconded judges, but in a different category of cases.

Fifth, there has been an increase in the number of judges who may be pressured by representatives of the aggressor country or the occupying forces under its control through threats to family members or their property in the territory occupied by the Russian Federation.

It should be noted that the personal safety of Supreme Court judges is not a priority issue on the agenda, as most judges believe that working in local courts, especially on the contact line, is much more dangerous. In turn, there are no preventive mechanisms to avoid pressure on judges in war zones.

A Large Number of Cases May Cause Justice System to Collapse

The respondents note that the number of open cases declared by the investigative authorities, as well as the quality of the first cases that come to the court, is inconsistent with the existing capacity of the justice system. Without prioritisation of these cases, the due quality of their preparation at the stage of pre-trial proceedings, adequate financial and organisational support of the court, it would be impossible to ensure that these cases are handled in compliance with international standards. Some of the respondents noted that the constant emphasis on the number of proceedings related to the consequences of war, and their growth indicate not only real scale of violations of the rules of war but can also be a way to put pressure on the justice system, or constitute politically motivated statements.

The judges also unanimously state that it is necessary to review the practice of procedural management in conflict-related criminal proceedings. Following the statements made by the Prosecutor General's Office that they conduct procedural management in more than 40,000 criminal cases related to the full-scale Russian invasion, judges believe the justice system cannot withstand such a load. There is a consensus that priority should be given not to the number of criminal cases, but to the quality of investigations.

Willingness to Lower the Standards to Speed Up the Justice Processes and Legitimise Existing Level of Evidence Documented by Investigative Authorities

Some of the respondents noted that ensuring the possibility of court proceedings on current or future war crimes cases can be ensured by lowering the threshold of the standards of proof. It is important to note that such a decision should only be based on public consensus, confirmed by the Parliament. Proponents of this idea believe it can ensure the

legitimisation of the materials collected by the investigation, speed up the consideration of cases, ensure protection and minimise the responsibility of the judges who will deliver judgements.

Lack of Personnel Due to General the Justice System Faces

The prolonged reform of the justice system, the blocking of the launch of key judicial institutions (High Council of Justice and High Qualifying Commission of Judges) are some of the reasons for the significant understaffing, the accumulation of significant organisational challenges that hinder the ability to administer effective justice not only in relation to war crimes, but also in general. As a result, the judges assess the situation with personnel that occurred because of these processes as catastrophic.

Currently, there is a critical mass of judges who have already submitted resignation letters and are just waiting for it to be approved. The long absence of appointments to the appellate courts has created a vacuum that, when these courts start working, will lead to the transfer of qualified judges to higher-level instances and a wave of potential resignations. It is going to be extremely difficult to compensate quickly and qualitatively the composition of judges throughout the country under the current conditions, this process will take a lot of time.

Reduction of Funding as a Threat to the Organisational Capacity of Justice System

The respondents call the loss of qualified personnel as one of the key threats in the chosen strategy of saving public expenditures. First, at the level of assistant judges and staff, because the announced reduction will primarily concern them, and not judges, whose salaries are regulated by other norms. The recorded level of expenditure reduction has already led competent court employees to seek other work in the private sector. Accordingly, their replacement under the given conditions, training, adjustment of processes with new personnel will become one of the key threats to the effectiveness of justice as a whole.
Along with the problems of ensuring the institutional capacity of justice due to the lack of personnel, the reduction of expenses already leads to significant problems in sending court summons, ensuring the work of convoys and court security, etc. Of course, this is not directly related to war crimes, but the general problem of underfunding the system will affect the ability to process them as well. Moreover, the lack of practice, lack of a sufficient level of knowledge and competence, general lack of funding, may lead, according to the respondents, to the deprioritisation of this category of cases at the court level.

Impact of Legislative and Administrative Practices on the Administration of Justice in Response to a Full-scale Invasion

The research participants, especially those who have faced displacement as a result of armed aggression since 2014, note a significant improvement in the situation with an operational response and the launch of judicial organisation processes in the conditions of an ongoing full-scale invasion. It is noted the leadership of the Supreme Court and the Parliament responded rather quickly and mostly appropriately to the situation. At the same time, certain instructions and recommendations for the actions of judges and

courts in the conditions of a possible invasion were not formed preventively. This led to the widespread practice of "manual management" of certain processes in the organisation of justice.

Also, the respondents emphasise that the considerable list of decisions adopted by the parliament since February 2022 is not fully thought out, quite often these decisions contradict the existing norms in other laws, it is rather a quick emotional reaction than an attempt to build a system adequate to the current conditions. Thus, some articles of the Criminal Code or Criminal Procedure Code were amended several times, sometimes contradicting each other. Judges note that both among colleagues and other stakeholders involved in investigative or judicial processes, regularly face situations of inconsistency of norms and their interpretation.

Some of the examples mentioned by the respondents:

- problems with the stay of POWs in Ukrainian pre-trial detention centres, where the administration of the institutions refused to keep them in the absence of court decisions. This led to the establishment of a rather dubious, from the judges' point of view, practice of choosing preventative measures for Russian POWs, which created additional challenges to upholding justice standards in the context of the rules of war.
- practice formed as a result of different interpretations and application of Art. 615 of the Criminal Procedure Code, which led to the active use by the prosecutor's office of the possibility of choosing preventive measures contrary to Art. 29 of the Constitution of Ukraine.
- massive (since the full-scale invasion) and false (in the opinion of most respondents) practice of holding the Russian soldiers accountable for illegal border crossings.

Problems of Distinguishing Responsibility amongst Parties to a Trial and Time Constraints in Producing Jurisprudence

The participants noted the society`s traditional perception that it is judges who are exclusively responsible for ensuring proper justice. Instead, society, experts and international donors ignore important aspects of reforming the justice system, which remain outside the control of the judiciary.

For example, gaps and inconsistencies in legislative regulation, lack of financing of pre-trial detention facilities, poor-quality work of pre-trial investigation authorities, etc. All this quite often significantly limits the court's ability to comply with the standards of fair justice. The impossibility of protecting the interests of accused persons as a result of systematic refusals on the part of lawyers also has an impact. Thus, it is a common practice in relation to cases involving Russian POWs, when the Centres of free secondary legal aid inform the court that " *...the defence attorney... sent a letter to the Centre that he does not like this person, he does not like his actions and he does not want to defend such a person.*"

Practice formation of the appellate and cassation courts is postponed, which respectively delays the request for possible changes to the legislation necessary for effective and

proper judicial proceedings on cases related to international crimes. This is due to the expected low level of appeals against court decisions, the unmotivated defence of the accused in this category of cases, the transfer of the latter to the "exchange fund" which leads to a subsequent de fact release of their sentence, etc.

Continuation of Ineffective Practices Established Within the Previous Period of Work on War Crimes

Some respondents, who had professional experience in considering cases on crimes related to the aftermath of Russian aggression since 2014, see the danger of and a repetition of previous unsuccessful practices and approaches to the investigation of this category of cases. The focus on speed and media coverage of these cases leads to poor-quality preparation of indictments and improper collection of evidence.

The participants mentioned the mass practice of improper classification of crimes, the use of deals with the investigative authorities, considering cases within 1-2 sessions, which end with the accused admitting guilt and quickly transferring him to the lists "for exchange" with subsequent departure outside Ukraine, etc. Judges see attempts to repeat such practices already in the context of court proceedings concerning Russian POWs. Respondents have doubts about whether it is possible to process such cases in a short time, feeling that these cases actually turn into statistics. Besides the challenges of ensuring the justice standards, such a formal approach eliminates the possibility of developing high-quality judicial practice and practice of working with cases related to international crimes within the justice system.

Consideration of Cases "In Absentia" Remains a Procedural and Personal challenge for Judges

The specificity of considering international crimes and other cases in the context of Russian aggression since 2014 gave relevance to the need to use "in absentia" procedures. Judges, even those with experience of in absentia proceedings, note that these categories of cases remain problematic for all trial participants. This is despite the fact the respondents themselves say "*the practice of applying this mechanism is already sufficiently developed. And there are verdicts, including the ones that passed the appellate instance*.

The key problems remain the non-resolution of a number of procedural issues that arise in the process of pre-trial investigation, certain prejudices and inertia of thinking and practice development processes, insufficient level of training and clarification regarding the features of the application of "in absentia" procedures.

Opinions were also voiced that the demand for justice may not be satisfied when in absentia procedures are actively implemented, because the execution of such a verdict is significantly limited, which means the court cannot ensure the inevitability of punishment. In absentia procedures should be accompanied by some educational work with the population in order to clarify the specifics of this mechanism and its role in ensuring justice (at least the possibility of further inclusion of compensation procedures through confiscation of the convicted person's property, etc.).

RECOMMENDATIONS

Ensuring adequate, effective and fair conflict-related justice is important in the process of overcoming the aftermath of any armed conflict. This is even more important in the context of the incredible scale of international crimes committed in the context of Russian aggression against Ukraine.

Justice must not only bring those responsible for committing international to account, to protect and restore the rights of victims, but also to ensure a general feeling and understanding in a society that is experiencing the trauma of war that justice has been served and the high demand for it has been satisfied.

The research results made it possible to identify a number of challenges and tasks. If the state succeeds, it can strengthen the potential of the domestic system to ensure justice for international crimes committed as a result of the armed aggression of the Russian Federation against Ukraine. Based on this realisation, as well as on the recommendations and requests expressed by the respondents, the authors of the research formulated a number of recommendations.

Education and Training of Judges

Proper education and professional development of judges should become a tool for strengthening professional expertise, as well as act as a certain prevention of dependence on one's own prejudices, and societal pressure in this category of cases.

It is important ***to develop and provide long-term comprehensive training programs in international humanitarian law within the framework of formal, informal and postgraduate education of judges***. They must necessarily include a practical element of mastering the relevant skills and abilities.

It will also be useful ***to introduce joint educational and training activities for all participants of the justice process*** (judges, prosecutors, investigators, and attorneys). These can be trainings, educational mock trials, etc., which can become a platform for identifying difficulties, discussing solutions, agreeing on the relevant practice and eliminating gaps in it.

During the development and testing of training programs on IHL it is important to provide educational and practical material not only from the field of law, but also certain ***tools for separating emotions from legal considerations and position***.

Judges also need ***training in the basic principles of cyber and information security***. The use social media, security of which causes concern, for official and informal communication has been mentioned on multiple occasions.

While acknowledging the contribution of non-governmental organisations, it is the state (primarily, the National School of Judges of Ukraine) who is trusted to play the main role in providing such training, but with a ***change in approaches to the organisation of the adult education process*** and the practical rather than theoretical orientation of the programs.

Regarding methods and approaches to education, the majority of respondents noted the need to combine in person and remote formats. The respondents also noted the need to form and disseminate ***analytical materials*** that would contain the basic principles, norms and recommendations for working with this category of cases, in particular ***covering work experience since 2014, as well as international experience,*** but one that would be relevant to the domestic context and specifics of local justice.

Regulation of Security Challenges in the Work of Courts and Judges
The key thing that the participants emphasised was ***the need for physical security and reforming the existing judicial security system***. It should, first of all, ensure the speedy and guaranteed reaction to any violation, attempt to attack the trial participants or the court visitors.

The courts' security should provide a real security space inside the courts, be able to effectively confront attempts to exert pressure on parties to a trial during hearings. It is also important to develop ***a clear algorithm for the actions of judges and guards during possible dangerous situations*** (attacks, hostilities, threats of violence, etc.). Algorithms should be systematically reviewed for relevance and participants should informed about their practical implementation.

According to some research participants, consideration of cases related to war crimes should be relocated to relatively safe regions of Ukraine. This will not only facilitate the workload management and balancing processes but can also become a factor in ensuring the court's independence from pressure.

Adequate Funding and Provision of Facilities and Resources for the Courts

There are several international instruments that attest to the need for adequate financing of the justice system. For example, the UN Basic Principles on the Independence of the Judiciary state that it is ***the duty of each state to ensure adequate funding of the judiciary*** so that they can properly perform their functions (principle 7). The European Charter on the Statute for Judges states a state has an obligation to provide judges with the necessary means to perform their tasks properly, especially to consider cases within a reasonable time (clause 1.6). Similar provisions are contained in the Beijing Statement on the principles of the independence of the judiciary of the Law Association for Asia and the Pacific.

During the research, the judges repeatedly raised the issue of adequate funding, because due to the lack of it, they cannot properly fulfil their duties, such as serving a subpoena to a witness, or even printing it, as there are no funds to purchase the paper.

Since adequate funding is an integral component of the judicial independence, providing courts with adequate resources should be a part of the legal system. For example, in some states, the constitution contains a relevant provision that a certain amount of the country's general budget should be allocated to finance the justice system. If it is about ***additional burden on the courts due to hostilities***, the appropriate ***regulation regarding their proper financial and material support*** should also be legislated.

Publicity and Communication of Justice Processes related to the Aftermath of War

Taking into account the public resonance this category of cases cause within the country and abroad, the research participants consider it worthy to adapt the practices of publicity on the international crimes, that are already implemented, for example, in the High Anti-Corruption Court on the anti-corruption cases. This primarily concerns ***the live broadcast of meetings and the implementation of well-thought-out communication support for problematic*** (potentially controversial) topics or cases. This will contribute to providing proper information to society, the necessary level of clarification of the specifics of war crimes and building the trust in justice. Both within the framework of specific cases and to the justice system in general.

According to the respondents, it is worth ***creating a separate archive or register with indictments and court decisions on war crimes***. And also ensure their further ***translation into English***, which in turn will not only expand the audience to communicate with, but also will contribute to the work of international mechanisms.

In addition, some of the respondents identify the court's decision in and of itself as an important tool of communication with society. Some respondents consider other means of communication rather as reinforcing, but not as key ones.

However, for the effectiveness of such communication, ***it is necessary to change the approach to the style of drafting the court decisions***. Research participants believe that judges should develop the skill of writing clear, convincing decisions that explain to society in "simple words" without excessive "chicanery" on the reasons of a certain court decision, demonstrating logic and main arguments, the reasons for approving certain arguments of the parties, etc. It can also help to demonstrate to the public the role of the participants in the judicial process, where the court decision first and foremost takes into account the evidence provided by the parties and its relevance.

In addition, the respondents made suggestions regarding the implementation of ***an information campaign on the topic of the cost of justice for Ukrainian taxpayers***, in particular, in cases involving international crimes. This could be an important element of open and honest communication, which could reduce the level of public protest and aggression that will inevitably arise after realising the real potential of the justice system to ensure justice.

Developing Best practices and Advisory Support for Judges

Respondents are convinced it is now extremely important to focus the common effort of judges from different instances and experts on developing internal domestic argumentation and best practices for working on this category of cases. This work should involve the involvement of various experts and take into account the national experience already available since 2014, as well as international practice.

The format of this work, according to the respondents, must necessarily include ***closed working groups***, which would address, for example, existing restrictions on expressing the positions of Supreme Court judges, etc. As well as the ***open discussions***, where judges of various instances and experts are involved, and under certain conditions — the representatives of other institutions involved in justice processes (investigative authorities, lawyers, members of parliament) would participate. In addition to developing recommendations, such expert groups could become a means of tracking gaps and inconsistencies in the legislation, identifying improper application of norms.

These discussion platforms, in addition to the main task, can become a tool for intersectoral interaction and overcoming communication barriers between instances.

Also, one of the proposals is ***to prepare simple guidelines*** on typical cases, which could help judges to navigate when conducting proceedings. They could include plot descriptions of typical cases; basic questions and stages; what needs to be investigated; guidelines regarding the relationship between international law and domestic legislation, etc.

The respondents identified an urgent need ***to study and analyse the previous experience of working with this category of cases since 2014,*** to develop relevant recommendations (including regarding possible corrections of practice, changes in legislation). It is about successful experiences and approaches, as well as systemic errors that currently risk scaling up on the all-national level.

Individual respondents suggested institutionalising the establishment of ***consultative groups among judges***, which became a reaction to the novelty of cases with which most judges had to deal without proper training. The initiators were often judges from the east of Ukraine who already had relevant experience (positive and negative) and were ready to share it.

Such a space is mostly built on interpersonal relationships (judges, experts, representatives of the prosecutor's office, investigative authorities, etc.), but it can be used and formalised as a tool for developing effective recommendations, generalising and analysing existing experience, building algorithms to improve the efficiency of justice in conditions of limited resources and the need to respond to a significant number of challenges in a short period of time. For example, the leadership of judicial self-government bodies can ***push judges with experience in dealing with conflict-related cases to share such an experience*** and approaches with other colleagues.

Compliance with Legislation, Inclusivity of the Process

Conduct an inventory of changes made to the articles of the Criminal Code and Criminal Procedure Code since the beginning of the full-scale invasion, and ***with the participation of the judicial community and other practitioners from the justice system, identify key inconsistencies, introduce and implement the necessary changes***.

To analyse the previous practice of the work of law enforcement agencies, consideration of cases by Ukrainian courts regarding international crimes or crimes against the foundations of national security in order to determine the key dangers of non-compliance with justice standards. On the basis of consultations with international and national experts, practitioners in the field of investigation and judicial proceedings, can develop a framework for the necessary changes to Ukrainian legislation.

MPs and the parliament need to develop relevant draft laws, discuss and develop them in close cooperation with experts and practitioners representing various professional groups directly involved in working with this category of crimes.

The Work of Prosecutors and Pre-Trial Investigative Authorities

Given the number of war crimes and the dynamic situation at the front line, it is important to form a position and practice within the law enforcement agencies taking into account the available resources of the justice system for proper qualification, coordination, prioritisation criteria and ensuring quality investigation.

Among ***the criteria for prioritisation*** were the gravity of the crime, high public attention, the ability to ensure the proper collection of evidence and the preparation of a high-quality indictment.

Ensuring ***high-quality professional training of specialists*** in the prosecutor's office and investigative authorities to work with this category of crimes. ***Taking into account the best investigative practices related to handling crimes in the period from 2014 to 2022***.

Functioning of convenient and understandable mechanisms for victims and witnesses of crimes to report them to law enforcement agencies

Proper documentation of all facts of crimes against the civilian population requires, among other things, ***development of convenient and barrier-free*** (technologically and procedurally) ***tools for people to contact law enforcement agencies*** with information about such crimes against themselves, or about events they witnessed.

For example, the experience of using the "Diya" app to collect information about property damage as a result of shelling of the Russian Federation demonstrated that it is possible of overcoming the barrier by quickly obtaining from citizens a large amount of information important for the state. This practice can be extended to other categories of crimes.

In fact, the task is to eliminate the communication gap at the start, i.e. to ensure the initial entry of basic information about the fact of the event/crime and the identifying the information provider (victim/witness) for their potential involvement in further investigation. In addition, it is important for investigative authorities ***to develop and disseminate systematic and understandable algorithms for reporting a crime***, information on the importance of providing such reports for a specific victim and for justice in general, on transparency and safety of further procedures for the interaction of the victim/witness with the system of law enforcement and justice system representatives.

Appendix 1.

Questionnaire format for focus group participants and individual interviews

Incoming question: How has your professional life changed as a result of the Russian invasion in February 2022 (up to 2-3 sentences)?

Individual measurement

- In which areas / topics directly related to the court proceedings on war crimes do you have enough knowledge, and in which areas do you need additional training? How do you generally assess the level of training and retraining of judges to work with these cases (it is important to understand which institutions and how they provide this training, how effective it is both in terms of content and form);
- What should be the main goal of justice in the field of war crimes, what should we achieve? The role of the court in this justice processes
- What is your vision of the similarities and differences in the application of the norms of the national criminal law and the international criminal law within the framework of court proceedings on war crimes - in practice, not in theory
- Under what conditions will judges / the justice system deliver acquittals to people accused of war crimes / citizens of the Russian Federation. Both at the level of personal reasons and possibly systemic aspects. Will the events of the conflict, or the personal life circumstances of the judges influence the court proceedings?
- What are the key risks/weaknesses/vulnerabilities that judges might face during the court proceedings on war crimes? What primary guarantees or steps could ensure impartiality / independence in the work of judges? Under what conditions will your colleagues freely make and voice decisions?

Institutional block and vision of the recommendation

- How should the system/model of handling cases on international crimes and the be designed, so that it will be able to guarantee the quality and efficiency of work on this category of cases?
- What decisions / steps within the justice system should be taken to change and increase the capacity to work with this category of cases? And what decisions do not depend on judges, but they should be made by other institutions?

Conclusive

What question / problem have we not discussed during our conversation? Or is there a question that hasn't been asked, but you'd like to comment on it?