JUSTICE IN EASTERN UKRAINE

DURING THE MILITARY AGGRESSION OF THE RUSSIAN FEDERATION

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Research report:
"Capacity of the Judiciary System to Ensure Justice
In the Armed Conflict in Eastern Ukraine"

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List of abbreviations:

ATO	anti-terrorist operation
CC of Ukraine	Criminal Code of Ukraine
CPC	Criminal Procedure Code
DPR	the so-called Donetsk People's Republic
ECHR	European Court of Human Rights
ICC	International Criminal Court
LPR	the so-called Luhansk People's Republic
MIA	Ministry of Internal Affairs
ORDLO	certain areas of Donetsk and the Lugansk regions of Ukraine
RF	the Russian Federation
SSU	Security Service of Ukraine

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FOREWORD

The armed conflict in Eastern Ukraine caused by the aggression of the Russian Federation (hereinafter – RF), led to tens of thousands of casualties, displacement of hundreds of thousands of people, as well as loss of property and business. Ukraine faced a vast layer of problems connected with the need to ensure justice and restore violated rights. War crimes, disappearances and extrajudicial arrests, exchange of prisoners outside of legal procedures, looting, increased pressure on judges from different sides, the challenges in restoring lost case files are only a tip of the iceberg. The scope of these problems has not been assessed yet.

How did the armed conflict affect the Ukrainian justice system and its capacity to ensure justice in war? How ready was it for these challenges? Is it capable of coping with these challenges today? Which problems were solved? Which issues need additional attention? Which problems can occur in the future, and what should be done to prevent them? We will try to answer these questions in this publication summarizing two years of work of a group of Ukrainian researchers initiated and supported by the International Renaissance Foundation.

We should make a note on the terminology. We used the term "armed conflict caused by the aggression of the Russian Federation" to describe the situation in eastern Ukraine. At the same time, experts, politicians, media professionals often call it a hybrid war. In fact, in addition to traditional means and methods of warfare, this conflict includes non-traditional means and methods. In particular, it was not an announced war. The Russian Federation is trying to hide its presence and participation in the armed conflict in Donbas and refers to the "independence" of the so-called Donetsk and Luhansk People's republics (hereinafter – the so-called DPR and LPR). Information attacks and threats, influence on the opinion of many people through the controlled media is an important component of this war. In this regard, the conflict in Donbas can be called a hybrid war from a political viewpoint.

However, the term "hybrid war" has not become a legal category yet and does not exist in legal instruments. In terms of international law, based on the UN General Assembly Resolution 3314 (14 December 1974), we can state that the RF committed an act of aggression against the sovereignty, territorial integrity and political independence of Ukraine[1]. Moreover, in the situations in Crimea and Donbas the Russian Federation has committed almost all acts of aggression listed in the annex to the resolution, in particular:

- The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- The blockade of the ports or coasts of a State by the armed forces of another State;
- An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Therefore, the term "hybrid war" cannot be used to describe the situation in the East of Ukraine yet, but it is more suitable for political context. From the viewpoint of international law, the situation in Donbas is an ongoing aggression of the Russian Federation against Ukraine.

However, the Parliamentary Assembly of the Council of Europe took the first step to look at the term "hybrid war" as a legal category. On 26 April 2018, PACE adopted Resolution 2217 (2018)[2] and Recommendation 2130 (2018)[3] entitled "Legal challenges related to hybrid war and human rights obligations". The Assembly noted today States are more and more often confronted with the phenomenon of "hybrid war", which poses a new type of threat based on a combination of military and non-military means such as cyberattacks, mass disinformation campaigns, including fake news, in particular via social media, interference in election processes, disruption of communications and other networks and many others. Therefore, hybrid war can destabilize and undermine entire societies and cause numerous

1 3314 (XXIX). Definition of Aggression // https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement.

2 Resolution 2217 (2018) "Legal challenges related to hybrid war and human rights obligations". Text adopted by the Assembly on 26 April 2018 (17th Sitting) // http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24762&lang.

3 Recommendation 2130 (2018) "Legal challenges related to hybrid war and human rights obligations". Text adopted by the Assembly on 26 April 2018 (17th Sitting) // http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24763&lang=en.

casualties. The increasingly widespread use of these new tactics, especially in combination, raises concerns about the adequacy of existing legal norms.

The Assembly pointed out that there is no universally agreed definition of "hybrid war" and there is no "law of hybrid war". However, it is commonly agreed that the main feature of this phenomenon is "legal asymmetry", as hybrid adversaries, as a rule, deny their responsibility for hybrid operations and try to escape the legal consequences of their actions. They exploit lacunas in the law and legal complexity, operate across legal boundaries and in under-regulated spaces, exploit legal thresholds, are prepared to commit substantial violations of the law and generate confusion and ambiguity to mask their actions.

Accordingly, the Assembly called on member States to step up international co-operation in order to identify hybrid war adversaries and all types of hybrid war threats, as well as to establish the applicable legal framework. It means there is a chance that international law will give a legal definition of this phenomenon and identify legal remedies to counter hybrid war.

At the same time, Ukraine reacted to hybrid war in accordance with the national legislation not by introducing martial law but through an anti-terrorist operation (hereinafter – ATO). In 2018, the ATO was transformed into a new category entitled "measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions".

To identify the territories controlled by Russia through the so-called DPR and LPR, the authors have used various synonymic terms, such as ORDLO (certain districts of Donetsk and Luhansk regions as defined in the Minsk accords), or the occupied territory (areas) as defined in the national legislation, or the territory of Ukraine outside of the control of Ukrainian government.

We should note that challenges related to the occupation of the Crimean peninsula by the RF were outside the scope of this study.

The justice system in the authors' understanding includes the judiciary, the law enforcement, as well as other entities tasked with ensuring the rule of law, namely lawyers, forensic experts etc.

To understand the impact of the RF aggression on access to justice in eastern Ukraine, we set the aim to assess the capacity of Ukrainian justice system to operate in the armed conflict in eastern Ukraine and ensure the right to fair trial, as well to develop recommendations to increase capacity in these directions.

Capacity of Ukrainian justice system to fulfill the need for justice can be assessed under the following criteria:

1) Availability of infrastructure, trained personnel and financial resources;
2) Sufficiency of legal framework;
3) Compliance with access to justice standards;

4) Ability to conduct effective investigation and fair prosecution for conflict-related crimes.

In 2016-2017, invited experts and civil society organizations conducted the following activities to diagnose existing issues:

- Analysis of legislation and draft laws related to administration of justice in armed conflict in eastern Ukraine caused by the RF aggression, as well as infrastructure amendments (20 laws and 80 draft laws and related documents reviewed);
- Collection and analysis of statistics relating to the justice system operations in 2013-2017 (the last year prior to the conflict and four years of the conflict);
- Collection of information about related studies (20 studies that reflect the topic of justice in the East of Ukraine in armed conflict to some extent);
- Monitoring of 214 court hearings in different categories of cases in Donetsk and Luhansk regions located near the ATO area, as well as in other courts in conflict-related cases; monitoring of the technical condition of 52 buildings and resources for administrative operations of the courts in Donetsk and Luhansk regions in November 2016 – April 2017;
- Selection and analysis of 400 court decisions in cases related to the RF aggression in eastern Ukraine (criminal cases, cases on compensation of damage to health, life, property; cases on the rights of internally displaced persons and participants of hostilities; cases on establishment of legal facts in the occupied areas etc.);
- Analysis of almost 750 publications in electronic media on the topic (in particular, investigation of crimes related to the RF aggression in eastern Ukraine, arrests and detention without court decisions, exchange of prisoners, the work of courts, prosecution and investigation authorities near the ATO zone, trials in conflict-related cases);
- Interviews with 40 persons involved in administration of justice in criminal, administrative, and civil cases – judges (10), public prosecutors (2), investigators (11), lawyers (4), victims (5), accused persons (5), a forensic expert, a human rights defender, and a representative of the Ombudsman's Office who live and work in Donetsk and Luhansk regions. Some interviewees had moved from the non-government controlled areas (interviews took place in March-May 2017).

Outcomes of these activities were recorded in a diagnostic table with a list of identified problems, methods used to identify these problems, and relevant sources of information. Later, these results were systematized and processed by experts who identified the list of key issues related to organization and administration of justice in the context of the RF aggression.

In July-August 2017, these problems were discussed in four focus groups (judges, prosecutors, and investigators, lawyers and human rights defenders). The aim of focus groups was to evaluate identified problems and possible solutions from the viewpoint of different stakeholders.

The aim of the study:

Assess the capacity of Ukrainian justice system to operate in the armed conflict in eastern Ukraine and ensure the right to fair trial, as well to develop recommendations to increase capacity in these directions

Areas of research:

1 Availability of infrastructure, trained personnel and financial resources

2 Sufficiency of legal framework

3 Compliance with access to justice standards

4 Ability to conduct effective investigation and fair prosecution for conflict-related crimes

Research methods:

analysis of legislation	**40**	laws
	80	draft laws and related documents reviewed
analysis of statistics	**1**	year before the aggression
	4	years of the conflict
analysis of related studies	**20**	studies
monitoring of the court system	**214**	court hearings
	52	court buildings
analysis of court decisions	**400**	court decisions
media monitoring	**750**	publications in electronic media
interviews	**40**	persons
focus groups	**4**	discussions
questionnaires	**100**	judges
	100	prosecutors
	100	investigators
	85	lawyers
	70	human rights defenders

In addition, questionnaires were used to evaluate the scale of identified problems and relevance of solutions. Responses to the questionnaires were provided by 100 judges (40 judges in Donetsk region, 29 judges in Luhansk region, 31 judge in Kyiv region); 100 prosecutors (43 prosecutors in Donetsk region, 34 prosecutors in Luhansk region, and 23 prosecutors in Kyiv); 100 investigators (37 investigators in Donetsk region, 31 investigator in Luhansk region, and 32 investigators in Kyiv); 85 lawyers (37 lawyers in Donetsk region, 17 lawyers in Luhansk region, and 31 lawyer in Kyiv); and 70 human rights defenders (27 in Donetsk region, 18 in Luhansk region, and 25 in Kyiv).

Experts have prepared this report based on these diagnostics and verification tools. The structure of this report is based on the groups of identified issues. It includes recommendations for improving the situation in the field of justice in armed conflict in Eastern Ukraine.

The authors would like to thank the judges, prosecutors, investigators, lawyers, human rights defenders, forensic experts, trial observers, and experts from civil society organizations who contributed to this report. The authors are especially grateful to the International Renaissance Foundation and its team for organizing the conduct of this study.

KEY FINDINGS AND RECOMMENDATIONS

Immediately after the Revolution of Dignity, the Russian Federation (hereinafter – the RF) annexed the Crimean peninsula and started promoting the divide of Ukraine. The imbalanced state authorities, weakness and lack of motivation of the law enforcement prevented them from stopping the activities of militants coordinated by the RF, including the seizure of key state authorities in Donetsk and Luhansk regions.

As a result, the Ukrainian government announced an anti-terrorist operation (hereinafter – the ATO) in the East of Ukraine. Even in the absence of a declared war, there is now a large-scale armed conflict. Though it takes place on Ukrainian land, it is in fact international.

The so-called Minsk agreements were an attempt at political regulation of the conflict. In general, they reduced the level of hostilities but preserved the conflict.

Most courts, prosecutor's offices, internal affairs bodies (police), as well as penitentiary institutions in Donetsk and Luhansk regions found themselves in the occupied area and ceased operations in 2014. Only some of them were evacuated and started working in other cities. State authorities in the government-controlled areas took over the powers of the bodies that had stopped working.

For two years, a group of Ukrainian experts supported by the International Renaissance Foundation studied the impact of the aggression of the Russian Federation on the justice system in Ukraine, challenges faced by the state, and its response.

Below is an overview of key facts and issues identified during the study, as well as recommendations of the experts.

1

INSTITUTIONAL CAPACITY OF THE JUSTICE SYSTEM INSTITUTIONS

1.1

There are serious challenges in ensuring independence and impartiality of judges, prosecutors, and investigators in Donetsk and Luhansk regions. On the one hand, these are long-standing issues: clans of officials and oligarchs had controlled authorities in the justice system. However, new forms of dependence have emerged as well.

The most common form of influence on administration of justice, according to the judges from Donetsk and Luhansk regions, are threats to relatives in the temporarily occupied areas. According to prosecutors, it is dependence on political structures and pressure from of the local government. Investigators, lawyers and human rights defenders considered corruption to be the most common type of influence.

There were recorded cases of the arrests of judges in the ORDLO territory controlled by the Russian Federation. The fact that judges have relatives or valuable property in the non-government controlled areas has negative impact on administration of justice. At the same time, on average, judges in Donetsk and Luhansk regions were less likely to complain about interference than their colleagues across Ukraine were.

Judges and prosecutors fear for their safety when working on conflict-related cases. Moreover, people who facilitated occupation of certain areas of Ukraine are still serving in state authorities in the field of access to justice. As a rule, it has negative impact on their ability to ensure administration of justice.

1.2

Many courts in Donetsk and Luhansk regions are understaffed for general and conflict-related reasons (difficulties in arranging accommodation in a new place of residence, threats to physical security, lack of reserve staff etc.).

Two thirds of interviewed judges in Donetsk and Luhansk regions thought their workload had increased in the armed conflict. At the same time, average workload of judges in Donetsk and Luhansk regions is lower than the national average with exception to local general courts.

The prosecutor's offices and, especially, police investigation units experience shortage of human resources. The lack of investigators near the contact line has paralyzed investigation in most criminal cases.

The majority of prosecutors in Donetsk and Luhansk regions reported an insignificant

conflict-related increase in their workload. At the same time, more than half of police investigators in Donetsk and Luhansk regions faced a significant increase in workload that had a negative impact on effectiveness of investigation. This issue is more serious in localities closer to the contact line. Investigation of criminal cases is also impeded by excess workload of expert institutions.

The armed conflict led to a significant increase of caseload for lawyers in the free legal aid system, especially in Luhansk region.

1.3

Judicial officials do not have sufficient training in international humanitarian law and sometimes lack skills required to perform their tasks. There are different reasons, including lack of experience, lack of motivation for work and professional development, higher education system flaws, non-competitive hiring, lack of high-quality legislation and consistent practice etc.

At the same time, there is extremely high demand among judicial officials for specialized training on issues related to the armed aggression of the RF in eastern Ukraine. There are specialized training programs on the topic of Russian armed aggression and its impact on administration of justice, but they are offered with delays.

1.4

Judicial officials from Donetsk and Luhansk regions are less satisfied with material and technical resources in comparison to their colleagues from Kyiv. Since the beginning of the Russian aggression, their conditions of work have worsened in most cases. Situation with resources for police investigators is the most challenging.

Judicial officials are least satisfied with the accommodation and household situation.

A comprehensive approach to these issues **should encompass** the following:

- completing the planned consolidation of courts, filling vacant positions of judges, prosecutors and investigators in eastern Ukraine, including through transfers from other regions (*competent authorities – State Court Administration of Ukraine, High Qualification Commission of Judges of Ukraine, High Council of Justice, the President of Ukraine*);

- specialized training for judges, prosecutors, investigators, and lawyers, in particular, on international humanitarian law and combating inconsistent application of laws (*competent institutions – institutions of education and advanced professional training of judges, prosecutors, lawyers with involvement of international and local experts*);

- developing a procedure to prevent assignment of conflict-related cases to judges with ties to the occupied areas and recommending judges to refrain from visits to the occupied areas (*competent authority – Council of Judges of Ukraine*);

- developing and adopting a concept and necessary legislative framework for a specialized court on international crimes with the involvement of international judges (in the capacity of lay judges), as well as international prosecutors and investigators; implementing relevant decisions after de-occupation of Donbas (*competent authorities – Ministry of Justice of Ukraine, Judicial Reform Council /advisory body to the President of Ukraine/, Verkhovna Rada of Ukraine*);

- introducing the state support program for officials of the justice system resettled from the occupied areas or living in high-risk environment (*competent authorities – Cabinet of Ministers of Ukraine, State Court Administration of Ukraine, Verkhovna Rada of Ukraine*).

2
LEGAL FRAMEWORK FOR ADMINISTRATION OF JUSTICE IN UKRAINE

2.1

Ukrainian justice system had no algorithms for operating in armed conflict. The legislation does not provide any instructions for the functioning of the justice system in hostilities.

After the occupation of certain areas of Donetsk and Lugansk regions of Ukraine (hereinafter – ORDLO), the legislator took steps to ensure access to courts in the government-controlled areas for residents of the occupied territories. The legislator also introduced court summons and notices online, which can be used, *inter alia*, in cases of ORDLO residents.

The Military Prosecutor's Office has been reinstated upon the President's initiative but its powers are exercised outside the scope of military sphere more often. A possibility of establishing military (war crime) courts has been declared. The Parliament took steps to increase effectiveness of criminal proceedings, including restrictions on certain rights that raise doubt about their constitutionality.

However, many existing and potential problems remain unsolved. Moreover, introduction of the measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions through Presidential orders with restricted access increased the level of legal uncertainty.

To solve these problems, the following steps are **necessary**:

- to revoke temporary provisions of the laws awarding some of the investigating judge powers to the prosecutors in the ATO area and possibility to detain a person for more than 72 hours (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to bring the authority of military prosecutor's offices in line with the Constitution of Ukraine and the aim of the law establishing this institution, in particular it should be removed from the control of the Headquarters of the Armed Forces of Ukraine (*competent authorities – Verkhovna Rada of Ukraine, Prosecutor General*);

- to introduce electronic storage of court case files (their copies) to prevent loss of files (*competent authorities – the High Council of Justice, State Court Administration of Ukraine*);

- to introduce legislative provisions allowing for prompt deployment of mobile justice authorities capable to ensure justice in special circumstances during escalation of hostilities (*competent authority – Verkhovna Rada of Ukraine*);

- to define the policy of justice system authorities (algorithms) for situations of blockade, seizure of premises, or hostilities through by-laws and subsidiary regulations (*competent authorities – Ministry of Justice of Ukraine, State Court Administration of Ukraine, the High Council of Justice, Council of Judges of Ukraine, Council of Prosecutors of Ukraine, Ministry of Justice of Ukraine, Security Service of Ukraine*);

- to introduce legislative amendments eliminating ambiguity in qualification of crimes committed in the armed conflict caused by the Russian aggression, in particular, crimes of terrorism, creation a criminal organization, illegal militarized and armed group, or participation in their activities (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to introduce legislative amendments addressing legal consequences of serving a sentence in the occupied areas, as well as the release from prison, taking into consideration that the person is not merely a criminal, but also a victim of Russian aggression (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to identify mechanisms for remote questioning of witnesses and other trial participants in the occupied territory, as well as methods to collect samples for forensic assessments (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to introduce legislative amendments to preserve specific legal safeguards of fair trial established in connection with ATO in case it is replaced by measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions in accordance with the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to publish the orders related to continuation or termination of the ATO with the start of the operation to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions (*competent authority – President of Ukraine*).

2.2

The case law regarding the obligation for Ukraine to compensate damages resulting from terrorist acts is inconsistent due to ambiguity of the legal framework (even at the stage of cassation). So far, it has not been in favor of the plaintiffs.

The case law in Ukrainian courts that obliges the RF to compensate damages in relation to events in eastern Ukraine is in favor of the victims. The Russian Federation authorities do not challenge court these court decisions. At the same time, the decisions have not been executed.

Ukraine is not applying sufficient effort to implement article 24 of the UN General Assembly Resolution "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (A/RES/60/147 adopted on 16 December 2005) regarding the development of means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines.

The following measures **should be taken** to ensure actual compensation of damages inflicted by the Russian aggression:

- to develop and offer an effective mechanism for compensation of damages resulting from the military aggression by the Russian Federation for individuals and legal persons based on legislation and case law; to hold an awareness-raising campaign to implement the mechanism; to develop a methodology for applications for recovery of property of the RF in execution of court judgements against the RF (*competent authority – Ministry of Justice of Ukraine*);

- to undertake more effective efforts on international level to create a mechanism for compensating victims of the armed aggression of the Russian Federation similar to the UN Compensation Commission established under the UN Security Council Resolution 687 (1991) (*competent authority – Ministry of Foreign Affairs of Ukraine*).

2.3

Once state authorities ceased operations in the occupied areas, execution of court decisions became more difficult if the authority was party to the case. Execution of court decisions where the debtor is in the occupied territory is complicated.

There is no extension of time limits for proceedings if the property or debtor are in the temporarily occupied areas. It is objectively impossible to execute these decisions, and time limits for execution of a court decision are likely to expire.

The procedure for the plaintiff to obtain an enforcement document in a case where materials are in the occupied areas is extremely complicated; it requires that lost files be restored.

Courts often reject restoring lost documents even having accurate information about the court decision in the Unified State Register of Court Decisions.

In order to address problems with execution of court decisions caused by the aggression of the Russian Federation, Ukrainian authorities **should take the following steps**:

- to include temporary occupation and armed aggression of the Russian Federation into the list of grounds for postponement of presentation of enforcement letters for execution or renewal of time limits (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to prepare a compilation of case law on disputes related to execution of court decisions (*competent authorities – Supreme Court, courts of appeal*);
- to develop template algorithms for execution of court decisions in cases related to the aggression of the Russian Federation in the form of methodological recommendations to state and private executive services (*competent authority – Ministry of Justice of Ukraine*);
- to resolve the issue of plaintiff replacement in cases where state authorities remaining in the occupied areas are under temporary shutdown (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

2.4

The state is wasting resources by prosecuting persons for offences committed under constraints and threat to life.

Excessive caseload can increase significantly after de-occupation and reintegration of the areas of Donetsk and Luhansk regions.

In the process of optimizing caseload in the justice system during de-occupation, the state needs to strike a balance between allowing impunity and gaining trust of the residents of reintegrated territories.

To ensure justice and prevent incapacitation of legal system, **it is necessary**:

- to expand the list of legal remedies for exemption from liability on the grounds of coercion. In this situation, it is necessary to strike a balance between preventing impunity and establishing credibility with the residents of relevant areas (exemption from criminal liability for persons who voluntarily abandoned criminal activities; exemption from punishment for persons convicted of crimes (amnesty); special measures – reconciliation or pardon) (*competent authorities – Ministry of Justice of Ukraine, Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine, Verkhovna Rada of Ukraine*).

2.5

The status of the persons held in detention (captivity) in the territory outside of Ukraine's control remains undetermined.

Procedures for prisoner exchange in the armed conflict in Ukraine remain beyond the scope of legal regulations. For the purposes of exchange, Ukrainian authorities use various legal avenues within criminal and criminal procedure law (release from detention with subsequent search warrants, proceedings are closed by the investigator (following the exchange) while the decision to close proceedings is canceled by the prosecutor), verdicts based on agreements without imprisonment, prison sentence with subsequent pardon etc.).

In order to address the gaps, the following is **necessary**:

- to introduce legislative amendments determining the status of persons who took part in the armed conflict caused by the aggression of the Russian Federation along with legal safeguards for this category of persons, in particular during exchanges (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to define exchange procedures in line with criminal law and criminal procedure through by-laws and subsidiary regulations (*competent authorities – Ministry of Justice of Ukraine, Prosecutor General, Security Service of Ukraine*).

2.6

National criminal legislation of Ukraine in not in conformity with international law. The title of Chapter XX of the Special Section of the Criminal Code "Criminal offenses against peace, security of mankind and international legal order" is outdated and its contents are contradictory. Ukrainian version of implementation of core crimes against international law has significant shortcomings.

These shortcomings can only be eliminated through amendments to the legislation of Ukraine on criminal liability aimed to bring it in line with international law. Most importantly, it is **necessary** to define international crimes (genocide, crimes against humanity, war crimes, and the crime of aggression) as offences in a separate chapter in the Special Section of the Criminal Code in accordance with the Rome Statute, in particular:

- to bring article 437 of the Criminal Code of Ukraine (aggression) in compliance with Article 8bis of the Rome Statute;
- to establish liability for crimes against humanity based on Article 7 of the Rome Statute;
- to ensure comprehensive implementation of international law provisions on war crimes (key reference point – Article 8 of the Rome Statute);
- to eliminate discrepancy between the definition of genocide under the criminal law of Ukraine and international law (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

3

ACCESS TO JUSTICE

3.1

The delay on behalf of central authorities made it impossible to remove case files and materials of enforcement proceedings (ongoing and completed) from the occupied areas and the conflict zone. Leaving materials of enforcement proceedings in the temporarily occupied territory led to obstacles for execution of court decisions. Legal mechanisms for restoring lost cases and documents have significant gaps.

To reduce the negative impact of these issues, it is **necessary**:

- to introduce legislative amendments providing possibility to issue certified copies of court decisions and enforcement documents and duplicates based on the Unified State Register of Court Decisions without restoring lost case files; to introduce a possibility to restore lost proceedings in cases without a final court decision (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to prepare a compilation of case law on restoring court cases and enforcement proceedings for all categories of cases (*competent authorities – Supreme Court and relevant courts of appeal*);

- to develop recommended algorithms for justice system authorities in relation to persons who were in remand prisons in Donetsk and Luhansk regions at the beginning of the aggression of the RF, persons convicted by the "courts" of the so-called DPR and LPR, and persons who served sentences in the occupied (*competent authorities – Ministry of Justice of Ukraine, Prosecutor General, Ukrainian Parliament Commissioner for Human Rights, Supreme Court*);

- to launch the Integrated Judiciary Information System, ensure that electronic court is fully operational, and integrate the system with information systems and registers used for execution of court decisions and operations of the criminal justice system (*competent authorities – The High Council of Justice, State Court Administration of Ukraine*).

3.2

Addressing the issue of access to courts for ORDLO residents and protecting their rights is necessary for successful reintegration of these areas. While ORDLO residents are not deprived of access to court in the government-controlled areas, physical access is significantly impeded.

Due to the lack of institutions providing services in the field of justice, residents of the non-government controlled areas face significant restrictions in their ability to receive basic services, such as notarization of documents or receiving birth or death certificates.

The right of physical and legal persons in the ORDLO to participate in court hearings is significantly curtailed due to lack of possibilities to ensure direct notification about the date, time and place of a court hearing.

In order to improve access to justice for ORDLO residents, the following measures **should be taken**:

- to accompany the launch of the Integrated Judiciary Information System with an awareness-raising campaign on access to justice provided by the System, as well as create conditions for obtaining electronic digital signature or other methods for identification of persons (for instance, near entry-exit checkpoints – in Ukrposhta (mail service) offices, courts, state banks, etc.);

- to provide clarification as to whether state registration of birth or death in the occupied territory can take place based on documents issued by the occupation authorities without preliminary establishment of such facts by courts pursuant to article 2(3) of the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (*competent authority – Ministry of Justice of Ukraine*); in case the procedure for establishment of these facts by courts is still valid – to exempt ORDLO residents from the court fees (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

3.3

Court fees were a significant problem for victims trying to bring their applications before the courts. Courts are often geographically remote from displaced persons, which impedes their physical access to court. These issues were partially solved in 2018 with the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions".

Notification of IDPs taking part in trials is often difficult since it is not possible to establish their actual place of residence.

In order to improve access to justice for internally displaced persons, the following measures **should be taken**:

- to launch the Integrated Judiciary Information System, ensure that electronic court is fully operational (*competent authorities – the High Council of Justice, State Court Administration of Ukraine*);

- to envision additional measures in procedural codes for the court to establish place of residence of a party to proceedings (respondents, third parties etc.) who is a displaced person, in particular, to add possibility to use the State Register of Voters and the State Register of Internally Displaced Persons along with the Unified Register of Internally Displaced Persons (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

3.4

There are exemptions from court fees for ATO participants, but the regulations are contradictory.

The term for applying to court for participants in hostilities in personnel disputes during the ATO is too short. Participants of the ATO face restrictions to their participation in court hearings in person. Often, the defendant cannot exercise his/her right to participate in appeal proceedings.

ATO participants face strict prosecution for (alleged) crimes.

In order to improve access to justice for ATO participants, the following measures **should be taken**:

- to eliminate discrepancies in regulations on court fees for war veterans (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to establish a rule that the time of service and rehabilitation is excluded from the period for application to court concerning rights in employment relations (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to introduce legislative amendments preventing situations where participation in hostilities of a party to proceedings will not result in suspension of civil, economic or administrative case proceedings except when the party has a representative (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to ensure direct participation of a suspect in appellate review of the case or rulings of the first-instance court by default, i.e. if the suspect or his/her representative has not submitted a motion for videoconference participation or relevant consent (*competent authorities – courts, Ministry of Internal Affairs of Ukraine*);
- to prepare a compilation of case law on proceedings related to the conflict caused by the Russian aggression in order to ensure consistent application of the law and evaluation of prosecution actions (*competent authorities – Supreme Court and courts of appeal, National School of Judges of Ukraine, Prosecutor General's Office, National Academy of Prosecution Service of Ukraine*).

3.5

The following issues were identified in relation to arbitrary arrest, detention, as well as enforced disappearance.

Qualification of the armed conflict as an antiterrorist operation created an issue with the legal status of all participants (terrorists, combatants, occupants etc.). It has direct impact on the status of imprisoned persons. The problem will persist or even exacerbate with the introduction of the measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions.

Other problems include arbitrary arrest and detention, as well as lack of alternatives to custodial measure of restraint in case of "grave" articles of the Criminal Code of Ukraine, such as article 110 (trespass against territorial integrity and inviolability of Ukraine).

Investigation of arbitrary arrests, detention, enforced disappearances, as well as prosecution of perpetrators, is usually ineffective.

Ukraine has ratified the International Convention for the Protection of All Persons from Enforced Disappearance. According to the Convention, the widespread or systematic practice of enforced disappearance constitutes a crime against humanity, and each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

In order to improve counteraction to arbitrary arrests, detention, and enforced disappearances, the following measures are **necessary**:

- to ensure effective prosecution and fair trial in all cases of enforced disappearances (*competent authorities – investigation authorities, prosecutor's office, courts*);
- to ensure access to detention facilities and detainees for representatives of relevant international mechanisms (*competent authorities – Security Service of Ukraine, Ministry of Justice of Ukraine*);
- to take appropriate action for comprehensive implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, in particular to establish criminal liability for enforced disappearance as defined in Article 2 of the Convention, namely arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

3.6

There were also issues concerning public hearings in cases related to Russian aggression.

There is widespread illegal practice of holding court hearings outside of courtrooms – hearings in every fifth case took place in judges' offices. Court hearings in Donetsk and Luhansk regions start with delays more often than in other regions.

There were individual cases when trial observers (monitors) were denied or restricted in access to a court or a court hearing, which gives rise to concerns.

In many cases, there is no announcement of the case or composition of the court. In several cases, judges attempted to obstruct audio recording of the hearing. In one out of three cases, courts do not follow proper procedure for announcement of the decision following trial.

Plea deals in criminal proceedings outside of court proceedings, including determination of penalty, are not public.

In some cases, court decisions are based on testimonies of witnesses who had not been questioned in court.

Half of all court buildings in Donetsk and Luhansk regions do not accommodate the needs of persons with disabilities.

In order to improve the situation related to the openness of court proceedings, the following steps **should be taken**:

- to take measures to equip court buildings for unimpeded access and participation in court hearings of persons with reduced mobility; to provide courts with appropriate number of courtrooms (*competent authority – State Court Administration of Ukraine*);
- hearings in cases following plea agreements in court proceedings should be held in accordance with the general rule on open court hearings (*competent authorities – courts*);
- to continue the positive practice of broadcasting trials online though technical means of the courts in open cases with public importance (*competent authorities – courts, State Court Administration of Ukraine*);
- to improve the training of judges and court staff on the following issues: implementation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular, the right a public hearing; implementation of legislative provisions on unrestricted video- and audio recording of court hearings; public pronouncement of court decisions etc. (*competent authority – National School of Judges of Ukraine and local experts*);
- to raise awareness among chiefs of administrative staff of courts on the requirement of public hearings, to ensure regular monitoring of compliance with the requirement and impose disciplinary sanctions for violations thereof (*competent authorities – chiefs of administrative staff of courts*).

4

PROSECUTION OF CRIMES COMMITTED DURING THE MILITARY AGGRESSION BY THE RUSSIAN FEDERATION

4.1

Responsibility for crimes, as well as other offences has to be inevitable – otherwise, it fosters disrespect towards the state and its authorities and increases the prevalence and severity of crime.

The number of committed, registered, investigated and prosecuted crimes has increased significantly since 2014. Existing procedural mechanisms are insufficient for effective counteraction to violations caused by the aggression of the Russian Federation. The prevalence of crime and concealment of crimes are relatively high while investigation is ineffective.

Since 2014, the Verkhovna Rada of Ukraine tried to establish conditions to ensure certainty of punishment for the crimes committed during the armed aggression of the RF against Ukraine.

Perpetrators can escape justice by staying in the temporarily occupied areas.

Crimes in the non-government controlled areas remain unpunished. Many cases proceed with trial in absentia when the defendants are in the non-government controlled areas.

Perpetrators can escape justice if the record of proceedings or data storage device with a record of proceedings are missing from case files. Appellate courts often revoke verdicts based on the lack of such records or storage devices in case files.

The following **measures are necessary** to address the problem of impunity:

- to take effective action to prevent underreporting of crimes committed by military personnel, in particular against civilians in the conflict zone, as well as crimes committed by military service members against their colleagues (*competent authorities – Prosecutor General, Minister of Defense of Ukraine*);
- to address disciplinary bodies with regard to imposing liability on judges, administrative court staff who allowed the absence of the record of proceedings or data storage device with a record of proceedings in case files (*competent authorities – Prosecutor General, courts of appeal*);
- to ensure proper mechanisms to search for persons who had committed crimes in Ukraine and prevent their escape to the areas temporarily outside of Ukrainian government's control (*competent authorities – Ministry of Internal Affairs of Ukraine, State Border Guard Service of Ukraine*).

4.2

The law has increased criminal liability for military offences for Ukrainian military service members.

In practice, there is widespread criminal prosecution of the ATO participants for actions that do not constitute criminal offences. However, there are cases of unreasonable mitigation of punishment for dangerous crimes, including under pressure. There are also widespread cases of bias towards military service members in determination of their liability. Commission of crime during the ATO in some cases is considered a mitigating circumstance and an aggravating factor in other cases.

To increase the fairness of criminal legal assessment of the actions of military service members, **it is necessary**:

- to ensure proper investigation of military crimes, in particular, taking into account circumstances for exemption from criminal responsibility (*competent authorities – State Bureau of Investigations of Ukraine, Prosecutor General*);

- to prepare a compilation of case law in criminal cases against members of the armed forces of Ukraine, in particular on application of the Criminal Code provisions on exemption from criminal liability, adherence to general principles of determination and exemption from punishment, as well as measures of restraint for members of the armed forces (*competent authorities – Supreme Court, courts of appeal*).

4.3

Qualification of crimes committed by members of the armed forces of the RF, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities depends of clear determination of the status of the armed conflict in eastern Ukraine and its participants. So far, there has been no such determination.

With regard to criminal (or terrorist) nature of the organized armed groups of the so-called DPR and LPR, their activities violate Ukrainian legislation and should be assessed from the criminal law perspective. However, courts often do not recognize the fact that DPR and LPR are terrorist organizations as common knowledge. Therefore, it is necessary to prove the "terrorist nature" of these organizations in each case. As a result, there is no consistency in qualification of similar crimes.

To ensure consistent practice in prosecution of the members of armed forces of the RF in the ORDLO, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities, the following measures are **necessary**:

- to define the legal status of the members of armed forces of the RF in the ORDLO, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

- to introduce legal amendments to define the procedure for compensation for victims of crimes when perpetrators are convicted in absentia, i.e. in special court proceedings (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

- to prepare a compilation of criminal case law on cases of the members of RF armed forces in the ORDLO, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities; to ensure consistent application of the law in matters related to the armed aggression of the Russian Federation against Ukraine by courts with different specializations in accordance with the procedure established by the law (*competent authorities – Supreme Court, courts of appeal*).

4.4

The most serious obstacle for implementation of "Home is waiting for you" program is that it does not apply to persons who committed crimes under articles 110-2 (financing actions, committed with the purpose of the violent change or overthrow of constitutional order or the assumption of state power, change of the territorial measures or state border of Ukraine), 111 (treason), 114 (espionage), 255 (creation of a criminal organization), 258-3 (financing terrorism), and 263 of the Criminal Code of Ukraine (unlawful handling of weapons, ammunition or explosives) – if a person has taken action required by the law proving that s/he sincerely repented and facilitated prevention of harmful consequences of his/her illegal actions.

To increase effectiveness of "Home is waiting for you" program, it is **necessary**:

- to extend it to persons who had committed crimes and include a wider number of Criminal Code articles that allow exemption from criminal liability (*competent authority – Security Service of Ukraine*).

1
ADMINISTRATION OF JUSTICE DURING THE MILITARY AGGRESSION BY THE RUSSIAN FEDERATION: KEY FACTS

Immediately after the Revolution of Dignity and the escape of the former President of Ukraine Viktor Yanukovych to Russia, as well as concentration of political power with the Parliament of Ukraine, the Russian Federation (hereinafter – the RF) annexed the Crimean peninsula and started promoting the divide in Ukraine. In March – May 2014, protests under Russian flags and pro-Russian mottos known as the Russian Spring took place in eastern, central, and southern regions of Ukraine. The protests were often accompanied by occupation of state authorities, primarily law enforcement buildings, clashes with pro-Ukrainian and pro-European demonstration.

The lack of balance in the state authorities, weakness and lack of motivation of the law enforcement were in the way of preventing activities of militants coordinated by the RF. However, active citizens, volunteer formations and, later, Ukrainian law enforcement worked to localize activities of pro-Russian forces and limit them to the parts of Donetsk and Luhansk regions by May 2014.

Takeover of key state authorities in Donetsk and Luhansk regions led to the ATO. Even in the absence of declared war, there is now a large-scale armed conflict. Though it takes place on Ukrainian land, it is in fact international.

The scenario prepared by the RF was implemented in the East of Ukraine. It resembled the takeover of Crimea, but the Russian armed forces were not engaged openly. In April 2014, Donetsk and Luhansk "people's republics" were established. Pro-Russian forces gained control over state authorities. "Volunteers" in Russia were mobilized to allegedly protect Donbas from the "junta" in Kyiv.

Hostilities started when armed groups led by RF special force officers seized several towns in Donetsk region – Sloviansk, Kramatorsk, and Druzhkivka. There, they first took control over militsiya units and subdued those to militant leaders. Russian saboteurs used the seized arms to equip local citizens, and militsiya officials also "cooperated". During several following days, the saboteurs gained control of other towns in Donetsk and Luhansk regions.

In response, Ukrainian authorities declared the ATO aimed at liberating the towns from saboteurs. There has been no declaration of martial law, in particular, because the law prohibits elections, and the presidential elections process had already started.

In June, pro-Russian militants attacked and seized border checkpoints, which enabled open supply of arms for the militants from Russia, including supply of multiple-launch rocket systems, tanks, and other heavy armored vehicles.

On 20 June 2014, Petro Poroshenko, the President of Ukraine, declared a unilateral ten-day ceasefire and promised exemption from prosecution for those who give up their weapons. After the period expired and militants did not meet the conditions, the Anti-terrorist headquarters launched a large-scale operation to liberate the occupied areas and restore control over Ukrainian border.

On 17 July 2014, militants shut down Malaysia Airlines Flight 17, a passenger Boeing 777, flying from Amsterdam to Kuala Lumpur. As a result, 298 people lost their lives. Later, international investigation showed that a warhead launched from "Buk" air defense system hit the plane. The "Buk" arrived from Russian territory and returned there.

This event drew even more attention of international community to events in Ukraine and led to political and economic sanctions against Russia. In response to the advances of the Armed Forces of Ukraine (hereinafter – the AFU) and possible deoccupation of Donetsk and Luhansk in August 2014, the Russian Federation deployed tactical groups of the Russian armed forces to support the militants. It led to massive clashes and large losses, including civilian casualties.

The so-called Minsk agreements were an attempt at political regulation of the conflict. In general, they reduced the intensiveness of hostilities but preserved the conflict.

On 5 September 2017, the so-called Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin was signed in Minsk (Minsk Protocol, Minsk I)[4]. It was signed by participants of the Trilateral Contact Group – Ambassador Heidi Talyavini (on behalf of the OSCE), Second President of Ukraine, L.D. Kuchma (on behalf of Ukraine), and Ambassador of the Russian Federation in Ukraine M.Y. Zurabov (on behalf of Russia), A.V. Zakharchenko, and I.V. Plotnitskiy who represented the so-called DPR and LPR at the negotiations.

4 PROTOCOL. on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin // https://www.osce.org/ru/home/123258?download=true.

In addition to bilateral ceasefire, the protocol provided for immediate release of hostages, enactment of a law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of Donetsk and the Lugansk regions of Ukraine, decentralization of power, in particular through the Law of Ukraine "On the temporary status of local self-government in certain areas of the Donetsk and the Luganskи regions"[5].

The law adopted on 16 September 2014 introduced a special procedure of self-government in certain areas of the Donetsk and the Lugansk regions (ORDLO) for three years under the condition that local elections in these areas are held in accordance with the Constitution and laws of Ukraine. In October 2017, the effect of the Law was extended by one year.

The law also guaranteed "prohibition on criminal prosecution and criminal, administrative punishment of persons who took part in the events in Donetsk and the Lugansk regions". It also introduced "special procedure for the appointment of the heads of prosecutor's offices and courts with participation of self-government authorities in this process".

In practice, the law was never implemented since the so-called DPR and LPR have not allowed free elections in accordance with Ukrainian law. Instead, they had a mock election of the heads and members of the "people's councils". Neither Ukraine nor the international community recognized the result of these elections.

In fact, these measures did not lead to cessation of fire or hostilities. The fighting escalated in the winter of 2014-2015.

On 11-12 February, Heads of States of Germany, France, Ukraine, and Russia approved a Complex of measures for the implementation of the Minsk agreement. It was signed by the contact group (Talyavini, Kuchma, Zurabov), and Zakharchenko and Plotniskyi (Minsk II).

UN Security Council Resolution 2202 of 17 February 2015 gave this document some legal recognition.

The Complex of Measures included immediate and comprehensive ceasefire in ORDLO and strict implementation of it starting 15 February 2015 and withdrawal of all heavy weapons by both parties at equal distances to create a security zone; pardons and amnesties granted through the enactment of a law prohibiting the prosecution and punishment of persons in connection with the events that took place in the ORDLO; release and exchange of hostages and illegally detained persons based on the principle 'all for all'; restoration of full control over the state border of Ukraine by the government throughout the conflict zone; constitutional reform will be conducted in Ukraine, and a new constitution to enter into force by the end of 2015 as a key element of decentralization (taking into account the special characteristics of the ORDLO as agreed with representatives of these areas), and a permanent law on the special status of the ORDLO, including participation of local governments in the appointment of heads of prosecutors and courts[6].

5 Law of Ukraine "On the particular status of local self-government in certain areas of the Donetsk and the Lugansk regions", 2014.

6 Complex of measures for the implementation of the Minsk agreement. // https://www.pravda.com.ua/articles/2015/02/12/7058327.

Overall, this document led to de-escalation of shelling and decrease in casualties, the start of exchange process. However, most provisions of the document remain unfulfilled by both sides.

From the beginning of the RF aggression in Donbas until February 2018, approximately 10,300 people died and 25,000 were injured. The number of registered displaced persons in Ukraine is close to 1.5 million. Over 300,000 members of the armed forces took part in the ATO. The majority of these people have high demand for justice.

However, implementation of the Minsk Agreements can result in impunity as they provide for full amnesty, pardon and withholding prosecution of persons in relation to the events in Donbas without any exceptions, such as war crimes, crimes against humanity or particularly grave crimes. Control of local governments in the ORDLO (potentially dependent on Russia) over the heads of courts and public prosecutors will undermine independence of these institutions.

Most courts, prosecutor's offices, internal affairs bodies (police), as well as penitentiary institutions in Donetsk and Luhansk regions found themselves in the occupied areas and ceased operations in 2014. Only some of them were evacuated and started working in other cities. The powers of the bodies were transferred to state authorities in the government-controlled areas.

Courts. There were 60 courts in Donetsk region and 35 courts in Luhansk region before the Russian aggression. Some courts in the occupied areas in Donetsk and Luhansk regions ceased operations in in May – July 2014, others continued until late summer 2014 when it became evident that Ukraine had lost control over the ORDLO and almost all state authorities in these areas stopped operations.

In September 2014, territorial jurisdiction of 60 courts in the areas of Donetsk and Luhansk regions outside of Ukraine's control or in the area of hostilities was changed. Cases from these courts were transferred to relevant courts in the government-controlled territory (Donetsk, Luhansk, Dnipropetrovsk and Zaporizhzhia regions). In practice, there was no transfer of these cases since it was impossible to move case files from the occupied areas.

At the same time, judges and court staff in the uncontrolled areas were left without work, though some of them moved to the areas controlled by the Ukrainian government.

To avoid the issue of transferring courts and their staff, on 12 November 2014, President Poroshenko issued an order changing location of seven largest courts. For instance, Donetsk Regional Economic Court, Donetsk Economic Court of Appeal and Luhansk Regional Economic Court were relocated to Kharkiv. Luhansk Regional Court of Appeal was transferred to Sievierodonetsk, Donetsk Circuit Administrative Court – to Sloviansk, Luhansk District Administrative Court – to Sievierodonetsk, Donetsk Administrative Court of Appeal – to Kramatorsk. By May 2015, these courts had resumed their operations in new locations.

In November 2014, three more district courts resumed their operations. In March 2015, one of them stopped working again due to hostilities. In January 2016, another district court started working.

By early 2018, more than half (50 out of 95) of the courts in Donetsk and Luhansk regions were not working (see Annex 1). At the same time, all courts of appeal and local economic and administrative courts resumed operations.

In December 2017, the President of Ukraine issued orders to consolidate local general courts and reorganize them into circuit courts. Accordingly, there shall be 19 circuit courts in Donetsk region and 14 circuit courts in Luhansk region. They will be able to launch operations only after deoccupation.

Prosecutor's office. On paper, structure of the prosecutor's office has remained the same in 2014 and 2015, including 56 district prosecutor's offices and offices of the same level in Donetsk region and 35 prosecutor's offices in Luhansk region. However, the majority of them (approximately 50 offices) stopped working in 2014.

The Law of Ukraine "On public prosecutor's office"[7] (2014) approved the updated system of public prosecutor's offices. The law significantly reduced the number of local prosecutor' offices. These provisions entered into force on 15 December 2015. For instance, the law envisioned 17 local prosecutor's offices in Donetsk region and 10 offices in Luhansk region. On 15 December 2015, only eight prosecutor's offices in Donetsk region and four prosecutor's offices in Luhansk region started working (see Annex 2).

Police. The structure of internal affairs system was approved by the order of the Ministry of Internal Affairs (hereinafter – the MIA) no. 861 (6 September 2013) "On the organization of the general structure of the MIA of Ukraine"[8]. It remained in place until the Law "On National Police"[9] entered into force on 7 November 2015.

However, since 2014, three city directorates and 30 city and district offices of internal affairs in Donetsk region, as well as 1 city directorate and 19 city and district office of internal affairs have stopped working.

In September 2015, the government approved the structure of territorial police bodies[10] replacing directorates and offices of internal affairs. There are six offices of the National Police working in Donetsk oblast, including 17 units, and 15 National Police offices in Luhansk region, including 6 units (see Annex 3).

Penitentiary facilities. After the occupation of certain parts of Donetsk and Luhansk regions, there are 29 penitentiaries remaining in the non-government controlled areas (14 facilities in Donetsk region and 15 facilities in Luhansk region). There are six penitentiaries in the government-controlled areas of Donetsk region and only one – in Luhansk region (see Annex 4).

The staff of the State Penitentiary Service in Donetsk region was transferred from Donetsk to Mariupol in 2014; the Luhansk region staff was transferred to Starobilsk. However, the majority of prisoners remained in the occupied areas.

On 18 May 2016, the government decided to eliminate all regional bodies of the State Penitentiary Service of Ukraine[11] and create six inter-regional directorates on execution of criminal punishments and probation of the Ministry of Justice.

The directorate in Donetsk region was succeeded by the Southeastern Interregional Directorate on Execution of Criminal Punishment and Probation located in Dnipro. The Northeastern Interregional Directorate in Kharkiv succeeded the directorate in Luhansk region.

There has been no organized transfer of prisoners from the non-government controlled areas to the areas controlled by Ukraine. By February 2018, efforts of the Ukrainian Parliament Commissioner on Human Rights led to the transfer of 186 persons convicted by Ukrainian courts from prisons in the ORDLO areas.

7 Law of Ukraine "On public prosecutor's office", 2014.

8 Not published.

9 Law of Ukraine «On National Police", 2 July 2015.

10 Cabinet of Ministers Resolution no. 730 "On establishment of territorial bodies of the National Police and elimination of territorial bodies of the Ministry of Internal Affairs", 16 September 2015.

11 Cabinet of Ministers Resolution no. 348 "On elimination of territorial bodies of the State Penitentiary Service and establishment of territorial bodies of the Ministry of Justice", 18 May 2016.

2

INSTITUTIONAL CAPACITY OF THE JUSTICE SYSTEM INSTITUTIONS

2.1 HUMAN RESOURCES

According to focus groups with judges, prosecutors, police investigators, lawyers and human rights defenders, the lack of human resources, high staff turnover, and excessive workload were among top five issues affecting administration of justice in armed conflict.

QUESTIONNAIRE RESULTS:

RELEVANT ISSUES AFFECTING ADMINISTRATION OF JUSTICE IN ARMED CONFLICT

Every respondent could choose up to five issues from the list.
Maximum percentage for one option – 20 percent.
The graph illustrates response ratio for each option.

Rating	RESPONSE OPTIONS	Overall ratio	Response ratio
1.	Lack of access to case files (court cases and executive proceedings) remaining in the temporarily occupied areas		12,16 %
2.	Shortage of human resources, high turnover of staff, excess workload		11,77 %
3.	The possibility for the perpetrators to evade justice by staying in the temporarily occupied areas		11,36 %
4.	Pressure and other influence on the court (corruption, dependence, vulnerability of judges in the ATO area, connection with the occupied areas, protests in front of courts etc.)		8,69 %
5.	Restricted or non-existent access to courts to defend their rights for the residents of occupied areas		8,37 %
6.	Lack of specific legal mechanisms safeguarding proper work in armed conflict		8,03 %
7.	Lack of legal mechanism regarding enforcement proceedings to ensure execution of court decisions in armed conflict		7,35 %
8.	Insufficient material and technical resources		5,74 %
9.	Detention of persons apprehended in Donetsk and Luhansk regions in the absence of sufficient legal grounds		4,93 %
10.	Lack of legal mechanisms for prisoner exchange		4,77 %
11.	Widespread impunity for crimes committed in Donetsk and Luhansk regions		4,33 %
12.	Lack of knowledge and training on conflict-related issues		3,57 %
13.	Shortcomings of legislation on the legal status of the missing persons and recognition of death		2,82 %
14.	Widespread criminal prosecution of ATO members for actions that have elements of crimes but committed in real combat to preserve military and civilian life		2,64 %
15.	Difficulties in ensuring prompt transportation of accused persons to court		2,11 %
16.	Widespread cases when perpetrators of crimes against national security are exempt from liability		1,36 %

In their questionnaires, judges ranked these issues fifth, prosecutors – second, investigators – first, lawyers – fourth, and human rights defenders – ninth.

Many courts in Donetsk and Luhansk regions are understaffed for general and conflict-related reasons (difficulties in arranging accommodation in a new place of residence, threats to physical security, lack of reserve staff etc.).

When amendments to the Constitution of Ukraine on justice came into force on 30 September 2016, almost every third court (219 courts across Ukraine) had only half the necessary number of judges or less[12]. In December 2016, there were four courts without a single appointed judge, and five more courts had no judges authorized to administer justice. In second half of 2016, there were 4,397 authorized judges out of 7,698[13] planned positions (62 percent)[14].

12 The list of courts with 50 percent or more judges not administering justice (due to expiration of the five-year authorization, reaching 65 years of age, or failure to take the oath). Status update: 12 October 2016. // http://vkksu.gov.ua/ua/oblik-posad-suddiw/spisok-sudiw-w-iakich-kilkist-suddiw-shtcho-nie-zdijsniuiut-prawosuddia-u-zwiazku-iz-zakintchienniam-piatiritchnogo-stroku-pownowazien-dosiagnienniam-suddieiu-65-ritchnogo-wiku-ta-z-nieskladienniam-prisiagi-suddi-skladae-50-i-bilshie-widsotkiw-stanom-na-1.

13 Decision of the Council of Judges no. 87 "On the staffing situation in Ukrainian courts", 2 December 2016 // http://www.rsu.gov.ua/ua/events/risenna-rsu-no-87-vid-02122016-sodo-kadrovoi-situacii-aka-sklalasa-u-sudah-ukraini.

14 Decision of the Council of Judges no. 87 "On the staffing situation in Ukrainian courts", 2 December 2016 // http://www.rsu.gov.ua/ua/events/risenna-rsu-no-87-vid-02122016-sodo-kadrovoi-situacii-aka-sklalasa-u-sudah-ukraini.

There are at least four underlying reasons.

First, authorization of judges most of whom were appointed by the former President Yanukovych has expired. However, the parliament refused to consider their indefinite appointment. They kept their position and salary but could not exercise judicial powers.

Second, many judges resigned almost immediately after the right to severance pay (a large one-time payment) was restored in 2016 and restrictions on indefinite financial support (monthly payment several times higher than an average pension in Ukraine) were lifted. The right to receive these payments was significantly restricted in 2014. The parliament then cut budget allocations for benefits in the state sector and established a limit for huge social payments to people fired from public service. Most members of Azarov cabinet moved to Moscow and left the state budget empty.

Third, many judges received a new incentive to leave the position as the new laws adopted in 2015-2016 required all acting judges to take a qualification exam proving their fitness for the position. The qualification exam included a knowledge and skill test, as well as integrity and professional ethics inspection, including inspection of expenses and property of the judge and his/her family members in comparison to the declared income.

Fourth, the reserve of future judges who had gone through selection and training was dismissed due to the lack of credibility of the previous High Qualification Commission of Judges in Ukraine and reports of manipulations during selection. Accordingly, there was no possibility to fill vacant positions quickly.

Though the number of judges was lower across the country (only one of nine courts without authorized judges was in Donbas – Novohrodivka city court in Donetsk region), there were additional reasons in Donetsk and Luhansk regions.

Many judges voluntarily remained in the non-government controlled areas, while others transferred to other regions of Ukraine. Judges in courts transferred to the government-controlled areas, in particular other cities in Donetsk and Luhansk regions, faced the problem of accommodation and organization of daily life. At the same time, judges in the ATO zone had no benefits in financial and social support in comparison to other judges.

Judge:

Maybe, the problem [of staff shortage] in the ATO area is more serious because some judges remained in the occupied areas. Many people resigned. Many people went from the occupied areas to other territories.

The problems of personnel shortage exist in the region because there are definitely not enough specialists… While it does not really affect local courts, the regional courts, economic courts, the court of appeal have jurisdiction over the region and circuit and the problem is different. People moved from regional centers to, mildly speaking, different conditions. This is one.

The second reason is the lack of stability in these conditions.

The third reason is being relatively close to the front line.

Each of these reasons is number one, in fact. The lack of any mechanism to support the specialists in my view, applies to courts to a significant extent… People who came here try to move further into the territory as soon as possible.

People lost everything there, and they got nothing instead, or no prospects even.

Staff shortage in courts complicates access to justice as trials take longer and it is impossible to form a panel of judges in many cases.

Prosecutor:

For particularly grave crimes, there should be a panel of three judges. They have a busy schedule and enough of their own cases. The police, the fiscal service, the military prosecutor's office, the SSU investigation units send cases. The SSU and the military prosecutor's office send grave and particularly grave crimes, where there has to be a panel. It creates delays because of the lack of judges. Some courts do not even have three judges. Now they supposedly started appointing them, but this mechanism is not working properly. There are delays and delays. I would like the trials to move faster. There should be more judges.

Lawyer:

We went around six courts in Donetsk region so they would find judges outside of Donetsk region. It happens often in criminal cases when judges have to hold the trial in a panel of three judges. Many courts, I am not even talking about each court, simply do not have three judges.

Investigators also faced challenges resulting from the lack of judges, especially in courts with only one judge. There are district centers at the contact line (Avdiivka, Stanytsia Luhanska) where police and prosecutor's office are working, but there are no courts. Accordingly, investigators and prosecutors have to go around with motions for investigating judges to other towns. Some investigators stated that the situation with staff shortage got better as one went further from the contact line.

Investigators:

We have staff shortage, one judge, one retired, and now we have one judge. Sanctions, arrests, motions, trial and everything else. She is overloaded. She cannot cope with it herself.

When it comes to judges, I do not think they have significant staff shortage. If you look at the statistics, as far as I know, there are enough judges in the cities further from the contact line. It is just that no one wants to work near the contact line.

The closer to the line, the more difficult it is. Because the judges are afraid.

We depend on judges completely.

Judge, we only have three, but only one is working. Someone is sick. It is impossible to impose a measure of restraint, get a search warrant; there are violations of deadlines; we have constant problems with that.

Human rights defenders explained that shortage of human resources was also caused by the failure to ensure safety of courts. Human rights defenders in a focus group reported that there were no guards in courts near the contact line.

Human rights defender:

The shortage of staff was in all my reports. You come to the court, look at the windows and see a forest and militants. There is no security in the court. Why? Because there are no physical resources. The court asks every month. I saw those reports – there are no physical possibilities. Honestly, it is not even a kilometer away, they left the forest, and several times two people came in. They [judges] are not protected by anything. That is why we have staff shortage. Many judges in 2014 left their positions because of this. In fact, only 3-4 judges are present out of 6-8. Almost 50 percent. Clearly, their caseload is higher.

Judges who took part in focus groups suggested finding ways to return judges who had resigned and solve the issue of appointing the judges whose five-year authorization has expired.

The situation is even more critical with the administrative staff in courts. While judges' salary is quite high, administrative staff do not receive enough money for rent and daily expenses. The cost of rent in Kramatorsk, Sievierodonetsk, Bakhmut, and Sloviansk has increased significantly with low offer and increased demand. Compared to a judge, it is easier for an administrative staff member to quit his/her job. Therefore, many administrative court staff have left, and it is difficult to find new people because it is almost impossible to find trained personnel from other regions.

Judges:

We analyzed the situation with the appeal [court] in Luhansk: 60 judges moved, and now there are 26 remaining. 60 people moved – the apparatus members, management, and general staff. There are 24 remaining. While judges can pay rent with their salary, the apparatus staff cannot afford it. Accordingly, these people leave. The most experienced judges and staff leave.

But there are bonuses for administrative staff. They can be from 50-100 percent of the salary. The secretary's salary is approximately 4000 hryvnia. It is not an attractive salary for an experienced expert.

Despite the attempts to increase salaries for administrative staff through bonuses, the employment conditions and career opportunities in other state authorities are more attractive.

Judge:

Let us compare which experts we need. Mostly, lawyers. If we look at law enforcement, civilian administrations, they have completely different social benefits, guarantees and prospects. People who come here try to move further as soon as possible. While judges do not have such opportunities today, the apparatus staff do. The administrative staff of the judiciary are rather high qualified. Any law enforcement body or other state authority will be happy to have them.

Ninety-six percent of judges from Donetsk and Luhansk regions responded that the number of staff in their courts has decreased since the beginning of the armed conflict in eastern Ukraine. Forty-one percent stated that the number of staff has reduced by more than half.

The prosecutor's offices and police investigation units also experience shortage of human resources. The lack of investigators near the contact line has paralyzed investigation in most criminal cases.

Prosecutors in focus groups also mentioned vacant positions, but they provided other reasons for the excess caseload. They also said that the SSU did not experience staff shortage, and that all positions in the SSU investigation units were filled.

Seventy-three percent of interviewed prosecutors from Donetsk and Luhansk regions said that the number of staff in their office has decreased since the beginning of the armed conflict in eastern Ukraine. At the same time, almost every tenth prosecutor said that the number of staff has decreased by more than half.

Perhaps, the most difficult situation concerning human resources in investigation units of police is in the areas located near the contact line. In focus groups, police investigators mentioned being involved in other duties (roadblock duty, public safety) despite the lack of investigators and excessive workload.

Investigators:

… we do not have enough human resources, not enough investigators. We only have five investigators working out of twenty-one in the staffing plan. We have three seconded investigators for two months; they just leave. We have only five investigators. No one wants to join because it is the contact line, first line. They are all afraid.

The situation has not changed for three years. We have even less people. We had seven, two left, we have five people left. No one wants to work there…

We have significant staff shortage. We have to cover the roadblocks and the area patrol as well. It also has its effect. We are distracted from investigation. It is a problem.

We, investigators, are also responsible for public order during public events in the city.

The staff of investigation units near the contact line stay due to strict and, sometimes, unfair, policy on human resources.

Investigators:

It is very, very difficult to transfer.

Completely impossible.

If you have connections, you will be transferred. If not – nothing.

It is the shortage of staff. No one is released from here.

You either resign or continue working.

The do not value us but simply make us work where we do not want to work.

In these conditions, the worker is even less interested in working. There is no interest. No benefits, no social support. Less and less attention is paid to these issues.

There is also a lack of investigators in units working on economic crimes due to complexity of these cases. According to prosecutors, police investigation in these types of cases is lengthy and ineffective.

The National Police addresses the lack of investigators near the contact line through seconding investigators from other regions for two months. However, due to the short secondment term and lack of interest in results, these measures do not increase effectiveness.

Investigator:

They just stay here… How they will perform, they just wait until their term expires and leave. No one is interested in productive work or achieving any specific results that could help.

Human rights defender:

We faced the shortage of staff specifically in the case of investigators. One person launches criminal proceedings; then another one comes.

Sixty-one percent of investigators from Donetsk and Luhansk regions stated that since the beginning of the armed conflict in eastern Ukraine the number of staff in their office has decreased. Nine percent of investigators stated that the number of staff has decreased by more than half.

Fifty-three percent of lawyers working in Donetsk and Luhansk regions reported an influx of lawyers from the non-government controlled areas.

2.2
WORKLOAD IN THE JUSTICE SYSTEM

Two thirds of judges in Donetsk and Luhansk regions thought their workload had increased in the armed conflict. At the same time, average workload of judges in Donetsk and Luhansk regions is lower than the national average with exception to local general courts.

According to statistics[15], the highest monthly average number of incoming cases and materials per judge is in Kyiv. Workload of judges in Donetsk and Luhansk courts is significantly lower, but it is slightly higher than the national average. We should note, however, that the State Court Administration is calculating the monthly average caseload based on staffing proposals instead of actual numbers of judges. Indicators are therefore not accurate, and the actual caseload of most judges is 2-3 times higher.

At the same time, we can see that an average monthly caseload per judge in local general courts in Luhansk region is down to pre-conflict numbers and exceeds the national average. In Donetsk region, the caseload has significantly reduced in comparison with 2013; it is slightly higher than the national average.

The short-term reduction of caseload per judge in general courts of Donetsk and Luhansk regions in 2014 can be explained by active hostilities.

Judge:

Overall, the caseload during hostilities varied. You see how it happened. We had regular caseload until July 2014. At the end of the month, fighting started in Popasna and nearby districts. In August, we had a lot less cases… People who were used to peace found themselves in a war. Many left, of course. Those who stayed did not know how to act. We were at work in court but people did not show up and we had almost no incoming cases. Though Popasna was under periodic shelling in the fall of 2014, the situation in court stabilized a little bit. The caseload returned to normal starting November because people adapted to the situation[16].

15 Administration of Justice Report – 2016 // http://court.gov.ua/userfiles/file/DSA/DSA_2017_all_docs/TRAVEN_17/ogl_2016_copy.pdf.

16 Kandydat u suddi VS Mykola Mazur: «Pamyatayu, yak ishov z roboty pislya odnoho iz obstriliv. Dyvlyusya – dym, a nepodalik dity hrayut u futbol» [Candidate Supreme Court Judge Mykola Mazur, "I remember walking from work after a shelling. I saw smoke and children playing football nearby] // https://ua.censor.net.ua/r462097.

STATISTICS:

AVERAGE MONTHLY NUMBER OF INCOMING CASES PER JUDGE

Region	2013	2014	2015	2016	2017
Local general court					
Donetsk region	81	47	60	57	60
Luhansk region	67	33	53	65	65
National Average	67	59	56	55	58
General court of appeal					
Donetsk region	23	13	6	9	19
Luhansk region	18	6	2	5	12
National Average	18	16	17	17	26
District administrative court					
Donetsk region	30	13	10	11	13
Luhansk region	30	12	10	8	21
National Average	31	28	25	18	20
Administrative court of appeal					
Donetsk region	37	19	7	8	30
National Average	176	30	23	20	30
District economic court					
Donetsk region	18	8	10	12	9
Luhansk region	12	6	5	5	6
National Average	17	18	21	15	15
Economic court of appeal					
Donetsk region	14	6	11	9	12
National Average	11	11	14	10	12

Average monthly caseload per judge of a general court of appeal in Donetsk and Luhansk regions has decreased in comparison with 2013 and is now significantly lower than the national average.

The number of incoming cases and case files in administrative and economic courts (per judge in accordance with staff proposal) has reduced since 2013; it is lower than the national average[17].

Therefore, statistics usually show a decrease in monthly average caseload of judges in Donbas in comparison with the period before Russian aggression. With exception to local general courts, caseload of judges in Donetsk and Luhansk regions is lower or similar to the national average level.

At the same time, 58% of interviewed judges in Donetsk and Luhansk regions thought that their caseload has increased during conflict period: 20% found a significant increase, 16% thought that the caseload has decreased and 26% thought it had not changed. One explanation is that the statistics include staff proposal figures instead of the actual number of judges, which has significantly decreased during Russian aggression.

Judge:

I think there is excessive caseload in courts. When I worked in court, we had 22 judges, and now we have 7 judges. The specifics of work related to the ATO. What has changed? We have, for instance, article 258(3). It has to be reviewed by a panel of judges. Sometimes judges even swapped places and went from one room to another to hear these cases. In some cases, there are 250 people. It is impossible to hear, and the composition changes. Artemivsk court replaces Horlivka. Horlivka has 350 thousand people living there. We started hearing the amended 257 of the Civil Code of Ukraine (comm. 1) "establishing the fact of birth and death in the temporarily occupied area". These cases are heard immediately. The judge has no time. The schedule is packed with panels, these cases, very big caseload. You have to find time somehow. The court's reach has increased – from 120 to 350 thousand residents. There are also many cases like these: births, deaths, they come daily.

Judges stated they did not manage to finish everything in an 8-hour day and had to work overtime.

At the same time, caseload in courts within one region can vary. For instance, in 2017, courts of Luhansk region received 34,828 cases, and almost two thirds of these cases (22,256 cases) concerned illegal crossing of Ukrainian borders. Almost all of these cases on illegal crossing were allocated to Svatove District Court where only 5 judges out of envisioned 10 are administering justice[18].

17 Source: Analytics on administration of justice, 2013 – 2017 // http://court.gov.ua/inshe/sudova_statystyka.

18 28 lypnya 2017 roku v Apelyacijnomu sudi Luhanskoyi oblasti provedeno koordynacijnu naradu iz holovamy ta suddyamy miscevyx sudiv Luhanskoyi oblasti [Coordination meeting with heads and judges of local courts in Luhansk region held on 28 July 2017 in Luhansk Region Court of Appeal] // http://lga.court.gov.ua/sud1290/pres-centr/111/365983.

Data from the Unified State Register of Court Decisions shows that majority of these cases were about illegal crossings of Ukrainian border in the officially closed "Izvaryne" checkpoint on the way to the Russian Federation.

Judges:

Getting there is the problem. While there are five automobile checkpoints in Donetsk region, there is only one pedestrian checkpoint in Luhansk region. People are forced to go through Russia, cross the border illegally. Now it is absurd. Svatove court, they have protocols, they measure their number in cubic meters.

I talked to the head. They have five bags.

Human rights defender:

There are crossing points at the border with Russia in Luhansk region, and many people from Luhansk region go from the non-government controlled areas through Russia and enter Luhansk region from there. Officially, checkpoints at the government-controlled areas are closed. That is why there are so many reports on illegal border crossing. There are lines; these reports are sent to courts. In fact, three courts in Luhansk region are swamped with these protocols. There is a crazy workload for the border guards. They also have issues with these reports; they need people to talk to those coming from Russia. There are hundreds, almost a thousand cases in courts.

Going through Russia is the easiest way to get from the non-government controlled part of Luhansk region to the government-controlled territories without crossing the contact line. Exit through the uncontrolled "Izvaryne" checkpoint is not recorded by the Ukrainian government, but exit from Ukraine without proper border control is discovered at the official point of entry (for instance, in Kharkiv region). Border guards draw up reports on administrative offences. However, courts close all these cases when the limitation period expires. The real reason is probably that courts are reluctant to punish individuals for offences they are forced to commit to avoid danger to their lives.

On 27 February 2018, the Parliament adopted a law transferring the competency in cases of illegal border crossing and imposition of penalties to the State Border Guard Service. However, at the time of writing, the law had not been signed[19]. Moreover, its implementation can result in actual punishment of persons who were forced to commit offences.

Changes in jurisdiction and the court system in Donbas led to increase in the workload for administrative staff of certain courts. Monitors learned from the court registry staff that there were no major changes in their work related to the ATO. However, eight courts reported a significant increase of their workload, especially in 2014-2015, with the situation

19 See draft Law on amendments to the Code of Administrative Offences and other laws of Ukraine on state border security no. 5442, 23 November 2016. URL://http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60570.

stabilizing in 2016. These changes were observed in courts that assumed additional territorial jurisdiction of other courts from the non-government controlled areas, since the number of staff in these courts has not changed.

The majority of prosecutors in Donetsk and Luhansk regions reported an increase in their workload due to the armed conflict, but not a significant one.

While 79 percent of prosecutors from Donetsk and Luhansk regions said their workload had increased, only one out of five prosecutors said the increase was significant. Fifteen percent of interviewed prosecutors noticed a decrease in their workload.

Based on the outcomes of focus groups with prosecutors from Donetsk and Luhansk regions, we can assume that there is no problem of excessive workload of prosecutors.

Prosecutor of the military prosecutor's office:

If you talk specifically about us, we have many staff positions. We have a number of vacant positions too. It has to do with the specifics of our work. We are military people, but there is high workload… The number of prosecutors in our office has also decreased.

Prosecutors were willing to share their thoughts on issues affecting their workload. In particular, they mentioned new types of crimes, inconsistency in case law and lack of clear position of high courts on complex issues.

Prosecutor:

We have been working in the special period for three years; there are specific crimes and specific issues related to pre-trial investigation and court investigation. And absolutely no case law.

Before, we had no hostilities or armed conflicts. Now we have them. We have to turn the judiciary and the law enforcement to one legal direction, make sure they work in accordance with common case law so they can work on cases.

Prosecutors said they were responsible for a large number of court hearings in different parts of these regions, sometimes even outside the region, which required a lot of travel. Moreover, they were not always able to attend. Courts had different views on motions to participate in a videoconference submitted by prosecutors.

Prosecutors:

We have high caseload. We can have four trials in different cities in Donetsk region. We ask, 'Let us hear the case in a videoconference. Our prosecutor will be somewhere in Druzhkivka, and he can hear your case after his key trial'. They say 'no'.

- Judges in Dnipropetrovsk?

These – yes. Kharkiv court – OK. Others – they do not want. They say, 'You are a prosecutor, you have to be present in the courtroom where the court is located".

... In the case registry, there are copies of summons, that we have hearings in other courts. Yet, the court still does not want that.

There is a problem with sending a local prosecutor there – he does not know the case, he is not responsible for the outcome, he will follow the letter of law. We need result. With our participation.

Human rights defenders in focus groups also mentioned that delays due to prosecutor's absence were common.

Prosecutors also mentioned postponement of hearings due to the absence of witnesses, victims, other parties, or due to the change of judges. Though a number of cases of an individual prosecutor does not seem high, all these other issue increase their workload.

Prosecutor:

... Most of all, we suffer because of the problem with bringing witnesses, victims. And my personal participation has to be organized. As a result, it seems I am not so busy, but there are many hearings due to these delays.

Also, prosecutors thought that their workload has increased because judges in appellate courts return cases for re-trial in the first instance court almost in all trials instead of delivering a judgment on the merits.

Prosecutor:

Look at the decisions of the courts of appeal. I do not remember a case when a court of appeal, regardless of the region, issued its own decision. They send everything for new trial because they do not want to look in detail etc.

The Prosecutor General's Office did not provide information about average caseload of prosecutors referring to the lack of available information.

More than half of police investigators in Donetsk and Luhansk regions experienced significant increase of their workload due to the armed conflict, which had negative impact on the effectiveness of investigation. The closer to the contact line, the more serious this problem becomes.

Eighty-four percent of interviewed investigators working in Donetsk and Luhansk regions reported an increase in their workload due to the armed conflict; 51 percent thought the increase was significant.

Official data of the National Police shows an increase of caseload of police investigators in Donbas in comparison with the period before Russian aggression (almost two-fold). The caseload in Donetsk region exceeds the national average, while the caseload in Luhansk region is almost the same as the national data.

Statistics:

AVERAGE NUMBER OF PROCEEDINGS PER INVESTIGATOR OF INTERNAL AFFAIRS BODIES (PER YEAR)

Region	2013	2014	2015	2016	2017
Donetsk region	166,8	263,7	299,5	287,5	299
Luhansk region	131,2	244,7	170,3	261,7	261,8
National average	166,8	171,8	186,6	256,8	258,8

The actual number of cases led by investigators close to the contact line can be two-three times higher than the national average.

Police investigator:

Before the armed conflict, I had approximately 50 criminal cases, now it is over 200. Per investigator. Approximately 80 percent are unsolved.

There is a catastrophic shortage. You have a plan and imagine what you need to do. However, due to the shortage of staff, you have to do the work delegated by your superior. It has to be done now and urgently. Meaning, you stop doing your work and start doing something else. There are very few people. Not enough staff. For instance, there is a sharp lack of investigators. Accordingly, there is more work, less people, you have no time...

The situation is even more difficult if police have to drive far to deliver apprehended persons for imposition of a restraint measure or a permit for investigative action.

Investigator:

I will give a simple example. Avdiivka. They have a police department, a prosecutor's office, and two procedural supervisors overseeing all cases. They used to have a court and everything was functioning there. Now, there are no judges. This city

is an example of how difficult it is to have any investigative action: imposing a measure of restraint, administrative cases. We have to transfer cases 60-70 km to other courts. There are no judges and no one wants to work there while the prosecutor's office there is working.

Investigators complained that judges often refuse to consider motions if a person is brought in the afternoon or out-of-office hours.

Prosecutor about investigators:

In general, they have an insane caseload. 500-600 cases per investigator. He cannot simply grasp that. Everyone thinks his or her case is the most important in the world. Grave crimes can wait. Complaints arrive. Ineffective. Of course, it is ineffective. Not a single investigative action. What should we do? Of course, punish *[investigators]*.

Effectiveness of investigation in most cases is extremely low. Many of them do not have a single investigative action organized. As a result, there is no chance of solving these crimes.

Human rights defenders about investigators:

Statistics of the National Police – unsolved crimes, when you open case files two years later, there is an acknowledgment of acceptance, the report, passport copy etc., information about creating a group of prosecutors, dismissing the group, creating, and it continues for two years.

I had a case when I called the investigator and said:

– There is a victim so-and-so. You have the open case.

- Yes.

- Have you interviewed him?

- No.

- Why?

- Well, it is what it is.

- Have you questioned the witnesses?

– Are there witnesses?

– There are 110 people.

– Do you have their contacts?

We also noticed that investigations are ineffective or there are no investigative actions at all. Unfortunately, we do not see effective means to influence investigators. I mean to force them to do investigative actions.

At the same time, according to official statistics, the number of recorded crimes in Donetsk and Luhansk regions has been decreasing steadily[20].

20 Crime statistics – Donetsk region // http://donetskstat.gov.ua/statinform1/kriminal1.php; Crime statistics – Luhansk region // http://www.lg.ukrstat.gov.ua/sinf/pravopor/pravopor0710_n.php.htm.

Statistics:

RECORDED CRIME IN DONETSK AND LUHANSK REGIONS

Information for 2014-2016, including all reports of crimes committed in the temporarily occupied areas and registered by other regional pre-trial investigation bodies.

Year	Donetsk region	Luhansk region
2010	62 555	32 132
2011	60 996	31 890
2012	48 909	26 562
2013	57 558	39 757
2014	55 860	29 614
2015	34 677	12 537
2016	29 832	12 290

Investigation of criminal cases is also impeded by excess workload of expert institutions.

Even referral to other regions for forensic expertise (Kharkiv, Dnipro, and Zaporizhzhia) does not improve the situation. There are delays in forensic examination for six months to a year, or more. The number of experts has decreased since some of them stayed in the non-controlled areas. Almost all types of expertise require more time than before. The expert has to come from one city, sometimes travel one hundred kilometers, while everything used to be within one town.

Forensic medical expert:

In 2014, starting June, we started receiving the deceased from the ATO. The number of assessments for explosion and firearm injuries has increased. While there used to be exceptional cases, since 2014, there were many people dead due to causes within our competency.

The highest number for our unit was in 2014. In 2015, there were less people and in 2016 even less. The highest workload was in 2014. We had approximately 380 autopsies in 2014, including 130 people who died in the ATO area. These were both military service members and civilians. We had never had more than 300. On average, we had 250-270 in our unit.

Caseload in the free legal aid system has also increased due to the conflict, especially in Luhansk region.

The average monthly caseload of free legal aid lawyers in Donetsk region has increased by twofold (from 2 cases per month in 2013 to almost 5cases in 2017). It also increased in Luhansk region – from 9 cases in 2013 to 11 cases in 2017. In addition, the caseload in the free legal aid system has remained four times higher than the national average, while in Donetsk region it is only slightly higher. It can reflect a significant shortage of lawyers in the free legal aid system in Luhansk region.

Statistics:

AVERAGE MONTHLY CASELOAD OF A LAWYER IN THE FREE LEGAL AID SYSTEM

(arithmetic mean number of assignments per lawyer per month)

Year	Donetsk region	Luhansk region	National average
2013	2,49	9,04	3,02
2014	2,24	2,67	2,47
2015	3,51	10,93	2,28
2016	3,8	13,1	2,52
2017	4,8	9,8	4,5

Investigator about lawyers:

We faced a problem with the legal aid center. A person was brought for investigative action and we asked for a lawyer. In response, "I called them". There are four in Sievierodonetsk. They are not picking up the phone. I said, "You pay them money". "We have no influence on them. They are not our slaves. We cannot force them". One does not want, the other one is unavailable, and the third one is on a business trip. The procedural deadline expires, the person is in custody in Sievierodonetsk for two days and leaves for Starobilsk, and nothing is done.

Therefore, the workload in the justice system in Donetsk and Luhansk regions is extremely high. The caseload of police investigators has significantly increased in comparison with the pre-conflict level, and it is higher near the contact line. Many cases are not investigated, which leads to impunity in the region.

The caseload of judges in Donetsk and Luhansk regions is slightly higher than the national average, but in some courts it is the highest in the country. Though prosecutors working in these regions did not complain much about excessive workload, they have to attend many court hearings in different areas of these regions or outside of them. As a result, they are not always able to attend.

2.3 ENSURING INDEPENDENCE AND IMPARTIALITY OF COURTS, PROSECUTORS, AND INVESTIGATORS FROM DONETSK AND LUHANSK REGIONS

According to the questionnaires for judges, prosecutors, investigators and human rights defenders, pressure or other influence on courts are among top five problems affecting administration of justice in armed conflict. Human rights defenders considered it the top issue, lawyers ranked it second, investigators – fourth. Judges and prosecutors consider this issue far less serious.

Justice system officers in the East of Ukraine face the same independence issues as their colleagues in other regions.

Investigator:

If you take into account subordination – investigator, prosecutor, and court – there is no direct [pressure], but the issue is raised more in the form of "I am in charge". Some acquaintances or somebody's relatives… Nobody forces any illegal action, but you understand that there is an uncle, aunt, brother, friend who is a judge or someone else…

In addition to common problems related to ensuring independence and impartiality of courts, prosecutors and investigators (such as nepotism, political influence, oligarch influence, corruption etc.), Russian aggression created new challenges. These include threats to justice officers, especially in relation to criminal proceedings against participants of the conflict on the side of the aggressor or Ukraine, as well as other similar cases.

Questionnaires show that the most common form of influence on administration of justice, according to the judges from Donetsk and Luhansk regions, are threats to relatives in the temporarily occupied areas. According to prosecutors, it is dependence on political structures and pressure from of the local government. Investigators, lawyers and human rights defenders considered corruption to be the most common type of influence.

Judges are particularly vulnerable as they have the most responsibility. Judges from Donbas emphasized in focus groups that they understood the burden and related risks when they became judges.

Judge:

No one found pressure, influence etc. We are all independent; we all knew where we were going. However, on the other hand, you cannot paint the entire region with the same brush […] It is not a secret that we have relatives there.

However, responsibilities of a judge and related risks did not prevent judges from visiting their relatives and property in the ORDLO. Some judges continue living there and their commute to work involves going through crossing points. Perhaps, there was a certain feeling of safety because the state had not evacuated courts until autumn of 2014 while law enforcement and prosecutor's offices had been relocated. Courts were usually not the targets of violent separatist takeovers; they continued their operations in the absence of state authorities to protect them.

The situation changed in the autumn of 2014 when the jurisdiction of some courts was changed, and other judges and courts were transferred to the government-controlled areas. Since then, there have been media reports about arrests of judges during their visits to the non-government controlled territory for family visits or property check-ups.

There are recorded cases of the arrests of judges in the ORDLO territory controlled by the Russian Federation.

The first report about kidnapping of judges appeared in October 2014. It referred to Mykola Starosud, a judge of Donetsk Administrative Court of Appeal, detained by militants of "Oplot" group of the so-called DPR[21]. Two days later, the High Administrative Court of Ukraine published information about the judge's release[22]. There were no details of release provided.

In October 2016, Vitalii Rudenko, a judge of the Appeal Court of Luhansk Region, was apprehended upon entering to the non-government controlled Krasnodon for his father's funeral. He spend nine months held by the militants. During his apprehension, he was accused of arresting the director of water utilities service and leaving the so-called LPR without water[23]. After his release, the judge described being subjected to psychological pressure and torture[24].

In March 2017, Eduard Kaznacheiev, a judge of Donetsk Administrative Court of Appeal, went missing. It turned out that the militants kidnapped the judge when he went to visit his house in Donetsk[25]. He was one of 73 prisoners released by the so-called DPR and LPR in December 2017 in exchange for persons detained by Ukrainian authorities[26].

21 Terorysty vykraly suddyu Doneckoho apelyacijnoho adminsudu [Head of Donetsk Administrative Court of Appeal kidnapped by terrorists] // https://www.pravda.com.ua/news/2014/10/9/7040309.

22 Z polonu zvilneno suddyu Doneckoho apelyacijnoho adminsudu Starosuda [Head of Donetsk Administrative Court of Appeal Starosud released] // https://ua.112.ua/suspilstvo/z-polonu-zvilneno-suddya-doneckogo-apelyaciynogo-adminsudu-starosud-127939.html.

23 Zvilnenyj z polonu ukrayinec rozpoviv podrobyci katuvan u pidvalax bojovykiv [The Ukrainian released from captivity told the details of torture in the basements of militants] // https://www.youtube.com/watch?time_continue=318&v=WEF21KBnOKI.

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25 Boeviki DNR vzjali v zalozhniki sudju Doneckogo apelljacionnogo adminsuda [DPR militants kidnapped the judge of Donetsk Administrative Court of Appeal] // https://lb.ua/news/2017/04/11/363619_boeviki_dnr_vzyali_zalozhniki_sudyu.html?aid=13P92Y.wghot.

26 Zvilnenyj Kaznacheyev: Bez zvernennya V. Medvedchuka do prezydenta RF V. Putina obminu ne bulo b [Kaznacheev after release: There would be no exchange without Medvedchuk's appeal to Russian President Putin] // https://politeka.net/ua/news/562328-osvobozhdennyj-kaznacheev-bez-obrashheniya-v-medvedchuka-k-prezidentu-rf-v-putinu-obmena-ne-bylo-by.

In August 2017, a report appeared that a judge of a district court in Dnipro had not returned after visiting his parents in the non-government controlled area next to Amvrosiivka[27]. There was no additional information about his name or whereabouts.

It is possible that the number of illegal detentions of judges is higher than reported by the media.

> Judges:
>
> N.V. went to her father's funeral. She was taken to a prison.
>
> Our colleague's father died; he travelled to see him and has been missing.
>
> Our colleague went to celebrate 8 March with his wife for a weekend. He celebrated. The neighbor went and snitched. That is it. The exchange is postponed and postponed.

The fact that judges have relatives or valuable property in the non-government controlled areas has negative impact on administration of justice.

In many cases, judges fear for their lives, relatives or property and recuse themselves from terrorism-related cases. Prosecutors stated this practice was very common.

Let us look at the case of Yakubovskyi, Russian citizen, accused of participation in terrorist activities of the DPR. The first-instance court acquitted him in absentia referring to the prosecution's inability to prove the existence of a terrorist organization.

In the Appeal Court of Donetsk Region (Bakhmut), six judges out of nine in the chamber have recused themselves on similar grounds:

> «[Yakubovskyi] *is accused of taking part in activities of the terrorist organization DPR from September 2014 until present time. He was allegedly appointed by the representatives of the terrorist organization to the positon of the "head of supreme court" of the DPR and received significant powers.*
>
> *Accordingly, I consider it necessary to recuse myself for my next of kin and property are in the territory occupied by the DPR terrorist organization and temporarily not controlled by Ukraine. My family members have the need to enter the temporarily uncontrolled territory to take care of the property, and there is a reasonable fear for the life and health of my relatives»*[28].

In another example, judges of a district court in Donetsk region sent a request to the High Council of Justice. They stated that judge V. of the court has recused herself in criminal

27 V ORDLO znyk dniprovskyj suddya [Judge from Dnipro went missing in the ORDLO] // http://www.unn.com.ua/uk/news/1681104-v-ordlo-znyk-dniprovskyi-suddia.

28 See resolutions of judges of the Court of Appeal of Donetsk Region http://www.reyestr.court.gov.ua/Review/70905091, http://www.reyestr.court.gov.ua/Review/70905061, http://www.reyestr.court.gov.ua/Review/70050567, http://www.reyestr.court.gov.ua/Review/70050604, http://www.reyestr.court.gov.ua/Review/70050902, http://www.reyestr.court.gov.ua/Review/70051138.

cases against officials of the so-called DPR since her elderly mother and aunt live in the non-government controlled areas and cannot leave the territory due to their poor health condition. The judge has real fear for their life and health because perpetrators may exert pressure on them[29].

However, these motives did not prevent the said judge from participating in a panel of a criminal case against a penitentiary service official accused of aiding the terrorist organization by coordinating fire at the AFU positions. The suspect was acquitted since *"the prosecutor failed to provide proof that the so-called DPR … is a terrorist organization"*[30].

Prosecutors in focus groups said that judges carry these decisions to the non-government controlled areas, which allows them to move freely.

Prosecutors:

> Judges are not only affected by the fact that their relatives stayed there, but they also leave to go there. There is no legal mechanism to prevent that as they did in the National Police. Because you cannot go to the occupied territory. Unofficially, some judges go there carrying acquittals. The say they had issued an acquittal under 258(3) – in absentia. The person is a bandit, a real militant who killed our soldiers. It is not right… I understand they have relatives but you should either work and follow the law, or move to live there.

> Local general courts with local judges are very lenient towards the so-called separatists and very strict towards the military service members, especially those from volunteer battalions.

According to prosecutors, the solution is the turnover of judges.

Prosecutor:

> If you send all judges to Ternopil and send those judges to work here. They would be impartial and could take lawful decisions… If the entire Lviv court is sent to Kramatorsk, it will make different decisions than the ones made here.

Human rights defenders say that the issue is solved by introducing specialization – cases related to the ATO are assigned to judges who have no fear.

Human rights defender:

> In K. town there was a judge from Alchevsk…When I was monitoring, he was the only one hearing cases related to the ATO. Other judges were not only unaware but they were simply scared.

Another solution suggested by judges and prosecutors is restricting available information about judges and prosecutors issuing decisions. The Unified State Register of Court Decisions requires that names of judges and prosecutors be indicated in the decisions. In late 2017, the legislator took into account this recommendation and amended the Law of Ukraine "On access to court decisions"[31]. According to the amendments, open-access court decisions in criminal cases can omit the names of judges or trial participants due to security concerns. It is unclear whether this solution will work. According to judge Rudenko who spent 9 months in captivity, militants have access even to restricted state registers.

29 Report on interference with activities of judges of Selydove City Court of Donetsk Region, 23 June 2017 // http://www.vru.gov.ua/content/file/1288-0-6-17_.pdf.

30 Verdict of Selydove City Court of Donetsk Region, 7 February 2017 // http://www.reyestr.court.gov.ua/Review/64564716.

Judges and prosecutors fear for their safety when working on conflict-related cases.

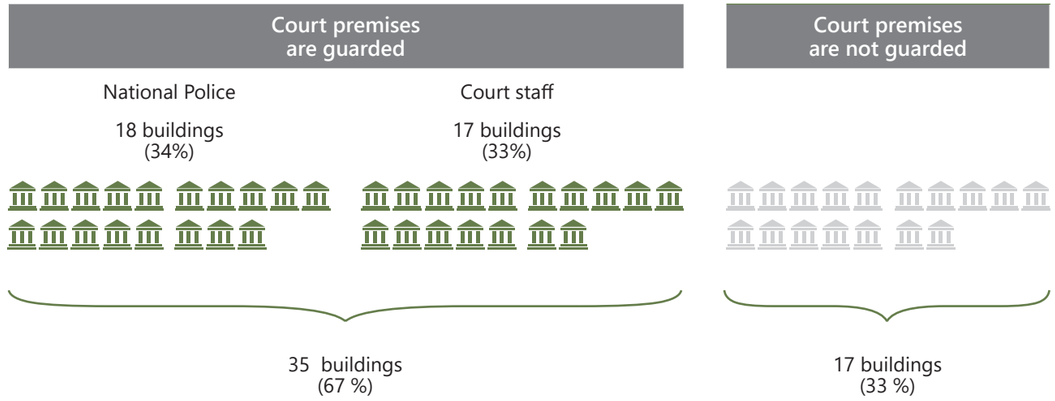
65 percent of judges, 53 percent of prosecutors, and 13 percent of investigators in Donetsk and Luhansk regions responded in questionnaires that legal framework and personal security safeguards do not take into account the specifics of working in armed conflict.

Judges and prosecutors reported widespread attempts to affect trials by supporters of the accused or other parties to the case through demonstrations in front of courts or prosecutor's offices (the latter is not as frequent), or filling the courtrooms with "support teams".

In the courts in Donetsk and Luhansk regions, monitors reported security presence in 35 buildings (67%), including 18 buildings guarded by the National Police of Ukraine on a permanent basis (51% of courts with a guard and 35% of all court buildings). In other cases, court staff were providing security (technical staff, bailiff). There was no security in 17 courts (33 percent). Often, these courts were located directly near the contact line.

Monitoring results:

SECURITY OF THE COURT PREMISES IN DONETSK AND LUHANSK REGIONS



Interviewed guards reported that the number of visitors had increased since the launch of the ATO. Often, armed military visitors enter courts, and there are more conflicts involving visitors in the ATO cases.

31 Law of Ukraine "On amendments to the Code of Economic Procedure, Code of Civil Procedure, Code of Administrative Procedure of Ukraine and other laws», 2017.

Judge:

We had a situation when 30 armed people came. We thought how to solve this issue. I said, 'Let's invite 50 our people with machine guns'. We invited 50; they came with a cart. The issue was solved. This is how it was during the first stages.

Now, however, the problem has been solved, according to the judges, since law enforcement bodies respond in such situations. Judges also found other ways to contain defendants' "support groups".

Judge:

We invite the media. We stay in contact to contain the people who come. We have videotaping. Then, they are a bit more tame because they ask which channel it is, 'is it our channel or not? No?' And they act differently.

Furthermore, in 2017, judges started using trial broadcasting in high-profile cases, including conflict-related proceedings. These broadcasts and recordings are available at the "Judiciary of Ukraine" website (https://court.gov.ua/affairs/online).

The majority of visitors come to support the accused Ukrainian military service members or volunteers, as well as persons accused of aiding terrorism. At the same time, it appears that judges feel more secure in the government-controlled areas. Accordingly, demonstrations or crowds of visitors do not affect the outcome as much as family members or property in non-government controlled areas.

Prosecutor:

Chanting, shouting is one thing. But when strangers try to influence the composition of judges we start defending the court physically. We had a trial in a volunteer battalion case in Donetsk region. And the present parliament members supported this criminal gang protesting at the courts. Now, it has become quieter. Perhaps, it is because there are fewer cases in this category than in early 2014-2016, and the majority of verdicts have been issued. However, it still happens.

Prosecutors think that a possible solution is a closed trial. At the same time, citizens are appalled by this method.

Prosecutors:

The person served in [law enforcement] authorities for 18 years; he was from the old school of the Party of Regions, in charge… He was a former… He was known in Donetsk region. The High Specialized Court said, "It's your man, your problem, you deal with it". Because we realized there would be pressure. And there was pressure until we made it a closed trial. Because I argued that we had witnesses…

The court sided with us, and we had a closed trial. People who made this war… left. And they were paid…

And they start arguing, 'You closed it, you are making decisions there. The prosecutor and the defendant, and the court are together, drinking and sleeping together', something like that.

Judges also receive telephone threats. For instance, in August 2017, three courts in Luhansk region received a phone call from an unidentified person saying, *'As of today, the Ukrainian National Corps is starting an unconditional fight for the rights of ATO soldiers. Any judge who issues a decision to arrest or restrict liberty or fundamental rights of an ATO soldier shall be executed along with the head of the court"*. The head of Luhansk Region Court of Appeal reported this to the High Council of Justice[32].

Prosecutors also expressed fear for the lives of their colleagues.

Prosecutors:

All our people are officially on the search list there [in the so-called DPR and LPR].

Yes, I mean, if they go there, there is no guarantee they will come back …

Starobilsk court is trying the case of Yefremov. They involved our representatives. I am saying it because a case of the former "master of the region", his nickname in the media, is tried in Luhansk region. And it is a lot of discomfort to join the trial living in the region and knowing the person can be shot in the street or on the way home.

To solve the issue, prosecutors suggested assigning high-profile conflict-related cases to courts in other regions to avoid risks for local prosecutors.

In terms of existing protection mechanisms for judges, prosecutors, witnesses and other parties, prosecutors think they do not take into account reality. They might be effective in the time of peace in some cases, but it is impossible to provide security for all persons under pressure in armed conflict.

Prosecutor:

Every day – 30-40 witnesses. It is not realistic to cover the scale. If the prosecutor said, 'I am also scared. I take part in this case, and I can get stabbed near my house'. You have a good hundred of people who need protection. Therefore, this protection loses sense… How can you provide everyone with a trained security specialist?

There is also unjustified dependence from the prosecution in courts in criminal cases.

Lawyers:

In our … court (located next to the SSU), for instance (I do not know if I should mention this) there is an agreement between the SSU and the prosecutor's office. As a rule, all decisions are beneficial to them. Someone external cannot simply influence. I had such experience. There is an agreement. I had a case in pre-trial stage, we needed to help ATO participants and find out what the position was. The head of criminal detection unit hinted to me that I had children and I should not

32 Report on interference with activities of judges from the Head of Court of Appeal of Luhansk Region, 8 August 2017 // http://www.vru.gov.ua/content/file/4839-0-8-17.pdf.

interfere. There are cases they care about; they need to be closed in accordance with indicators, and they do not let "others" interfere.

Judges do not want to argue with the prosecutor's office, investigation authorities. If the prosecutor's office decided that the person is guilty, judges usually support this decision of the prosecutor's office or investigation authorities with a verdict. A person comes to the court as a suspect. If you are a suspect… If the case is terminated, it will definitely not be due to absence of the elements of crime.

Judges from the courts in Donetsk and Luhansk regions submitted fewer complaints about interference than their colleagues across the country did on average.

Since early 2017, the High Council of Justice has been maintaining the open registry of judges' reports on interference with their activities[33]. According to 2017 data, there were 10 reports submitted per each of the two regions (3% of all reports). At the same time, average number of reports from the regions and Kyiv City was 13.4 reports per year.

In four cases, the High Council of Judges refused to respond to reports of judges from Donetsk and Luhansk regions because it did not find interference (systematic complaints against actions of the judge by a case participant, lawful actions of the National Anti-Corruption Bureau and the Specialized Anti-Corruption Prosecutor's Office in relation to a judge). In eight cases, the High Council of Judges took response measures, and in other eight cases, there was no response by the end of 2017. In particular, the High Council of Justice responded to reports about dissemination of false information about the judge (according to the judge) with threats; phone calls and text messages about a specific decision from a person claiming to be an SSU official; the prosecutor's office refusal to register a crime report concerning interference with justice; and submission of disciplinary complaint against a judge by a parliament member. So far, the High Council of Justice has not responded to the reports about individual complaints of parliament members to the SSU (asking to verify court decisions for separatism); publication of personal data of judge concerning her links to the non-government controlled areas and a trip to the Russian Federation; and pressure from trial participants aimed at achieving a certain court decision etc.

Interestingly, in 11 out of 20 cases, judges complained about interference by state officials representing the prosecutor's office, the SSU, the National Anti-Corruption Bureau, the National Police, parliament members etc.

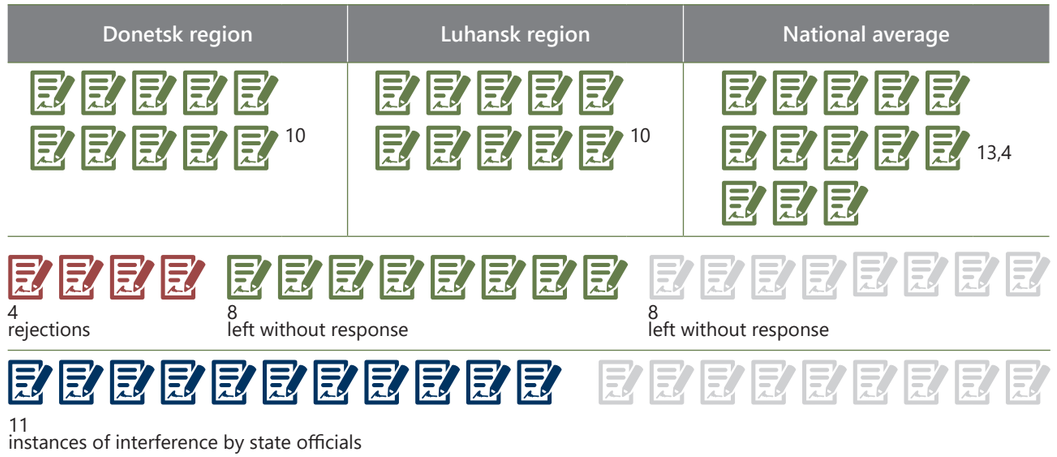
Some judges considered disciplinary complaints or recusal requests as attempts of interference. Every fourth report concerned attempts to hold them liable for corruption interpreted by the judges as pressure.

There were no reports about attempts to interfere by representatives of the so-called DPR and LPR. Instead, there were reports of interference in support of the accused Ukrainian service members and volunteers.

33 Registry of interference reports submitted by judges // http://www.vru.gov.ua/add_text/203.

Statistics:

OFFICIAL COMPLAINTS ABOUT INTERFERENCE WITH ACTIVITY OF JUDGES RELATED TO ADMINISTRATION OF JUSTICE (SUBMITTED BY JUDGES FROM THE COURTS IN DONETSK AND LUHANSK REGIONS)



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According to official data, officials of the justice system from Donetsk and Luhansk regions are prosecuted for criminal offences more often than in other parts of Ukraine.

Corruption undermines independence and impartiality of the representatives of the justice system. According to the National Anti-Corruption Bureau, by 2018[34], the Specialized Anti-Corruption Prosecutor's Office sent 27 cases concerning officials of courts, prosecutor's offices and the SSU for trial, including 12 cases concerning illegal benefits received by judges (two cases against judges from Luhansk region). There cases are on trial, sometimes for years. Only in one case concerning a prosecutor, the court issued a verdict based on a plea agreement.

In 2017, the High Council of Justice suspended four judges from Donetsk and Luhansk regions based on a submission of the Specialized Anti-Corruption

34 https://nabu.gov.ua/reestr-sprav.

Prosecutor's Office regarding criminal proceedings against these judges. One of the judges was suspended twice. Overall, there were 29 judges suspended on these grounds[35].

In 2017, the High Council of Justice also issued 12 arrest/detention warrants for judges, including six warrants against judges from Luhansk and Donetsk regions.

Statistics:

RECORDED CORRUPTION OFFENCES COMMITTED BY JUDGES OF THE COURTS IN DONETSK AND LUHANSK REGIONS

Indictments in cases of illegal benefit received by judges	Suspension in relation to criminal prosecution	Approval of apprehension/ detention of a judge
2 out of 12	4 out of 29	6 out of 12

Despite the absence of convictions, we can reasonably assume that corruption in courts and law enforcement bodies in these regions is at least equally prevalent as in other regions of Ukraine.

In some cases, people who facilitated occupation of certain areas of Ukraine are still serving in state authorities in the field of access to justice. As a rule, it has negative impact on their ability to ensure administration of justice.

Judges, prosecutors, investigators, human rights defenders pointed out in questionnaires that these cases were widespread. 57% of human rights defenders, 22% of prosecutors, 3% of investigators said these cases are widespread and they hamper the administration of justice. According to 20% of human rights defenders, 10% of prosecutors, 12% of investigators, 6% of judges, and 2% of lawyers, these cases are rare and they hamper the administration of justice.

9% of human rights defenders, 12% of lawyers, 6% of investigators, and 5% of prosecutors had heard about such cases but thought that these persons were performing their functions in a proper manner. At the same time, the majority of judges, prosecutors, investigators, and lawyers stated they had not heard about such cases or did not respond to the question.

35 Notice on temporary suspension of a judge, 2017 // http://www.vru.gov.ua/add_text/225.

Questionnaire results:

HOW OFTEN DO PEOPLE WHO FACILITATED OCCUPATION OF CERATIN AREAS OF UKRAINE CONTINUE WORKING FOR JUSTICE AUTHORITIES?

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
These cases were widespread; it hampers the administration of justice	0%	5%	3%	22%	57%
These cases are rare; it hampers the administration of justice	6%	10%	12%	2%	20%
These cases exist, but these persons perform their functions properly	0%	5%	6%	12%	9%

2.4 TRAINING OF JUDICIAL OFFICIALS IN THE MATTERS OF MILITARY AGGRESSION

Questionnaires showed that 85% of judges, 68% of prosecutors, 54% of investigators, 96% of lawyers and 76% human rights defenders reported facing new conflict-related issues due to the armed aggression of the RF in Ukraine.

The justice system officials do not have sufficient training in these issues and sometimes lack skills required to perform their tasks. There are different reasons, including lack of experience, lack of motivation for work and professional development, flaws of the higher education system, non-competitive hiring, lack of high-quality legislation and consistent practice etc.

Judge:

Judges in general courts lack experience in cases related to war crimes.

Representative of the Ombudsman's Office:

Perhaps, it is necessary to increase the capacity of judges, lawyers, and experts in cases related to compensation of material damages caused by shelling. It is necessary to develope coherent case law.

Lawyer:

I think that trainings on cases of treason would be relevant.

During focus groups, most complaints referred to the training of investigators. Some prosecutors said they even had to take over certain functions of investigators to achieve at least some result.

Prosecutor:

We have four investigators. One of them really understands the matter; he is good. The other three have no idea what is happening. One is covered in tattoos, has a silver necklace, a superman. He does not understand anything. The other one is a robot. The last one does not do anything. We write notices of suspicion, reports, conduct investigative actions. The investigation is completely assigned to the procedural supervisor.

Human rights defenders also noticed low quality of investigators' work. In some cases, they explained it with the influx of new, poorly trained staff in combination with the lack of motivation of the old staff.

Human rights defenders:

There is hard evidence, but they are registered in such a way that under procedural rules you have to acquit every criminal, they are not recorded. They are listed clumsily, not recorded, and then they say, 'We have no proof'. It does not mean they do not. They are just not recorded in accordance with the procedure.

… They do not collect evidence, do not investigate. In the ATO zone, there is a practice to join cases and transfer them to other authorities. Then, even material cases concerning terrorist acts are lost. In particular, in some cases we cannot trace anything back… It is a widespread practice. Police transfers it to the SSU, and the SSU transfers it up within its structure. When the case is found, there is nothing except the crime report inside.

Even investigators recognized the lack of training. They said that many staff are the young professionals without experience. In fact, investigators often lack training to perform their functions, notwithstanding specialized skills to investigate cases related to the RF aggression.

Investigators:

Many people have no experience or knowledge. They have to learn from scratch.

It is necessary to restore in Luhansk region. We no longer have an educational institution preparing specialists who practiced here, in district stations, and accumulated the necessary experience.

… Only the young people are working. After the end of hostilities, liberation of S., and some people resigned, others were fired. The team became much younger. Young staff from the temporarily occupied areas came to work… They are all young; there is no one to share experience. People try to start working after college and come across questions to which almost no one can provide answers in their case. The team is new; there is room for development and learning.

The problem is that young unexperienced staff join, and they have to be trained from the beginning.

It was always like that. But we used to have time for this, and now we simply do not.

Human rights defenders also emphasized the lack of experts with specialized training in the military prosecutor's office. According to them, the lack of university education for military lawyers is not the only underlying reason. In addition, there was no competition for positions in the military prosecutor's offices, and the quality of personnel is not the best.

Human rights defender:

There are also questions to the work of the military prosecutor's office… In terms of education, only one faculty in Kharkiv Law Academy is a military faculty – they can prepare 35-36 military lawyers. Therefore, when the military prosecutor's office was created in 2014 with 500 positions, these people, civilian lawyers who used to work in the prosecutor's office went to work there. I was told there was no competition. It was easier to get into the military prosecutor's office. Low quality of personnel. Accordingly, it affects investigation.

Human rights defenders provided examples of judges reluctant to implement novelties in the judiciary process. In particular, some judges were unaware of the amendments simplifying the establishment of the facts of birth and death in civil cases even six months after enactment. Some lawyers pointed out better training of new judges in comparison with the "old school".

Lawyer:

I think there is more trust to the newly appointed judges. They try to use international and European law in their practice. There is case law in their decisions and resolutions. But those with indefinite appointment, especially heads of courts, who had been working in courts for a long time, their credibility has dropped.

Prosecutors pointed out the lack of unified approach and consistency in the application of law in cases related to the armed aggression of the Russian Federation. At the same time, prosecutors emphasized that high-level courts often refrained from generalizing case law in these matters. As a result, there is legal uncertainty, which complicates the work of investigating authorities and the prosecution.

There is extremely high demand among judicial officials for specialized training on issues related to the armed aggression of the RF in eastern Ukraine.

Eighty-seven percent of judges, prosecutors, lawyers and human rights defenders confirmed the relevance of trainings, workshops on activities in armed conflict. Almost half of respondents (49 percent) had taken part in such training, 23 percent had not participated in trainings or known about them, and another 15 percent of respondents were too busy. At the same time, judges and prosecutors were the least informed (45% of judges and 35% of prosecutors thought there were no such trainings).

Judges, lawyers, and human rights defenders showed the highest interest in additional training, while prosecutors and investigators were not interested as much (22% of prosecutors and 36% of interviewed investigators said they did not feel the need for such training for different reasons).

Questionnaire results:

INTEREST IN SPECIALIZED TRAINING ON TOPICS RELATED TO THE AGGRESSION BY THE RF IN EASTERN UKRAINE

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Trainings are relevant; respondent has participated in such trainings	45%	31%	18%	80%	81%
Did not know about such trainings	45%	34%	16%	7%	0%
Did not participate due to high workload	0%	7%	8%	0%	0%

There are specialized training programs on the topic of Russian armed aggression and its impact on administration of justice, but they are created with significant delay.

Most programs are dedicated to the rights of internally displaced persons (hereinafter – IDP). In 2016-2017, the Council of Europe provided support for 24 trainings on European standards of assistance to IDPs. More than 200 lawyers providing secondary legal aid and over 200 staff of the legal aid bureaus took part in these training events[36].

There were separate training events for judges. According to the National School of Judges, training courses for judges were complemented with a number of thematic lectures, seminars, roundtables, and trainings. These covered the following topics: "The role of courts in ensuring respect for human rights and application of international humanitarian law", "Overview of cases initiated by Ukraine against the Russian Federation", "Access to justice for victims of sexual and gender-based violence and victims of conflict", "Reconciliation in conflict-related cases", "Torture and victim protection" etc.

36 Trainings "The rights of internally displaced persons" conducted for lawyers in Donetsk and Luhansk regions. // https://goo.gl/BtXS34.

The 2018 plan includes trainings (six academic hours each) on the protection of the rights of IDPs and conflict-affected population for the judges of district general and administrative courts, judges of civil law chambers in appellate courts.

Moreover, starting 2018, professional advanced training will cover the specifics in cases of crimes against national security of Ukraine and military crimes for judges of general district courts and criminal chambers in appellate courts. Judges of civil law chambers in appellate courts will have classes on civil proceedings in special circumstances (during the anti-terrorist operation) and application of the Law of Ukraine "On temporary measures for the period of the anti-terrorist operation" (2 September 2014). However, these classes are limited to two academic hours[37].

There is no specialized training on these matters for prosecutors. According to the National Academy of the Prosecutor's Office of Ukraine, preparation of submissions to the International Criminal Court is covered only during advanced training for military prosecutors in garrisons acting in the field of criminal justice, as well as in specialized training of candidate public prosecutors. The National Academy of the Prosecutor's Office of Ukraine has published 110 copies of the handbook for military prosecutors, which includes, *inter alia*, application of international humanitarian law (hereinafter – the IHL) in armed conflict and standards of investigation of international crimes[38]. There is no publicly available information about similar training for investigators.

At the same time, human rights defenders expressed opinions about the lack of training for judicial officials and suggested introducing specialized courts or units for conflict-related cases.

Human rights defender:

It is necessary to lobby for some specialized courts or panels of judges specializing in these cases, ATO-related cases, or with the military, or criminal and civil matters.

Questionnaire results:

SUPPORT FOR THE INVOLVEMENT OF INTERNATIONAL EXPERTS

Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
10%	27%	61%	47%	79%

Moreover, 79 percent of human rights defenders supported the idea of specialized courts or court chambers with involvement of international judges, prosecutors, investigators and experts with relevant experience. 61% of lawyers, 47% of prosecutors, and only 10% of judges agreed with this idea.

37 Standardized courses // http://nsj.gov.ua/training/judges/standartizovani-programi-pidgotovki.

38 Military prosecutor's handbook: theory and practice. / [Balan et. al.]. – K.: National Academy of the Public Prosecutor's Office of Ukraine, 2017. – 529 p.

2.5
MATERIAL AND OTHER RESOURCES

Proper working and living conditions usually contribute to effective performance of judicial officials.

Judicial officials from Donetsk and Luhansk regions are less satisfied with the material and technical resources for their work than their colleagues from the capital are. Since the beginning of Russian aggression, their conditions of work have worsened in most cases. Situation with resources for police investigators is the most challenging.

The same number (58 percent) of judges and prosecutors working in Donetsk and Luhansk regions thought that there were sufficient material and technical resources for their work.

At the same time, 42 percent of judges and prosecutors experienced the lack of necessary resources (as opposed to 23 percent of judges and 22% of prosecutors in Kyiv). In addition, approximately three out of four judges who said there were not enough material resources recognized that the situation had exacerbated with the armed conflict, and only one out of four judges noticed an improvement.

Yet, three out of four prosecutors who said there were not enough material resources noticed an improvement over the previous year. Judges highlighted the lack of courtrooms for proceedings due to the lack of space or other resources for normal functioning.

Judge:

> There are not enough rooms. The building can accommodate seven people. The staff proposal is 11. In Bilovodsk, there is room for 3 judges, and there are six. They have 2 courtrooms for 6 judges. It leads to delays. Of course, we try to follow deadlines, but when you come and hear that there is a panel here, a panel there. Video conferences take up the entire day. There is no other solution except to postpone for the next day.

Investigators had radically different opinion on the state of resource procurement – 84 percent of investigators in Donetsk and Luhansk regions are completely unsatisfied with material and technical resources for their work (in Kyiv, 75% of interviewed investigators responded in this way).

In addition, almost 40 percent of the above investigators thought that the situation had been similar before the conflict. Thirty-four percent recognized that that the situation had exacerbated with the armed conflict, while 26 percent noticed improvement during the previous year (in Kyiv, 56% of investigators who were unsatisfied with the situation had noticed improvement).

Questionnaire results:

OFFICIALS OF THE JUSTICE SYSTEM IN DONETSK AND LUHANSK REGION WHO REPORTED THE LACK OF MATERIAL RESOURCES

	Judges	Prosecutors	Investigators
Donetsk region	42%	42%	84%
Luhansk region	42%	42%	84%
Kyiv	23%	22%	75%

Focus group information supports these observations – judges and prosecutors were more satisfied with material and technical resources for their work (not all), and most investigators were not satisfied.

Judge:

> Well, I do not see it as a problem. In our five-story building, every judge arriving from Donetsk received an office with a computer and everything necessary. We have a convoy car; we do not have situations when defendants are not brought before the judge. I do not think it is a problem.

Human rights defenders did not record serious issues related to material and technical resources in courts during monitoring. At least 14 courts in Donetsk and Luhansk regions (27 %) lacked material and technical resources for effective staff performance. In most cases, the staff lack computers and use their own devices. In some courts, premises are uncomfortable for visitors, and the courtrooms are small. The biggest problem is linked to the places for holding defendants in detention in courts. According to observations, there are no convoy premises in 17 courts (33 percent), or they cannot be used for this purpose. Therefore, defendants who arrive for a hearing are forced to wait in convoy vehicles.

Human rights defenders:

> There were excellent material and technical resources everywhere: computers, Xerox machines, paper. These were the courts I monitored. The problem was always with places for detention. When I asked, many courts either said they lost the key, or showed me some door, and clearly, I looked for the quartermaster to get inside. I succeeded. In short, there was nothing there. No human rights guarantees whatsoever. He arrives at 10 o'clock; the trial is in progress. Let us say he needs to wash his face, have breakfast or at least lunch – nothing. The person is brought to some dirty room, meter long and meter wide, and locked. By law, there should be a convoy person on the other side of the wall, and a window – and there is nothing.

> It is like a tradition – there is a room but it is not used. Neither the convoy nor the judges need it. As a result, the defendant is either sitting in a car, or in the cage in the courtroom. He is just sitting in a cage at another hearing (we talked to the defendants) because it is better to be there than in these small rooms.

Of course, they were hiding it [the place for defendants] from me. They were in a regular car when it was cold or hot. The car was metal; everything was hot. It was ridiculous: I asked the convoy if I could speak to them. They said, 'Yes, please'. I asked them, and they responded, 'We haven't eaten in a day'. I asked around why. 'We will feed them now'. They went to buy something in the store.

According to the monitors who took part in focus groups, these issues can be solved even with current level of funding. It depends, first, on the will of the head of the court. They talked about good practice example from a court in Luhansk region with a place for group or individual accommodation of defendants with a separate entrance. There was a microwave, a kettle, and they received food.

As a rule, judges and prosecutors work in better conditions than investigators. Of course, it is demotivating for the investigators.

Investigator:

The prosecutor's office has good resources. Everyone has work computers, printers. They receive paper. For some reason, the prosecutor's office takes care of that while police does not. They asked at the prosecutor's office, 'Come take our paper'. We came, and they had toilet paper, tissues, air freshener in the boxes.

Investigators complained about uncomfortable offices, the lack of or poor condition of service vehicles, lack of office equipment and supplies, lack of fuel and having to buy it at their own expense.

Investigator:

When someone comes to work here, the person is provided with a desk – that is it. You bring your laptop, your printer, and start working. You buy your paper, your ink and work. We had this problem even before the war. It has been and remains like that, and there is no attempts to solve it. No money.

Investigators' opinions about premises of district police units varied depending on the location.

Investigators:

The station in Stanytsia Luhansk was completely destroyed by shelling, and we moved to some bank. We are all in one room. There is the detective service, investigation, the district police officer, and human resources. All in one room.

We were promised the building of the district office. But I do not know when it will happen. Maybe, when we retire.

I would also like to add that in our station the situation is the following: there was no refurbishment in the building, the condition is terrible, walls are leaking, and there are not enough chairs or computer equipment. The remand prison is closed. It is very cold in the rooms.

Some focus group participants said there was refurbishment in the stations, everything had been upgraded, and there was some funding. There were positive examples from Donetsk region.

Investigator:

Every investigator has a personal office, maximum – two investigators per office. It is refurbished. Help yourself, as they say. The material and technical condition is fine. There is functioning transport at the duty station.

The closer to the contact line, the more complaints there were. Often, investigators had to travel very far (even 150-300 km at once) to receive an approval from a prosecutor or a judge for investigative action or measures to ensure criminal proceedings.

Investigators:

The lack of vehicles… Units working on criminal proceedings have old cars – what was available and was not taken.

Usually, on our own, and almost no funding for gasoline, fuel.

Once, Kyiv provided used cars in 2014-2015, they are being repaired.

Every car goes 400-500 km per day.

Yes, the roads are bad. Vehicles wear out fast, in two-three years.

We do not have convoy as such. It is difficult to convoy people. There is a duty car, one per district. It has been fixed many times. The new cars… The superiors are driving them.

You get on the bus with the apprehended person you want to detain and go. A regular bus. No handcuffs, nothing. Then you wait for the convoy to take him. The convoy is coming from B. 150 km away to take one person.

Investigators also complained about difficulties in using covert investigative actions. To produce motions for these actions, one needs to have a special protected device. Not all investigators have access to such devices, and motions are often produced by hand.

Investigator:

It took me a week to write the motion. It was full package, many copies. By hand, not on the computer.

Once the prosecutor approves the motion, the special service has to transfer it to the court of appeal, and it happens once per week. Because of the lengthy bureaucratic procedures, covert investigative measures sometimes become redundant.

The interviewed judges also talked about the absence of a female unit in remand prisons in the towns with local courts in Luhansk region. It requires additional measures to organize a court hearing and bring women to court hearings, as there is no possibility for holding women in a local remand prison. It creates obstacles for hearings because they have to coordinate with the transfer of accused women from another region.

Judge:

There is no female unit in the remand prison. The closest prison for transfer is Kharkiv remand prison. Not every day… There is a schedule. They are transferred… In detention cases, for women… If it is a panel, you need to coordinate with three people…

Judicial officials are least satisfied with the accommodation and household situation.

Questionnaires show that only 1 percent of judges, 8 percent of prosecutors, and 16 percent of investigators in Donetsk and Luhansk regions consider provisions for accommodation of experts in the ATO zone satisfactory. They are convinced that housing is affordable (judges and prosecutors) or provided by the state. The majority of respondents admitted that it was difficult to find housing, there were no official rent agreements, and the rent was too high.

Questionnaire results:

HOUSING SITUATION OF THE JUSTICE SYSTEM OFFICIALS IN DONETSK AND LUHANSK REGIONS

UAH **442** monthly assistance for utilities provided to internally displaced persons

Focus group participants were unanimous in saying that rent prices went up due to relocation of people from the occupied areas. Though the judge's salary is sufficient to rent an apartment and pay utilities (7-8 thousand hryvnia), many judges spend half of their monthly salary on these needs. The state compensates only 442 hryvnia. The administrative court staff is in the worst situation – their salary is insufficient to rent separate accommodation. This leads to an increase in staff resignations.

Judges:

I have to move almost every six months. Either the place is sold, or rent goes up, and we cannot show it in our statements because no one wants an official agreement – they would need to declare income and pay taxes, and no one in K. wants that. The only option is to pay cash.

…OK, judges have salaries, but the apparatus – you will not envy their salary.

…Our staff have to live with 4-6 people in one apartment to afford rent and utilities...

Some people quit and went back to those territories.

And these people worked 5-7 years in courts; they know the system and are qualified. Still people leave because life passes, they do not get married or have children. Some people were able to bring their families; others were not able to bring their family.

We asked the Minister of Finance officially to consider the possibility of paying for housing. We referred to various legal documents. We received a direct rejection.

Many investigators are IDPs; they either rent apartments or live with their relatives. IDPs receive monthly support for housing, which is a rather small amount. According to investigators, the state has started to address the housing problem. Some investigators received service housing, but only a small percentage (10-15 percent).

Investigator:

There are no possibilities to provide housing in Starobilsk. There are no new houses under construction and no living premises. I know that staff in Sievierodonetsk received flats. Last year and this year.

To solve the housing issue, participants of focus groups suggested restoring non-residential buildings, abandoned dormitories, and re-purposing them for service housing, as well as providing affordable loans for personal construction.

Judges and prosecutors usually receive a salary, which is 1.5 – 3 times higher than the investigator's salary, and they complain about salary size less often. The court apparatus staff and investigators are extremely unsatisfied with their salaries.

For many investigators with long history of employment, the prospect of receiving a pension along with a salary is an incentive to continue working. Relatively high pensions keep investigators from resigning. In addition, investigators at the contact line are entitled to bonuses. However, it turned out that while investigators in Luhansk region received bonuses, investigators in Donetsk region did not. Participants of focus groups concluded that these bonuses depend on the integrity of the regional police leadership.

FINDINGS AND RECOMMENDATIONS

1

Many courts in Donetsk and Luhansk regions are understaffed for general and conflict-related reasons (difficulties in arranging accommodation in a new place of residence, threats to physical security, lack of reserve staff etc.).

Two thirds of interviewed judges in Donetsk and Luhansk regions thought their workload had increased in the armed conflict. At the same time, average workload of judges in Donetsk and Luhansk regions is lower than the national average with exception to local general courts.

The prosecutor's offices and, especially, police investigation units experience shortage of human resources. The lack of investigators near the contact line has paralyzed investigation in most criminal cases.

The majority of prosecutors in Donetsk and Luhansk regions reported an insignificant conflict-related increase in their workload. At the same time, more than half of police investigators in Donetsk and Luhansk regions faced a significant increase in workload that had a negative impact on effectiveness of investigation. This issue is more serious in localities closer to the contact line. Investigation of criminal cases is also impeded by excess workload of expert institutions.

The armed conflict led to a significant increase of caseload for lawyers in the free legal aid system, especially in Luhansk region.

2

There are serious challenges in ensuring independence and impartiality of judges, prosecutors, and investigators in Donetsk and Luhansk regions. On the one hand, these are long-standing issues: clans of officials and oligarchs had controlled authorities in the justice system. However, new forms of dependence have emerged as well.

The most common form of influence on administration of justice, according to the judges from Donetsk and Luhansk regions, are threats to relatives in the temporarily occupied areas. According to prosecutors, it is dependence on political structures and pressure from of the local government. Investigators, lawyers and human rights defenders considered corruption to be the most common type of influence.

There were recorded cases of the arrests of judges in the ORDLO territory controlled by the Russian Federation. The fact that judges have relatives or valuable property in the non-government controlled areas has negative impact on administration of justice. At the same time, on average, judges in Donetsk and Luhansk regions were less likely to complain about interference than their colleagues across Ukraine were.

Judges and prosecutors fear for their safety when working on conflict-related cases. Moreover, people who facilitated occupation of certain areas of Ukraine are still serving in state authorities in the field of access to justice. As a rule, it has negative impact on their ability to ensure administration of justice.

3

Judicial officials do not have sufficient training in international humanitarian law and sometimes lack skills required to perform their tasks. There are different reasons, including

lack of experience, lack of motivation for work and professional development, higher education system flaws, non-competitive hiring, lack of high-quality legislation and consistent practice etc.

At the same time, there is extremely high demand among judicial officials for specialized training on issues related to the armed aggression of the RF in eastern Ukraine. There are specialized training programs on the topic of Russian armed aggression and its impact on administration of justice, but they are offered with delays.

4

Judicial officials from Donetsk and Luhansk regions are less satisfied with material and technical resources in comparison to their colleagues from Kyiv. Since the beginning of the Russian aggression, their conditions of work have worsened in most cases. Situation with resources for police investigators is the most challenging.

Judicial officials are least satisfied with the accommodation and household situation.

A comprehensive approach to these issues should encompass the following:

- completing the planned consolidation of courts, filling vacant positions of judges, prosecutors and investigators in eastern Ukraine, including through transfers from other regions (*competent authorities – State Court Administration of Ukraine, High Qualification Commission of Judges of Ukraine, High Council of Justice, the President of Ukraine*);
- specialized training for judges, prosecutors, investigators, and lawyers, in particular, on international humanitarian law and combating inconsistent application of laws (*competent institutions – institutions of education and advanced professional training of judges, prosecutors, lawyers with involvement of international and local experts*);
- developing a procedure to prevent assignment of conflict-related cases to judges with ties to the occupied areas and recommending judges to refrain from visits to the occupied areas (*competent authority – Council of Judges of Ukraine*);
- developing and adopting a concept and necessary legislative framework for a specialized court on international crimes with the involvement of international judges (in the capacity of lay judges), as well as international prosecutors and investigators; implementing relevant decisions after de-occupation of Donbas (*competent authorities – Ministry of Justice of Ukraine, Judicial Reform Council /advisory body to the President of Ukraine/, Verkhovna Rada of Ukraine*);
- introducing the state support program for officials of the justice system resettled from the occupied areas or living in high-risk environment (*competent authorities – Cabinet of Ministers of Ukraine, State Court Administration of Ukraine, Verkhovna Rada of Ukraine*).

3
LEGAL FRAMEWORK FOR ADMINISTRATION OF JUSTICE IN UKRAINE

3.1
SUPPORT MECHANISMS FOR ADMINISTRATION OF JUSTICE IN SPECIAL CIRCUMSTANCES

Ukrainian legislative framework was unprepared for prompt response to challenges posed by the Russian military aggression against Ukraine.

The law does not advise the justice system bodies on how to act during hostilities.

After pro-Russian separatists seized key state authorities in Donetsk and Luhansk regions in spring 2014, Ukraine took steps to evacuate prosecutor's offices and law enforcement agencies, yet courts stayed to continue their operations. For a certain amount of time, courts continued working even under occupation and shellings. They were disorganized in the absence of a rehearsed action plan for such circumstances or any instructions or recommendations from the capital.

> Judge:
>
> People used to peaceful existence find themselves amidst a war. Of course, many have left. Those who stayed did not know how to act. We were at work in court but people failed to appear, and we received almost no cases. Though the city of Popasna was periodically shelled in the fall of 2014, the situation in the court began to stabilize gradually.

> … I remember returning from work after a shelling. I saw smoke and children playing football nearby. It was surreal and hard to believe. However, that was the reality. It is no wonder that people started going to courts again to have their issues solved.
>
> … Then, the most acute phase of severe battles for Debaltsevo started in mid-January 2015. Popasna is situated nearby. I do not know why, but the terrorists also shelled us very often during that time. The war in the city peaked. More people were leaving than in the summer of 2014. However, our court continued working. It was not a regular mode. Some of our staff had left as well. Others had no means and were forced to stay...
>
> … I stayed because of my work. In fact, we thought about terminating operations. Some courts in the area next to the frontline (like ours) had shut down. However, we realized that it would leave our region without justice[39].

Many problems that require response from the legislative bodies have emerged, and some of them have persisted. As a rule, legislators were too late.

After occupation of ORDLO, the legislative branch took steps to provide residents of the occupied areas with access to courts in the areas controlled by the Ukrainian government.

First decisions that filled the legal gap came out only on 12 August 2014. The Law "On administration of justice and criminal proceedings during the anti-terrorist operation" (entered into force on 20 August 2014)[40] changed territorial jurisdiction of cases assigned to courts in the area of anti-terrorist operation, as well as jurisdiction over criminal cases concerning offences committed in that area, for the duration of the anti-terrorist operation.

Therefore, jurisdiction of 60 courts in Donetsk and Luhansk region was reassigned to courts in these and other regions. The staff were offered a transfer to other courts in the areas controlled by the Ukrainian government. However, judges were not able to do that while the High Qualification Commission of Judges was not working (its members were subject to lustration, and new members had not been appointed). In December 2014, the Council of Judges introduced a provisional mechanism for assignment of judges from the occupied areas to other courts[41]. It provided an opportunity to receive salary without adjudicating cases. Later, this mechanism was formalized through a law[42]. Afterwards, it was transformed into a mechanism of temporary secondment of judges to other courts with not only a salary but also powers to adjudicate cases in other courts[43]. However, these mechanisms had significant shortcomings in practice. Even in 2017, the issue of secondment of all judges who expressed their willingness to transfer from courts in the occupied areas has

39 Kandydat u suddi VS Mykola Mazur: «Pamyatayu, yak ishov z roboty pislya odnoho iz obstriliv. Dyvlyusya – dym, a nepodalik dity hrayut u futbol» [Candidate Supreme Court Judge Mykola Mazur, "I remember walking from work after a shelling. I saw smoke and children playing football nearby] // https://ua.censor.net.ua/r462097.

40 Law of Ukraine "On administration of justice and criminal proceedings during the anti-terrorist operation", 2014.

41 Decision of the Council of Judges no. 75 on temporary assignment of judges of the courts of Donetsk and Luhansk regions, 22 December 2014 // http://rsu.gov.ua/ua/site/download?doc=L3VwbG9hZHMvZG9jdW1lbnRzL3Jpcy03Ni0yMzEyMjAxNC5wZGY=.

42 Paragraph 10, Chapter II "Final and Transitory Provisions", Law of Ukraine "On ensuring the right to fair trial", 2015.

43 See Art. 55, Law of Ukraine "On the Judiciary and Status of Judges", 2016.

not been finalized. Based on the updated legislation, the High Council of Justice issued a formal decision[44] to eliminate 48 local general courts in Donetsk and Luhansk regions that had not been functioning since 2014 due to the occupation. The decision was aimed at ensuring proper transfer of judges to a permanent place of employment at other courts without competition.

Another mechanism for ensuring administration of justice by courts in the occupied areas was to change their location, which did not require a transfer of judges or staff. For instance, on 12 November 2014, the President of Ukraine changed locations of seven largest courts in Donetsk and Luhansk (local and appellate economic and administrative courts, as well as general appeal courts).

However, due to delayed decisions of state authorities, the majority of cases remained in the occupied areas, whereas the infrastructure of relocated courts was rebuilt from scratch during several months.

At the same time, in decisions in Khlebik v. Ukraine and Tsezar and Others v. Ukraine, the European Court of Human Rights recognized that Ukraine has taken all the measures available to it to organize its judicial system taking into account the objective obstacles that the Ukrainian authorities had to face[45].

Electronic case management envisioned by the law adopted on 3 October 2017[46] includes processing and storage of case files in electronic format. In the future, it would prevent the loss of case files and executive documents, but this is merely but a future prospect that will not affect past relations.

The Military Prosecutor's Office has been reinstated upon the President's initiative. A possibility of establishing military (war crime) courts has been declared.

In 2012, the new Criminal Procedure Code eliminated military prosecutor's offices. However, under the circumstances of Russian military aggression, the territorial structure, principles of staffing (with civilians) and organizational principles of prosecution authorities were insufficient for the level of threats to national defense. On 14 August 2014, the parliament adopted a law to restore military prosecutor's offices in the prosecution service[47]. These provisions are reiterated in the new Law "On Public Prosecutor's Office" adopted on 14 October 2014.

Military prosecutor's offices include the Main Military Prosecutor's Office as a unit of the Prosecutor General's Office, regional military prosecutor's offices, and garrison military prosecutor's offices.

44 High Council of Justice decision "On termination of court operations in relation to natural disasters, hostilities, counterterrorist activities or other extraordinary circumstances", 25 January 2018 // http://www.vru.gov.ua/act/13046.

45 See Khlebik v. Ukraine, ECHR, 25 July 2017 //https://rm.coe.int/case-of-khlebik-v-ukraine-1-ukr-ed/1680738311, Tsezar and others v. Ukraine, ECHR, 13 February 2018 //http://hudoc.echr.coe.int/eng?i=001-180845.

46 Law of Ukraine "On amendments to the Code of Economic Procedure, Code of Civil Procedure, Code of Administrative Procedure of Ukraine and other laws», 2017.

47 Law of Ukraine "On amendments to the Law of Ukraine "On Public Prosecutor's Office" concerning establishment of military prosecutor's offices", 2014.

In August 2015, the Prosecutor General established the Military Prosecutor's Office of the ATO forces as a regional prosecutor's office. Its mandate covered several regions, including Kharkiv, Donetsk and Luhansk regions. When regular prosecutor's offices are not functioning in certain areas due to extraordinary circumstances, their functions can be vested with the military prosecutor's offices.

At the end of 2014, there were 702 positions at the military prosecutor's offices (including 639 positions of prosecutors and investigators); in 2015 – 837 positions (including 659 positions of prosecutors and investigators); in 2016, there were 958 positions (including 668 positions of prosecutors and investigators); and at the end of 2017 there were 974 positions (including 677 positions of prosecutors and investigators).

The military prosecutor's office is responsible primarily for ensuring investigation and procedural guidance in pre-trial investigation of military and other criminal offences committed by the military personnel, as well as representing the state prosecution in these cases.

Unfortunately, the potential of the military prosecutor's offices was often used in a different area. Military prosecutors focused on military crimes instead of identifying and investigating all crime committed by military personnel (non-specific offences committed by the force members were left for investigation by the National Police investigators, which had a serious impact on quality and promptness of investigation, or observance of law among the military members). Instead, military prosecutors started investigating crimes committed by civilians (corruption, economic crimes, crimes against property etc.) not only in the ATO area, but also across Ukraine[48].

For instance, in 2016, military prosecutor's offices submitted twelve times more proceedings on general service-related offences than proceedings on military service-related offences[49].

Prosecutor:

There is part 10 of Article 216 of the CPC of Ukraine, which defines the investigation jurisdiction, and the prosecutor can determine the jurisdiction in a case. The military prosecutor's office is often using this provision, but, in my view, in a slightly unnecessary direction – in cases of taxes, bribes in police, foresters. The Chief Military Prosecutor, who is a deputy of the Prosecutor General, is using this provision actively. However, the police is investigating cases of murders, "strange" suicides, rape, or robberies in the ATO area committed by the military personnel. Military prosecutor's office does not want to investigate these cases. They investigate what is "interesting", even if the perpetrator is not a member of the military forces. Two years ago (2015), there were 37% of indictments outside of their jurisdiction among those sent to court, last year there were 52% of such indictments. There are many cases not connected with the military.

48 Banchuk O. Svoboda, yaku my vtrachayemo [The freedom we are losing] // Dzerkalo tyzhnya. – 21 April 2017. – https://dt.ua/internal/svoboda-yaku-mi-vtrachayemo-240491_.html.

49 See Integrated Crime Report 2016

According to the law adopted on 18 January 2018[50], the AFU Headquarters was given the authority to engage and utilize forces and means (personnel and experts, material and technical means) of the Military Prosecutor's Office upon consent of relevant supervisors with the purpose of ensuring national security and defense, response and deterrence of the military aggression by the Russian Federation. This authority makes the prosecutor's office dependent on the military command, which contradicts constitutional principles relating to the prosecutor's office.

In March 2017, the President stated that he was planning *"to suggest that specialized military courts be reinstated in accordance with existing international practices"*[51]. In his view, military experts and judges should evaluate actions of commanders in combat. Decisions of military courts will not raise questions among the military personnel.

This statement followed a conviction and imprisonment of a general whose actions led to a loss of a military cargo plane and death of military officers (the plane was brought down by terrorists). However, the conviction stems from investigation and prosecution in this case conducted by the military prosecutor's office. The President also suggested the latter. The above position seems inconsistent since there is a possibility that that the President will criticize verdicts of military courts based on the work of the military prosecutor's offices.

In November 2017, the President announced plans to introduce a draft law on the war crime court[52]. The concept for establishment and functioning of a military or war crime court(s) is unknown. Possibly, it will utilize the experience of countries where war crime courts can be established during war.

Military courts existed in Ukraine until 2010. They were adjudicating disputes involving military force members; during the last years of their existence, they processed criminal cases only. Judges of these courts were military force members and received additional remuneration as military personnel. Ukraine eliminated this mechanism due to the lack of need to have military courts in peaceful times, as well as questions raised about violations of the independence principle.

The Parliament took steps to increase effectiveness of criminal proceedings, including measures that provide for restriction of rights that casts doubts on whether it is constitutional.

On 12 August 2014, Verkhovna Rada adopted two laws that allowed the following in the area of the anti-terrorist operation:

50 Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions", 24 February 2018.

51 Publication in the Facebook profile of Petro Poroshenko, 28 March 2018 // https://www.facebook.com/petroporoshenko/photos/a.474415552692842.1073741828.474409562693441/976565305811195.

52 Hlava derzhavy pro novyj Verxovnyj Sud: My vidkryvayemo novu storinku v istoriyi pravosuddya u nashij krayini [The President about the new Supreme Court: We are turning a new page in the history of justice in our country] // http://www.president.gov.ua/news/glava-derzhavi-pro-novij-verhovnij-sud-mi-vidkrivayemo-novu-44382.

1) Preventive detention of persons suspected of terrorist activities for more than 72 hours, not exceeding 30 days, upon the prosecutor's approval without a court decision[53];

2) In cases where investigating judges cannot exercise their powers, such powers can be temporarily transferred to relevant public prosecutors[54].

Human rights organizations criticized these laws as inconsistent with the Constitution of Ukraine and international obligations. Soon after, the Verkhovna Rada of Ukraine declared a forced derogation from a number of duties under the ICCPR and the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the anti-terrorist operation until final termination of the military aggression by the Russian Federation, restoration of constitutional order in the occupied areas of Ukraine[55].

However, we found no examples of these provisions being used in practice. According to the prosecutors, they were not used in practice due to their vague wording.

To overcome impunity, a law adopted on 7 October 2014[56] introduced special (in absentia) court proceedings in cases of certain crimes against national security, public safety and corruption in the absence of a suspect absconding from investigation and subject to interstate/international search warrant. The law also provides for mandatory publication of the summons in special pre-trial investigations in the nationwide media and official websites of the investigation authorities.

According to the law adopted on 15 January 2015[57], the scope of proceedings in absentia was extended to include failure to appear before an investigator, prosecutor, or a court by a suspect/accused person in the temporarily occupied areas of Ukraine or in the area of the anti-terrorist operation, provided there is a search warrant (not necessarily interstate or international).

The legislator also introduced court summons and notices online, which can be used, inter alia, in cases of residents of ORDLO areas.

On 27 November 2014, State Enterprise "Ukrposhta" discontinued mail delivery in the areas of Donetsk and Luhansk regions outside of the Ukrainian government's control. Since then, courts used various means to notify persons residing in the occupied areas – from sending notices by electronic mail or a phone to publishing them on their websites or in the media.

53 Law of Ukraine "On amendments to the Law of Ukraine "On combating terrorism" on preventive detention in the ATO area of persons involved in terrorist activities exceeding 72 hours", 2014.

54 Law of Ukraine "On amendments to the Criminal Procedure Code of Ukraine concerning special regime of pre-trial investigation in war, emergency or the area of anti-terrorist operation", 2014.

55 Resolution of Verkhovna Rada of Ukraine "On the Statement of Verkhovna Rada of Ukraine on Ukraine's derogation from obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms», 21 May 2015.

56 The Law of Ukraine "On amendments to the Criminal and Criminal Procedure Codes of Ukraine on certainty of punishment for crimes against national security, public safety, and corruption", 2014.

57 The Law of Ukraine "On amendments to laws of Ukraine on certainty of punishment for perpetrators absconding in the temporarily occupied areas of Ukraine or in the area of the anti-terrorist operation", 2015.

However, in most cases, these means of notification were not recognized as proper under the law.

Only the law adopted on 3 October 2017 (entry into force – 15 December 2017) established that the court shall summon and notify persons through official website of the judiciary (with a link to the relevant decision in the Unified State Register of Court Decisions) in cases where residential or employment address of a party is located in the temporarily occupied area or in the area of anti-terrorist operation. The summons (notification) shall be published no later than twenty days before the date of the first hearing or ten days before any other hearing or an individual procedural action[58]. Once the notification is published, the person shall be considered notified of the date, time and place of the hearing. The courts shall inform relevant parties about issued court decisions in a similar manner. Therefore, the issue of improper notifications was resolved for the courts. However, it persists for the ORDLO residents – it is unlikely that they are able to follow publications on all court websites.

The same law allows for withholding the names of judges and parties in court decisions in criminal cases available for the public through the Unified State Register of Court Decisions for "security reasons".

Problems that require legislative change remain unsolved.

Eighty-eight percent of judges, prosecutors, investigators, lawyers and human rights defenders from Donetsk and Luhansk regions in their questionnaires admitted that it was necessary to adopt specific legislation to regulate relations in the justice field in armed conflict since the existing regulations were insufficient and tailored predominantly to peaceful times. At the same time, human rights defenders warned that specific legislation should not introduce unjustified restrictions of human rights under the guise of war.

Participants of focus group interviews pointed out, first, inconsistency between the legal assessment of the situation (as anti-terrorist operation) and actual circumstances.

Judge:

This situation has been going on for three years. It was named the anti-terrorist operation. I do not know, but do operations in other countries last for three years? Without a concrete plan etc. When will the legislator define what is happening here? How do we act in these circumstances?

Prosecutor:

Another problem is that we have a special period – martial law. It affects everything while the state leadership is trying to avoid the situation. It leads to legal uncertainty at all levels. Because it is a special period – we are not at war really.

It significantly obstructs the development of case law on crimes related to the armed conflict, such as terrorism, participation in illegal armed groups, or aggression or armed conflict. Sadly, the situation will be further exacerbated by the new law that introduces a new legal term

58 Law of Ukraine "On amendments to the Code of Economic Procedure, Code of Civil Procedure, Code of Administrative Procedure of Ukraine and other laws», 2017.

to replace the "anti-terrorist operation"– "measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions"[59]. The situation will no longer be an anti-terrorist operation but will not be recognized as a war. Clearly, it will lead to new difficulties in qualification of crimes.

In their questionnaire responses, 89 percent of human rights defenders, 86 percent of lawyers, 73 percent of prosecutors, 50 percent of investigators, and 48 percent of judges responded that the lack of clear qualification of the armed conflict in eastern Ukraine had significant impact on the effectiveness of administration of justice in relation to crimes committed in the ATO area. Eleven percent of human rights defenders, 23% of prosecutors, 37% of judges, 43% of investigators thought it had an impact, but not a significant one. At the same time, 4% of persecutors, 6% of judges, and 7% of prosecutors were convinced that the lack of clear qualification of the armed conflict does not affect administration of justice in cases of crimes committed in the ATO area.

Questionnaire results:

THE IMPACT OF LEGAL FRAMEWORK FOR THE ARMED CONFLICT ON THE EFFECTIVENESS OF JUSTICE

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Significant impact	48%	73%	50%	86%	89%
Insignificant impact	37%	23%	43%	14%	11%
No impact	6%	4%	7%	0%	0%

Persons under investigation or on trial at the time of occupation were in a legal vacuum – they have remained in detention, and a number of their rights are being violated, such as the right to liberty or fair trial. When the so-called "DPR" or "LPR" issue decisions in relation to these persons, Ukrainian authorities do not recognize such decisions. There is a similar problem concerning those who were serving sentences and were released by the decisions of the "DPR" or "LPR".

Prosecutor:

People are released from detention facilities in those areas with the "LPR" certificates of release on the grounds of amnesty or other grounds. The prosecutors are obliged to file motions with the court to have the persons locked up again because they had not served their sentence. An illegitimate authority released the person. The person showed up, "Put me on a registry, administrative oversight". The person is apprehended and taken to the remand prison. The person is shocked…

59 Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions", 23 February 2018.

People come every day saying, "That's it, guys, I served my sentence".

The courts found a solution. Together with the prosecutor's office, they see the grounds for release. The person is arrested, the prosecutor's motion is satisfied, and the court releases the person on the same grounds under the Ukrainian law.

- Yes, but it was the court that found this mechanism, but the court is not obligated to do this. It is necessary to check his behavior, whether he committed any offences during this period. We cannot check that.

Often, witnesses or other parties live in the occupied territory. There is a way to contact them by phone and they are ready to testify, but they do not want to go to the government-controlled territory. Under the procedural law, they can be questionedin a videoconference. However, the law requires that the person be at the premises of a Ukrainian justice authority for identification purposes.

Investigator:

There is an investigative action in the form of an interrogation in a videoconference. The requirement is that the interrogated person, such as a witness or a victim, is at a state authority for identification etc. However, he cannot come to any authority. That is why our investigative actions are illegal.

To solve this issue, investigators suggested using passport images transferred online or a more complicated method – videoconferencing through the OSCE or Red Cross missions.

Similar problem arises when investigation requires a DNA sample from the person living in the occupied areas. The samples also could be obtained through the Red Cross mission. It would require legal recognition of this method and the organization's consent.

Earlier, we have discussed the lack of independence of judges when their close relatives or properties remain in the occupied areas. It is clear that legal and infrastructural changes are necessary to solve this issue.

Introduction of the measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions through Presidential orders with restricted access increased the level of legal uncertainty.

On 30 April 2018, the President of Ukraine issued an order "On approving the decision of the National Security and Defense Council "On the large-scale anti-terrorist operation in Donetsk and Luhansk regions""[60]. The decision of the National Security and Defense Council has not been published – the document is for internal circulation only. According to the President's website, it changed the format of the large-scale anti-terrorist operation introduced in 2014. The website also says that the President signed the Decree of the

60 Presidential Decree no. 116/2018 "On the decision of the National Security and Defense Council "On large-scale anti-terrorist operation in Donetsk and Luhansk regions", 30 April 2018. URL: http://www.president.gov.ua/documents/1162018-24086. Decision of the National Security and Defense Council is for authorized use only.

Commander-in-Chief of the AFU "On the launch of the United forces operation to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions" whereby the operation to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions started at 2pm on 30 April 2018. Though the President of Ukraine said the ATO was over[61], there have been no legal document published to confirm this statement.

It results in legal uncertainty as many provisions (on judiciary, criminal liability, tax, social security etc.) are linked to the ATO regime. At the same time, it is unclear whether the ATO is officially over, and whether these provisions are valid.

For instance, the legislator had linked certain special mechanisms (such as notification about court hearings through the official website of the judiciary) directly to the ATO regime. Extension of these mechanisms can be relevant if the ATO is replaced with the measures to ensure national security and defense, response and deterrence of the RF military aggression. However, there are no legal grounds for such extension now. On the other hand, there have been no published legal provisions terminating the ATO.

3.2
COMPENSATION OF DAMAGES CAUSED BY THE ARMED AGGRESSION OF THE RUSSIAN FEDERATION

Cicero said that money is the sinews of war (nervus belli pecunia). According to the Ministry of Defense of Ukraine, the damages caused by the RF armed aggression in Donbas amount to approximately USD 50 billion[62]. Both the military personnel, and the civilians, incur property damages as shellings destroy their homes, transport, and other property.

Victims face the need to find means to restore their financial condition at least in part. Citizens of Ukraine file claims with national and international courts, including the European Court of Human Rights. According to the Unified State Register of Court Decisions, victims tend to use one of the two available legal channels to receive compensation – a lawsuit against the Ukrainian government pursuant to the Law of Ukraine "On combating

61 30 kvitnia rozpochalas operatsiia Obiednanykh syl iz vidsichi ta strymuvannia zbroinoi agresii Rosii na Donbasi – Prezydent pidpysav Ukaz [Operation of the Joint forces to counteract and contain military aggression by Russia in Donbas started on 30 April – the President has signed the decree]. URL: http://www.president.gov.ua/news/30-kvitnya-rozpochalas-operaciya-obyednanih-sil-iz-vidsichi-47206.

62 U Minoborony ocinyly zbytky vid rosijskoyi ahresiyi na Donbasi v 50 mlrd dolariv [Ministry of Defense estimated damages from the Russian aggression in Donbas in the amount of 50 billion dollars] // https://ua.112.ua/ato/u-minoborony-otsinyly-zbytky-vid-rosiiskoi-ahresii-na-donbasi-v-50-mlrd-399301.html

terrorism"[63], or a lawsuit against the RF based on the civil law and the Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal order in the temporarily occupied areas of Ukraine". None of these has resulted in actual compensation, though there are cases when courts awarded such compensation.

The case law regarding the obligation for Ukraine to compensate damages resulting from terrorist acts is inconsistent due to ambiguity of the legal framework (even at the stage of cassation). So far, it has not been in favor of the plaintiffs.

In April 2014, the anti-terrorist operation was launched in Ukraine[64]. Therefore, courts often apply the Law of Ukraine "On combating terrorism" to legal relations stemming from damages in the area of the ATO or during its conduct.

According to article 19(1) of the Law, "compensation of damages incurred by the citizens from the terrorist act shall be organized at the expense of the State Budget of Ukraine in accordance with the law with subsequent collection of the amount from the persons who had inflicted such damage in accordance with the procedure established by law". Terrorist act is a criminal act involving the use of arms, causing explosion, arson or other actions listed under article 258 of Criminal Code of Ukraine (hereinafter – the CC).

Compensation of damages caused by terrorists at the expense of the state is in line with international practice. For instance, according to the French law (9 September 1986), victims of terrorism receive compensation from the special state fund. The fund is formed through mandatory payments from insurance agreements, as well as the money collected from perpetrators.

In Ukraine, there is no mechanism for compensation of damages caused by terrorists despite the relevant duty of the state. Courts have different approaches to this issue.

> Human rights defender:
>
> That is why, before there is political will to say it is an aggression, before it happens not on the unofficial level, but on the state level, there will be no changes to the legislation... Because there is a problem, and there were several cases on compensation for the property left in the area of hostilities or destroyed. There are no legislative provisions regarding this matter. That is why it is very difficult for lawyers to collect these materials and claim damages from the state.

Courts dismiss most cases of this kind based on various grounds: lack of a legally defined procedure for compensation; the plaintiff's failure to prove that the damage was caused by the actions or failure to act of the respondent, the state authorities of Ukraine; absence of a verdict establishing perpetrators of the terrorist act in the criminal case concerning destruction of property; lack of proof that destruction of property was caused by the terrorist act; the lack of proof that the victim has transferred the destroyed or damaged

63 Law of Ukraine "On combating terrorism", 20 March 2003.

64 Presidential Decree no. 405/2014 "On the decision of the National Security and Defense Council of 13 April 2014 "On urgent measures to counter the terrorist threat and preserve territorial integrity of Ukraine", 14 April 2014. // http://zakon3.rada.gov.ua/laws/show/405/2014. Decision of the National Security and Defense Council is secret.

property to the local state administration or self-governance authority, which is allegedly a precondition for compensation; or lack of budget for these purposes[65].

For instance, one of the first cases on compensation of damages caused by a terrorist act concerned an apartment in Sloviansk (Donetsk region) damaged in an artillery shelling. The first-instance court dismissed the claims because "the law establishing procedure for compensation of damages caused by terrorist acts has not been adopted. [...] there is no state authority charged with a duty to organize compensation, or a mechanism to establish the amount of compensation"[66].

The appellate court revoked this decision and accepted the claims based on the need to use an analogous mechanism for compensation in emergencies established by the Code of Civil Protection of Ukraine[67].

At the stage of cassation, the court revoked previous decisions and directed the case for re-trial due to contradictory grounds stated in the lawsuit (on the one hand, damages were caused by the anti-terrorist operation, on the other one – the damage was inflicted by the terrorist act). However, the courts failed to clarify the grounds or establish the object of proving while each ground required proof of different circumstances[68].

In another case, a person was requesting compensation for the destruction of her house. The first-instance court established that damages resulted from the anti-terrorist operation and the terrorist act, and ruled in favor of the plaintiff. The court referred to the absolute responsibility of the state to ensure peace and order in society, as well as the safety of person and property for everyone under its jurisdiction. The duty to compensate damages does not depend on whether the act of violence originated from state officials, terrorists, unidentified persons[69]. The appellate court upheld this ruling.

In this case, the court of cassation also revoked all previous decisions and directed the case for re-trial, but on different grounds. According to the court, the plaintiff should have voluntarily transferred the damaged house to the land plot of the local state administration or local governance authority. The courts also had to establish the status of the land plot where the house was located, since the land and the property are indivisible. The duty to compensate damages lies with the state regardless of its culpability, and upon compensation, the state acquires the right to recourse against the perpetrator. Accordingly, the court had to solve the issue of involving the persons against whom the state may bring recourse claims for compensation in the case[70].

65 See Overview prepared by the Civil Chamber of the Court of Appeal of Donetsk Region on the case law on compensation of damages to the property of individuals resulting from the anti-terrorist operation // https://sl.dn.court.gov.ua/sud0544/obsha/cydovapraktika/cedovapraktika2.

66 See decision of Sloviansk City District Court of Donetsk Region, 12 January 2016, // http://www.reyestr.court.gov.ua/Review/54994490.

67 Decision of the Court of Appeal of Donetsk Region, 15 March 2016// http://www.reyestr.court.gov.ua/Review/56562010.

68 Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases, 22 February 2017 // http://www.reyestr.court.gov.ua/Review/65190948.

69 Decision of Popasna District Court of Luhansk Region, 14 December 2016 // http://www.reyestr.court.gov.ua/Review/63508115.

70 Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases, 27 September 2017 // http://www.reyestr.court.gov.ua/Review/69294004.

In another case, lower courts refused to grant a claim for compensation. The court of cassation also revoked these decisions and directed the case for re-trial since the courts had not established whether there was a legally defined procedure for compensation of damages caused by the terrorist act[71].

A significant portion of such cases is at the stage of cassation – the losing parties, primarily state authorities, are determined to challenge court decisions. The High Specialized Court for Civil and Criminal Cases as a court of cassation has not managed to ensure clear and consistent application of the law in these cases or provide guidance for case law. As a rule, the Court refrained from issuing a final ruling in these cases and sent them for re-trial to local courts (see rulings in cases no. 423/450/16-ц[72], no. 243/11658/15-ц[73], no. 757/10896/16-ц[74]). Currently, the Supreme Court serves as the court of cassation.

The case law in Ukrainian courts that obliges the RF to compensate damages in relation to events in eastern Ukraine is in favor of the victims. The authorities of the Russian Federation do not challenge court decisions. At the same time, these decisions have not been executed in practice.

Public organization "Syla Prava" has developed a strategy for obtaining compensation for victims of the Russian aggression, including IDPs and persons who lost property, families of the deceased military personnel or civilians, or injured soldiers and civilians. The strategy includes the following legal steps:

1) establishing the legal fact of damage to the plaintiff caused the military aggression by the Russian Federation against Ukraine;
2) submitting a lawsuit against the RF for compensation of damages based on the preliminary court ruling;
3) application for recovery of the property of the RF located in the territory of Ukraine or other states[75].

The organization is now providing legal assistance to citizens in these cases. Its website contains a registry of court decisions with references to 123 decisions establishing the legal fact of damages resulting from the Russian aggression, as well as 8 court decisions on recovery of funds for compensation from the Russian Federation that have entered into force[76]. Also, in a number of these cases, the courts used termination of the state external loan payments by Ukraine to the Russian Federation (the loan in the amount of 3 billion US dollars was provided in Russia during Yanukovych's times in exchange for refusal to sign the EU Association Agreement).

A pilot case was the case about compensation of damages to Iryna Veryhina. First, she applied to court with a petition to establish the legal fact of forced resettlement from Luhansk region (Ukraine) as a result of the armed aggression of the Russian Federation against Ukraine and occupation of the part of Luhansk region by the Russian Federation. The court granted the petition[77].

Later, Iryna Veryhina filed a lawsuit against the RF for compensation of pecuniary and non-pecuniary damages. The court granted the claim[78] on the grounds of article 5(6) of the Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal order in the temporarily occupied areas of Ukraine". According to this provision, compensation of pecuniary and non-pecuniary damages inflicted because of the temporary occupation to the state of Ukraine, legal persons, public associations, citizens of Ukraine, foreign citizens or stateless persons, shall be the duty of the Russian Federation as the occupying power. Though this law recognized the Autonomous Republic of Crimea and Sevastopol as occupied territories, the Resolution of Verkhovna Rada "On recognition of separate districts, towns, and villages of Donetsk and Luhansk regions as temporarily occupied areas" (17 March 2015) recognized separate districts, towns, and villages of Donetsk and Luhansk regions as occupied territories.

Russia as the respondent did not challenge these decisions. In theory, they can be implemented by applying for recovery of property of the RF or legal persons partially owned by the RF outside of Russia. However, there is no information about successful execution of such decisions.

Further legislative amendments, i.e. recognition of Russia as an aggressor state, have strengthened this approach. It appears that the legislator has supported the case law on Russia's liability for damages and approved the following provisions in 2018:

1) Responsibility for pecuniary or non-pecuniary damages to Ukraine resulting from Russian military aggression lies with the RF in accordance with the principles and norms of international law;
2) Ukraine does not bear responsibility for illegal actions of the RF or its occupying administration in the temporarily occupied areas of Donetsk and Luhansk regions or their illegal decisions;
3) The RF is responsible for violations of the rights of civilian population as an occupying power[79].

71 Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases, 21 December 2016 // http://www.reyestr.court.gov.ua/Review/63623106.

72 Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases, 27 September 2017 // http://www.reyestr.court.gov.ua/Review/69294004.

73 Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases, 22 February 20176 // http://www.reyestr.court.gov.ua/Review/65190948.

74 Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases. 21 December 2017// http://www.reyestr.court.gov.ua/Review/63623106.

75 Nanesena hromadyanam Ukrayiny shkoda maye vidshkodovuvatysya Rosijskoyu Federaciyeyu, yak derzhavoyu-ahresorom [Russian Federation as the aggressor has to compensate damages inflicted upon citizens of Ukraine] // http://sila-prava.org/uk/otrimati-kompensaciyu.

76 Court Practice. List of court decisions, 27 November 2017 // http://sila-prava.org/uk/klyuchovi-dosyagnennya-ta-sudova-praktika.

77 Decision of Holosiivskyi District Court in Kyiv, 18 March 2016 // http://www.reyestr.court.gov.ua/Review/56531535.

78 Decision of Holosiivskyi District Court in Kyiv, 18 March 2016 // http://www.reyestr.court.gov.ua/Review/61275011.

79 See Article 2, 6, 7 of the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions", 23 February 2018..

3.3
EXECUTION OF JUDGEMENTS

According to the established case law of the European Court of Human Rights, the right to a fair trial would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see Hornsby v. Greece); and the execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" and cannot be unduly delayed (see Immobiliare Saffi v. Italy).

Due to the Russian aggression in eastern Ukraine and the temporary occupation of the ORDLO, Ukraine is unable to guarantee execution of judgments in these areas. Therefore, Verkhovna Rada of Ukraine issued a Statement on Ukraine's derogation from obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms.

Participants of focus groups with state officials also pointed to the issue of execution of judgments during focus groups.

Judge:

Any court decision has to be executed. There are tens and hundreds of thousand unexecuted cases, they entered into force, and there is a mark in the registry. These are civil, economic, and administrative cases.

Questionnaires showed that 85 percent of lawyers, 68 percent of judges, 67 percent of human rights defenders faced many problems with implementation of court decisions in eastern Ukraine during the armed conflict. 33 percent of human rights defenders, 21 percent of judges and 13 percent of lawyers reported rare problems. In addition, 2% of lawyers and 11% of judges said they had not faced such issues.

Questionnaire results:

PROBLEMS WITH IMPLEMENTATION OF COURT DECISIONS IN EASTERN UKRAINE DURING THE ARMED CONFLICT

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Many problems	68%	38%	23%	85%	67%
Rare problems	21%	37%	43%	13%	33%
No problems	11%	25%	34%	2%	0%

Once state authorities in the occupied areas stopped working, execution of court decisions became more difficult if the authority was party to the case.

In particular, this problem manifested in cases where the Pension Fund of Ukraine had a debt. Some of these authorities were relocated to the government-controlled areas. However, the duty to serve clients was transferred to other authorities of the Pension Fund. It resulted in the problem with identification of the debtor between the relocated and the new responsible authority. This is how participants of focus groups described this problem.

Lawyer:

I will speak about the example of [execution of] a decision on Chernobyl veterans. Artemivsk Pension Fund is not performing its functions and transferring everything to Starobilsk because the resettled person was registered [the Pension Fund Directorate in Artemivsk district of Luhansk was relocated to the address if the Pension Fund Directorate of Starobilsk district of Luhansk region, and the latter received the customer service duties[80]]. Starobilsk is sending everything to Artemivsk [because the latter is the debtor]. Everything is done so that it is impossible to execute the decision. Though there is a letter from the Pension Fund clearly explaining the duties of each authority I think the purpose is to prevent the execution of the decision. The authorities that have to execute the court decision fail to do that.

In these cases, position of the courts is that there are no sufficient grounds to replace the debtor since it was relocated to the government-controlled territory and did not stop working.

For instance, someone challenges a decision of the Pension Fund Directorate in Alchevsk (Luhansk region) issued on 25 April 2014 to refuse age pension on preferential terms. The court satisfied the claim and ordered the respondent to pay age pension on preferential terms.

The person had to move to Kreminna town, Luhansk region due to hostilities. In April 2015, the person filed a statement with the court asking to replace the debtor in proceedings with the Directorate of the Pension Fund in Kreminna district. However, the court dismissed these claims:

> *"The debtor in the executive proceedings is the Pension Fund Directorate in Alchevsk, Luhansk region.*
>
> *At present time, separate areas of Luhansk region are outside of Ukrainian government control, certain offices in Luhansk region cannot perform their functions, in particular, regarding accrual and payment of pensions. However, according to the order of the Main Directorate of the Pension Fund in Luhansk region, directorates were transferred to the areas where state authorities were exercising their powers to full extent, including Pension Fund directorates in Alchevsk, Luhansk region, currently located at the address of the Pension Fund Directorate in Svatove, Luhansk region, namely: 50-Richchia Peremohy Square, 38, Svatove, Luhansk region.*

80 Resolution of the Board of the Pension Fund of Ukraine no. 9-1 "On the authority to provide services to insured persons", 12 May 2015 // http://zakon2.rada.gov.ua/laws/show/z0608-15.

[…]

Accordingly, the plaintiff has to arrange execution of the court decision with the Pension Fund Directorate in Alchevsk"[81].

In cases where the social security authority in the occupied area was the plaintiff, the courts at first allowed different approaches to replacing the plaintiff with a different social welfare authority in the government controlled-area holding the transferred authority temporarily. For instance, a court refused to replace the plaintiff because the social welfare authority in the occupied area was not abolished, and its powers were transferred temporarily. The appellate court did not uphold the ruling using the reasoning that formal disappearance of a legal entity was not a factor for administrative case. According to the court, transfer of authority is key for succession and, therefore, succession in material relations requires the replacements of the plaintiff with its successor[82].

Yet, the new Supreme Court disagreed with the appellate court:

"According to Article 264 of the Code of Administrative Procedure of Ukraine (version of 15 December 2017), when a party to an executing proceedings is eliminated upon submission of the state executor or application of an interested party, the court can replace the party to the criminal proceedings with its successor.

[…]

According to Article 104(1) of the Civil Code Ukraine, the legal person is terminated through reorganization (merger, acquisition, division, or transformation) or liquidation. In case of reorganization, property, rights and obligations of the legal person are transferred to its successors.

[…]

Accordingly, succession takes place when legal entity is terminated through reorganization (merger, acquisition, division, or transformation).

Procedure for liquidation includes several actions and, according to Article 104(2) of the Civil Code of Ukraine, a legal person is considered terminated from the day of the entry on its elimination in the Unified State Register.

At the same time, the case files do not have information about reorganization or liquidation of the plaintiff. In its turn, the Executive Directorate of the Fund of Social Security for Production Accidents and Professional Illnesses in Luhansk Region issued order no. 144 (14.08.2015) transferring functions of the unit of the Executive Directorate of the Fund of Social Security for Production Accidents and Professional Illnesses in Sverdlovsk (Luhansk region) [plaintiff] to the unit of the Executive Directorate of the Fund of Social Security for Production Accidents and Professional Illnesses in Sievierodonetsk (Luhansk Region) [applicant in proceedings to change the plaintiff].

81 Decision of Donetsk Administrative Court of Appeal, 22 July 2015 // http://www.reyestr.court.gov.ua/Review/47350535. High Administrative Court of Ukraine upheld this decision (http://www.reyestr.court.gov.ua/Review/66459559).

82 Decision of Donetsk Administrative Court of Appeal, 5 December 2016 // http://www.reyestr.court.gov.ua/Review/63152894.

Accordingly, there has been no elimination of a party to executive proceedings subject to the dispute, and the unit of the Executive Directorate of the Fund of Social Security for Production Accidents and Professional Illnesses in Sievierodonetsk (Luhansk Region) is not a successor of the unit of the Executive Directorate of the Fund of Social Security for Production Accidents and Professional Illnesses in Sverdlovsk (Luhansk Region). There are, accordingly, no legal grounds for the replacement of a party to criminal proceedings"[83].

The Supreme Court's position created obstacles for turning the court decision on recovery of penalties for execution.

In some cases, executors sometimes refused to open proceedings due to alleged inability to execute decision of courts caused by the ATO in Luhansk and Donetsk regions. They did not check whether the debtor had property outside of the ORDLO.

Execution of court decisions when the debtor is in the occupied territory is complicated. Of course, there are objective challenges in applying for the recovery of property in such territory. However, this does not excuse the State Enforcement Service for failing to take all available measures and removing abandoning duties to execute court decisions.

In these cases, courts protect the interests of plaintiffs.

"The actual registration of the enterprise in the area where state authorities are temporarily not exercising their powers does not exclude possibilities to find property outside of this territory. However, the enforcement service has the right to find these facts only within open enforcement proceedings.

The enforcement service cannot know whether it will be able to enforce the judgement on the day it opens or refuses to open executive proceedings. Only execution can show whether it is possible to execute the decision.

[…]

Under these circumstances […], actions of the Enforcement Unit of the Department of the State Enforcement Service of the Ministry of Justice of Ukraine to refuse opening enforcement proceedings concerning the order of the Economic Court of Donetsk Region dated 31 May 2016 were unlawful"[84].

There is no extension of the time limits for proceedings if the property or debtor is in the temporarily occupied areas. It is objectively impossible to execute these decisions, and the time limits for execution of a court decision are likely to expire.

According to the general rule, enforcement documentation can be presented for enforcement within three years. Judges pointed out that the term for execution of judgments can expire by the time Ukraine regains control over the occupied areas and will be able to execute decisions. However, there will be certain legal challenges in this regard.

83 Supreme Court Ruling, 14 February 2018// http://www.reyestr.court.gov.ua/Review/72290397..

84 Ruling of Donetsk Economic Court of Appeal, 10 January 2017 // http://www.reyestr.court.gov.ua/Review/64045872..

Judge:

There is also a time limit for enforcement proceedings. If it expires, the person avoids responsibility. It is necessary to amend the Law of a Ukraine "On enforcement proceedings".

It is necessary to allow automatic postponement for execution of a court decision if the debtor or the property is in the occupied territory, or to provide a mechanism to extend this period.

The procedure for the plaintiff to obtain an enforcement document if the materials are in the occupied areas is extremely complicated and it requires that lost files be restored. Courts often reject restoring lost documents even having accurate information about the text of the court decision available in the Unified State Register of Court Decisions.

A significant part of case files and enforcement proceedings has remained in the territory controlled by the so-called DPR and LPR.

Judges:

The main problem is that original documents remained there. Since 2011, we have electronic judiciary system. There is a database of court decisions, if we have a jurisdiction, for instance, for Horlivka; we only have access to the case database in Horlivka. We can access the database and look. Whether there really was a case in the lawsuit of Ivanov against Sydorov. What the court ruling was, the decision, and whether it entered into force or not.

Marinka district court moved its archives. In other courts, it is a problem, and the solution is not clear. If there is a decision in the register, we can solve it somehow.

Court practice shows that courts often restore lost case files using the Unified State Register of Court Decisions as a source of information[85] in order to prepare enforcement documents or their copies. Though these procedures are easy to simplify – information in the register is sufficient to issue enforcement documents.

Moreover, there are widespread refusals to restore lost proceedings only based on the Unified State Register of Court Decisions, judicial case management software and copies of individual documents based on the lack of evidence to restore the documents.

For instance, the unit of the Executive Directorate of the Fund of Social Security for Production Accidents and Professional Illnesses in Kreminna district (Luhansk region) filed a request to restore lost court proceedings in an administrative case where the unit had applied for recovery of penalties. The court examined submitted documents and closed proceedings related to the request:

85 See, for example, ruling of Luhansk District Administrative Court, 9 November 2015 // http://www.reyestr.court.gov.ua/Review/53323867.

"Restoring case files is necessary for further application in the framework of execution of a court decision.

In order to restore the lost files in case [...], the plaintiff provided copies of documents, namely a copy of a decision of Luhansk District Administrative Court dated (05.12.2013) printed from the Unified State Register of Court Decisions, copy of an order no. 144 dated 04.08.2015, extracts from the Unified State Register of Legal Persons, Private Entrepreneurs and Public Associations, copy of letter no. 444/03 dated 26.09.2016 whereby the plaintiff stated that an inspection of the Unified state register of enforcement proceedings showed the proceedings in progress (p. 54) whereby enforcement proceeding no. 42019829 dated 11.02.2014 is in progress, copy of the decision to launch enforcement proceedings no. 42651366 dated 26.03.2014, copy of a decision to launch enforcement proceedings no. 42019829 dated 11.02.2014. According to information obtained from the state enforcement service department of the Main Territorial Justice Directorate in Luhansk region, enforcement proceedings in the case no. 812/9786/13-a dated 17.01.2014 are in progress at Antratsyt City District Unit of the State Service.

...

Upon examination of documents provided by the plaintiff's representative, procedural documents available through the Specialized Court Case Management Software, the court decided the following.

[...]The court obliged the parties to provide all available files of administrative case no. 812/9786/13-a, but the parties have not provided the court with the said documents that would allow the court to restore the contents of the decision of Luhansk District Administrative Code dated 05.12.2013.

[...] All materials used by the court to make a determination in the said administrative case are missing. Therefore, the court does not have grounds to consider the contents of the court decision in case no. 812/9786/12-a established"[86].

In other words, courts often consider an electronic copy of a court decision in the Unified Register of Court Decisions insufficient to establish its contents.

At the same time, judges in focus groups suggested a solution based on the information from the Unified Register of Court Decisions.

Courts often did not request the execution of ex parte decisions when the respondent resided or stayed in the occupied areas and avoided appearing in court. Judges considered that ex parte decision did not enter into force unless there was a confirmation of receipt by the respondent. It is almost impossible to deliver such decision to the respondent in such cases.

Judges and lawyers reported this problem in interviews and focus groups.

86 Ruling of Luhansk District Administrative Court, 22 February 2017 // http://reyestr.court.gov.ua/Review/66645685. See analogous ruling of the same court dated 25 April 2017 // http://www.reyestr.court.gov.ua/Review/66191312.

Judges:

The law mandates that the court decision is sent to the respondent by mail. However, part of the territory is occupied, there is no mail service there and we cannot mail anything. Accordingly, if you follow the law strictly, this decision cannot enter into force. It can result in violation of the plaintiff's right to access justice. Because there is a decision in his favor but it will not enter into force for an indefinite period of time. The practice of most courts is to publish an announcement in a newspaper. However, I had cases when the person found out a year later through the executive service about the court decision concerning this person. We renewed the time limit for appeal, and the decision was reviewed and revoked. Yet, you need to write it in the law because some courts have been accumulating such cases for three years; decisions do not enter into force, and the plaintiff's right is violated.

Lawyer:

There is a trend when ex parte decisions do not enter into force, and judges refuse to issue enforcement letters saying they are not able to deliver the decision – the respondent is living in the uncontrolled areas. Accordingly, the term for appeal does not start, and the decision does not enter into force.

Before 15 December 2017, the Civil Procedure Code included an indirect link between entry into force of an ex parte decision and receipt by the respondent (since the term for appeal started from the moment of receipt, and the decision entered into force in the absence of appeal after its expiration). However, judges postponed issuing enforcement letters since it was impossible to send the copy of an ex parte decision by recommended or any type of mail to the temporarily occupied area.

The amended Code of Civil Procedure of Ukraine that entered into force on 15 December 2017 solved the problem. Entry into force of an ex parte decision was linked to its publication instead of receipt. At the same time, the respondent has the right to renew the appeal period.

3.4
SHORTCOMINGS OF THE PROCEDURE FOR EXEMPTION FROM LIABILITY

The state is wasting resources by prosecuting persons for the offences committed under constraints and threat to life.

Earlier, when talking about excessive caseload (sub-chapter 2.2) we pointed out that the justice system is facing a significant caseload related to the armed conflict.

However, the use of legal remedies is not always effective and, sometimes, even unjust. For example, there are dozens of thousands of cases concerning illegal crossing of the Ukrainian border in the officially closed checkpoints. People were trying to reach the government-controlled territory through Russia to avoid crossing the contact line. At first, judges were imposing administrative sanctions but later refused to do so understanding the necessity of these actions. On paper, the cases were closed on the grounds of expiration of the period for imposing administrative liability. At the same time, the State Border Guard Service and the courts have continued to waste significant resources to draw up protocols, issue resolutions, cover mailing expenses etc. This approach illustrates the ongoing ineffective use of state resources.

Excessive caseload can increase significantly in case of deoccupation and reintegration of the areas of Donetsk and Luhansk regions.

The majority of their residents risk facing liability: from administrative liability for violations of currency regulations (using foreign currency for payments) to criminal penalties for financing terrorism (paying "taxes" to the so-called "DPR" and "LPR") or participating in the activities of terrorist organizations (working for the authorities of the so-called "DPR" and "LPR").

Human rights defender:

For example, people who stayed in the occupied areas used to work in municipal enterprises providing key services to the towns, villages etc. When they arrive to our territory, the SSU detains them and charges with participation in terrorist organization. Is it really participation in a terrorist organization? It is hard to say without defining "participation". In reality, they did not hold weapons or take part in hostilities, but participation in an organization is by default.

Prosecution of all these violations will impose excessive burden on the legal system and create a risk of selective application of the law for political purposes.

Clearly, there should be no punishment for forced actions that are not related to violence and committed due residence or employment in these areas even if they include elements of violation. Moreover, prosecution of these people would obstruct their reintegration.

In the process of optimizing the caseload in the justice system during deoccupation, the state needs to strike a balance between allowing impunity and the need to gain trust of the residents of territories that need to be reintegrated.

There can be different solutions:

1) Exemption from criminal liability for those who have voluntarily rejected criminal activities;
2) Exemption from punishment for persons convicted of a crime (amnesty);
3) Application of special measures (reconciliation or pardon).

The first option is being applied today but in a rather limited scope. For instance, the SSU program "Home is waiting" provides for court exemption from criminal liability for persons who voluntarily abandoned participation in activities of terrorist groups and illegal armed groups. The program applies to those who did not take part in murders, torture, rape, and attacks on enterprises, establishments or organizations, or other grave crimes, and sincerely wish to contribute to prosecution of crimes concerning the establishment or activities of such group and termination of its activities.

According to the SSU, more than 200 persons have enrolled in the program[87]. The program can have potential for expansion, but the shortcoming is the use of resources of the law enforcement bodies and courts.

The second option – amnesty – is also not the best solution for reintegration as it provides for verdicts; in addition, it will not decrease the caseload in the justice system.

However, in negotiations, this term is used in a broader sense than in Ukrainian criminal legislation. The so-called 2014 Minsk Agreement obliged the Ukrainian party to adopt a law to prevent prosecution and punishment of persons in relation to the events in separate districts of Donetsk and Luhansk Oblasts. It was reflected in Article 3 of the Law of Ukraine "On the special procedure of self-governance in separate districts of Donetsk and Luhansk Oblasts":

> *"The state prevents in accordance with the law the criminal prosecution or imposition of criminal, administrative liability or sanctions against participants of events in Donetsk and Luhansk Oblasts"[88].*

As we see, the wording is so vague that its implementation would lead to impunity or arbitrariness in the interpretation of the term "participants of events". Clearly, such approach caused a wave of relentless criticism from the human rights defenders.

> Human rights defender:
>
> Full amnesty for the people who were killing and torturing others is simply impossible because leaving certain grave and particularly grave crimes unpunished would guarantee that these people continue committing these crimes in the future[89].

The third option are special means. So far, they exist only in the form of legislative initiatives and proposals. For instance, one of the draft bills[90] provided for the so-called "reconciliation measures" – measures undertaken after liberation of the territory of Ukraine from temporary occupation directed at establishing persons involved in the military aggression of the RF against Ukraine, activities of the occupying administration and promotion of the temporary occupation of Ukraine. In fact, it is lustration of certain categories of persons with restriction on occupying public posts, working in the media, or obtaining permits for the purchase, storage and possession of firearms, hunting weapons, cold or pneumatic weapons.

Reconciliation measures would be the responsibility of the temporary state authority, the National Commission for Reconciliation. The Commission would include six members, including three people residing outside the temporarily occupied area, and the rest would be IDPs.

At the same time, the draft law does not answer the question whether these measures include release from liability for certain categories of crime.

Instead, there are draft proposals[91], whereby special measures (authors call them pardon) include release from liability for non-serious crime but with restrictions on the exercise of certain rights for a definite period of time. This procedure includes application to court at the place of one's residence with a report on having committed a crime and a pardon request. The court uses clear criteria to make proper decision on pardon. Such decision would result in a 10-year restriction on the right to be a government or a military official, work in the law enforcement, local government or the judiciary, or teach; the right to vote or be elected for state or local governance, as well as the right to organize and conduct elections[92].

We should note that the idea of special extra judiciary procedure for exemption from liability for cooperation with the "authorities" of the occupied territories did not find support among the majority of interviewed representatives of the justice system in Donetsk and Luhansk regions (this idea was supported by 49 percent of interviewees). More than half of interviewees among judges, lawyers and human rights defenders supported the idea, though there were far less supporters among prosecutors and investigators. The majority of the opponents think that it should be a judiciary procedure; others are convinced that collaborators should not be exempt from liability.

In principle, to achieve justice and prevent legal system from being paralyzed, it is possible to find a balanced well-thought combination of all the abovementioned options.

It is important that people who suffered from the Russian aggression are not held responsible. At the same time, people who committed serious crimes, in particular war crimes, crimes against humanity or crime of aggression, should face responsibility for their actions.

87 SSU Program "Home is waiting" // https://ssu.gov.ua/ua/pages/206.

88 Law of Ukraine «On the special procedure of self-governance in separate districts of Donetsk and Luhansk Oblasts», 16 September 2014, was adopted for three years. It was extended by one year by the Law of Ukraine "On creating conditions for peaceful resolution of situation in certain areas of Donetsk and Luhansk regions", 10 October 2017. According to the Law, it is enacted only after de-occupation, namely withdrawal of all illegal armed groups, their weapons, militants and mercenaries from Ukrainian territory.

89 Zaxarov Ye. Shho oznachaye amnistiya dlya separatystiv? [What does amnesty mean for the separatist?] // http://khpg.org/index.php?id=1444219415.

90 Draft bill on the temporarily occupied territory of Ukraine no. 3593-д., 19.07.2016 // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59833 (dismissed).

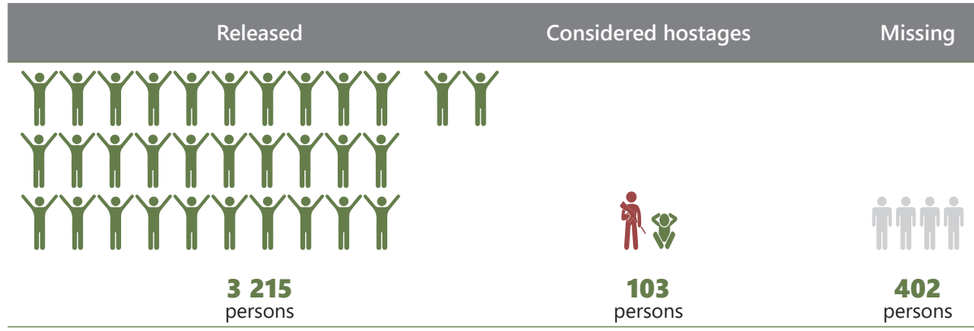
91 Krym ta Donbas: shho oznachaye proshhennya pislya deokupaciyi? [Crimea and Donbas: what is pardon after de-occupation?]// https://hromadskeradio.org/programs/rankova-hvylya/krym-ta-donbas-shcho-oznachaye-proshchennya-pislya-deokupaciyi.

92 Program for reintegration of the temporarily occupied areas of Crimea and Donbas, chapter "Responsibility Concept" // https://business.facebook.com/Center4ReintegrationCrimeaDonbass/posts/1957770554493716.

3.5
RELEASE OF PERSONS DETAINED IN RELATION TO PARTICIPATION IN THE ARMED CONFLICT

During the active phase of hostilities related to the RF aggression in eastern Ukraine, the combatants were captured by the enemy in various circumstances and ended up in places of detention. According to Vasyl Hrytsak, head of the SSU, over 3,215 persons were released from detention under the control of militants during the armed conflict in Donbas. Overall, 103 persons are considered hostages in Donetsk and Luhansk, and 402 people are missing[93].

HOSTAGES IN EASTERN UKRAINE ARRESTED AND KIDNAPPED DURING THE ARMED CONFLICT



There is no official information about the number of people detained by the Ukrainian side and, accordingly, released or transferred to the occupied territory. According to some sources, before the exchange on 27 December 2017, there were 386 persons identified in relation to involvement in crimes in the ATO area on the search list of the so-called DPR and LPR in exchange for hostages. Ukraine was ready to release 306 persons. Other 80 persons were under prosecution for particularly grave crimes or crimes unrelated to the ATO[94].

The status of persons held in detention in the territory outside of Ukraine's control remains undetermined.

93 Data available in the end of 2017. See: SBU vitaye zvilnenyx 74 ukrayinskyx zaruchnykiv [SSU welcomes 74 released Ukrainian hostages" // https://ssu.gov.ua/ua/news/1/category/2/view/4242#.U9y57fRJ.dpbs.

94 Bohlanova O., Maslakov A. Vyktor Medvedchuk: Spysky y uslovyya obmena ya sohlasovыvayu tolko s Prezydentom Ukraynы [Medvedchuk: I coordinate the lists and conditions for exchange only with the President of Ukraine] // Komsomolskaya pravda v Ukraine. – 23.11.2017 (https://kp.ua/politics/592904-vyktor-medvedchuk-spysky-y-uslovyia-obmena-ya-sohlasovyvaui-tolko-s-prezydentom-ukrayny).

Under Ukrainian law, they are hostages under article 147 of the CC. However, since there is no legal definition of the so-called "DPR" and "LPR", or their subject status, the status of persons in these territories remains undefined. This issue requires legislative regulation, which was also mentioned by participants of focus groups.

At the same time, the status of an individual captured in the war zone during hostilities should be equal to that of a prisoner of war in case of martial law.

International humanitarian law establishes that the "prisoner of war" status exists only in international armed conflict. According to Article 43 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (hereinafter - Protocol I), members of the armed forces of a Party to a conflict (other than medical personnel and chaplains) are combatants, that is to say, they have the right to participate directly in hostilities. According to Article 44(1) of Protocol I, any combatant who falls into the power of an adverse Party shall be a prisoner of war.

The status and treatment of prisoners of war are governed by the Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949 (hereinafter – Geneva Convention III). According to Article 4 of the Geneva Convention III, prisoners of war are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
   (a) that of being commanded by a person responsible for his subordinates;
   (b) that of having a fixed distinctive sign recognizable at a distance;
   (c) that of carrying arms openly;
   (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Therefore, only certain categories of persons are entitled to the 'prisoner of war' status, and only in international armed conflict.

International humanitarian law does not regulate the exchange of prisoners of war, but it governs their release and repatriation. According to Article 20 of the Regulations concerning the Laws and Customs of War on Land (1907), after the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible. Article 118(1) of Geneva Convention (III) establishes that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities. According to the ICRC commentary to Article 118 of Convention (III), it is one of the most important Articles in the Convention establishing the duty to release and repatriate prisoners of war[95].

This provision is emphasized in Article 85(4)(b) of Protocol I whereby unjustifiable delay in the repatriation of prisoners of war or civilians is a grave breach of Protocol I, when committed willfully.

At the same time, according to Article 119(5) of Geneva Convention III, prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence. Article 119(6) of Geneva Convention III provides that Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

Customary international humanitarian law also supports provisions of Articles 118 and 119 of Geneva Convention III. For instance, Rule 128(A) states that prisoners of war must be released and repatriated without delay after the cessation of active hostilities[96]. The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed[97].

Convention III includes specific provisions on repatriation and accommodation of seriously wounded and seriously sick prisoners of war (Articles 109 – 117).

In addition to combatants and other persons entitled to the status of a prisoner of war, other persons can take part in international armed conflict. They are not combatants and not entitled to the status of a prisoner of war and, accordingly, cannot enjoy the rights and safeguards provided by the status. Fundamental guarantees for this category of persons are enshrined in Article 75 of Protocol I. In general, these guarantees amount to humane

95 Convention (III). Article 118 Release and repatriation. Commentary of 1960 - //https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=ACBCD2830E088D59C12563CD00428F5E.

96 Customary International Humanitarian Law. URL: https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf f.

97 Ibid.

treatment and the right to fair trial. According to article 75(3) of Protocol I, except in cases of arrest or detention for penal offences, persons arrested, detained or interned for actions related to the armed conflict shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

In terms of prisoner (detainee) exchange in relation to direct participation in hostilities in non-international armed conflict, international humanitarian law does not create a duty to conduct these exchanges, but it allows for their conduct. In fact, IHL does not regulate prisoner (detainee) exchange – it governs their release.

In a situation of non-international armed conflict, international humanitarian treaty law does not include provisions on prisoner (detainee) exchange. Article 6(5) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 (hereinafter - Protocol II) states that at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained. This provision of Protocol II can be interpreted as promoting amnesty and allowing the Parties to release and exchange prisoners (detainees). The ICRC Commentary (1987) notes that the object of this sub-paragraph is to encourage gestures of reconciliation which can contribute to reestablishing normal relations in the life of a nation which has been divided[98].

With regard to customary IHL and non-international armed conflicts, Rule 128(C) states that persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist[99]. The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed[100]. The practice establishing the customary nature of this rule in non-international armed conflicts consists of numerous agreements concluded, for example, in the context of the conflicts in Afghanistan, Angola, Bosnia and Herzegovina, Cambodia, Chechnya, El Salvador, Liberia, Mozambique and Rwanda[101]. Rule 128(C) of customary IHL can also be interpreted as a provision that encourages release and exchange of persons detained (imprisoned) in relation to direct participation in hostilities.

Procedures for prisoner exchange in the armed conflict in Ukraine remain beyond the scope of legal regulations. For the purposes of exchange, Ukrainian authorities use various legal avenues within criminal and criminal procedure law (release from detention with subsequent search warrant, proceedings are closed by the investigator (following the exchange) while the decision to close proceedings is canceled by the prosecutor), verdicts based on agreements without imprisonment, prison sentence with subsequent pardon etc.).

98 Additional Protocol II. Article 6 Penal Prosecutions. Commentary of 1987 - //https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C6692EB184B56F56C12563CD0043A476.

99 Customary International Humanitarian Law. Rules - //https://www.icrc.org/rus/assets/files/other/customary.pdf.

100 Ibid.

101 Ibid.

During focus groups related to exchanges and connected legal regulations, as well as concrete exchange operations in 2014-2015, witnesses of these events reported that combatants arrested by Ukrainian law enforcement were in custody in the remand prison in Kharkiv. These persons were waiting for exchange for 3-4 months, and they were transferred to the uncontrolled areas without any documents from the Ukrainian side. These exchanges took place, for instance, on 26 December 2014, 21 February 2015. Transfers of small groups of persons (4-5 persons) took place throughout 2015.

Participants of focus groups described preparation for the transfer of persons in detention under pending investigation. The court assigned a restraint measure of 60 days in custody following a motion submitted by the prosecutor's office. Upon expiration of this term, prosecutors did not apply for extension or ask for a different measure. The court cannot apply a stricter measure than requested by the prosecutor. The person was released on bail or personal commitment. Afterwards, the staff of the Security Service of Ukraine took the person from the remand prison. Therefore, the person left the remand prison with a personal commitment statement and was transferred and exchanged for our soldiers.

A judge noted that, in some cases, law enforcement bodies suggested the change of a restraint measure and mentioned that the person was subject to exchange

> Judge:
>
> We ask what we should do with this. They told us to issue a warrant. Then the charge is changed, a deal is made and the person is released under Article 75 of the CC (discharge on probation).

After the transfer of these persons to the uncontrolled areas and a search warrant, these cases continued to "pile up in the police". A judge even mentioned his case when articles 69 (imposition of a punishment milder than prescribed by the law) and 75 (discharge on probation) of the CC were used stating that these were exceptional cases in his practice.

The prospects of exchange also affected court proceedings when judges were warned in advance that the person was assigned for exchange. The judges were advised to make the trial as quick as possible.

> Judge:
>
> We are considering this case. We finish it and once the verdict enters into force, they [the SSU] deal with the issue of exchange. They do not let us know whether the exchange happened or not.

All the above examples show that the exchange procedure used by Ukrainian authorities to liberate the AFU soldiers, fighters of the volunteer battalions or other prisoners of the so-called "DPR" and "LPR" takes place without an established procedure. The status of persons subject to exchange is not covered by the criminal law. Under current criminal procedure, this will inevitably lead to violations of the rights of these persons (in particular, their right to liberty and personal security, right to legal assistance in the exchange procedure etc.).

3.6
COMPLIANCE OF UKRAINIAN CRIMINAL LAW OF UKRAINE WITH INTERNATIONAL STANDARDS

Social and political events of the 20th century (two World Wars, numerous regional and internal armed conflicts) have shown that organized (mass, systematic) violence renders national criminal law provisions on the so-called general criminal offences (murder, rape, robbery etc.) ineffective. It resulted in a shift in the legal doctrine to the idea that crimes committed in the framework of or in relation to organized (mass, systematic) violence have special legal nature sometimes called "system criminality"[102].

Examples of system criminality include core *crimes under international law*, namely genocide, crimes against humanity, war crimes and aggression. Criminality of these acts stems from the international law regardless of whether they are criminalized in a particular state[103]. The key crimes have been "codified" in the international law since the middle of the 20th century, and the norms on liability for these crimes constitute *international criminal law*.

It is important for the national criminal law to be in line with international criminal law in the context of the RF military aggression against Ukraine.

First, in certain cases, national criminal law on general crimes does not cover the acts criminalized on international level. For instance, declaring that no quarter will be given constitutes a war crime. Understandably, there are no analogous crimes among general offences. Provisions establishing liability for general offences *a priori* are not designed for armed conflict.

Second, when there is analogous general offence to a war crime, qualification of the act and prosecution under general principles can violate the *fair labeling* principle[104]. From a societal perspective, there is a serious difference between "regular" robbers and war criminals who took civilian property in armed conflict.

Third, international law imposes a number of positive duties on the states in relation to the core crimes under international law to prevent impunity of these crimes, such as non-recognition of immunity, absence of the statute of limitations, adherence to the *"aut dedere aut judicare" principle*. Prosecution of these actions under general criminal law is likely to result in violations of the duty to prevent impunity[105].

102 See, for example, System criminality in international law / eds. H. van der Wilt H. et al. Cambridge University Press, 2009. P. 1-25.

103 For example, Nurnberg Principle II states, "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law».

104 For more on this principle, please see Chalmers J., Leverick F. Fair labelling in criminal law //The Modern Law Review. 2008. Vol. 71. №. 2. P. 217-246.

105 This situation gradually developed in the German Federative Republic after World War II.

Fourth, compliance of domestic criminal law with international standards is particularly important for Ukraine since it accepted the ICC jurisdiction. The Office of the Prosecutor is conducting preliminary examination of the situation in Ukraine pursuant to submitted declarations on acceptance of the ICC jurisdiction. In case a "full-scale" investigation of events in Ukraine, compliance of Ukrainian criminal law with international standards (in particular, the Rome Statute) will play a role in determining whether the State is able to carry out the investigation or prosecution. Article 17 of the Rome Statute concerning admissibility of cases requires this determination[106]. The ICC operates based on the principle of complementarity, and it only accepts a limited number of cases, in particular, when the state is unable to carry out investigation (see Article 17(3) of the Rome Statute). Accordingly, discrepancy between the criminal law of Ukraine and international standards can lead to an increased number of "Ukrainian" cases in the ICC. On the one hand, it will have negative political consequences for Ukraine in the international community. On the other hand, it is unlikely to serve the interests of justice since the international tribunal faces more difficulties in conducting effective and prompt investigation than national courts.

National criminal legislation of Ukraine is not in line with international law.

Even without detailed evaluation[107], we can state that there are discrepancies between Ukrainian criminal law and international law on core crimes. One of the indicators is that the National Security and Defense Council decision (25 January 2015) "On extraordinary measures of counteraction to the Russian threat and manifestations of terrorism supported by the Russian Federation" emphasized the need to develop amendments to the 2001 Criminal Code of Ukraine and establish criminal liability for crimes against humanity.

Coalition of human rights organizations "Human Rights Agenda" created a working group to develop proposals for amending the criminal law of Ukraine and ensure its conformity with international law. The draft bill developed by the working group was presented and supported by the Inter-Agency Committee on Implementation of International Humanitarian Law in Ukraine[108]. In early 2018, the Ministry of Justice presented the draft bill for public discussion[109]. In its Resolution 2198 (2018), the Parliamentary Assembly of the Council of Europe urged the Ukrainian authorities to bring the Criminal Code and Code on Criminal Procedure of Ukraine into line with the provisions of international humanitarian law and international criminal law[110].

During a focus group, human rights defenders noted serious difficulties encountered during legal qualification of the events in Donbas in accordance with the current domestic legislation.

106 Rome Statute is the most current and progressive "codification" of these crimes.

107 The analysis is provided hereinafter.

108 See meeting minutes of the Committee on Implementation of International Humanitarian Law in Ukraine, 22 February 2017 // old.minjust.gov.ua/file/58838.docx.

109 On amendments to the laws concerning harmonization of the criminal legislation with international law // https://minjust.gov.ua/m/pro-vnesennya-zmin-do-deyakih-zakonodavchih-aktiv-schodo-zabezpechennya-garmonizatsii-kriminalnogo-zakonodavstva-z-polojennyami-mijnarodnogo-prava.

110 Resolution 2198 (2018) "Humanitarian consequences of the war in Ukraine", adopted by the PACE on 23 January 2018 // https://rm.coe.int/resolution-2198/1680785d22.

Human rights defender:

> When you look at a decision, it was a month ago, the person was detained and convicted, and there were procedural violations, as well as mixing of terminology – the ATO, hybrid war, international humanitarian law, and customary law. When the judge is writing in the decision and mixing a lot. We understand that no one can ensure any implementation of this decision in the future in any form. We have no educational system to manage these issues.

Unfortunately, events in Donbas exposed discrepancies between the CC and international law concerning liability for core crimes. "The root of the evil" lies in unjustified inert orientation towards the Russian criminal law and model legislation of the Commonwealth of Independent States (hereinafter – the CIS) during the adoption of the Criminal Code of Ukraine in 2001. Ukrainian legislators had a chance to follow the Rome Statute, the most up-to-date "codification" of core crimes under international law, but they chose to stay within the post-Soviet criminal law tradition.

First verdict under article 438 of the Criminal Code (violation of the rules of warfare) was issued only on the third year of the armed conflict with Russia. Article 438 is the domestic version of international law norms on war crimes. However, it is based on article 365 of the Criminal Code of the Russian Federation (196) and article 106 of the Model code for CIS states (1996). Both provisions have substantive and terminological contradictions with Article 8 of the Rome Statute on war crimes and IHL norms.

Even Russian academics admit this discrepancy: *"When we compare article 365 of the CC of the RF with the wordy Article 8 of the Rome Statute, we could say that the ability to create highly abstract norms is a virtue of our legislator. However, we doubt that it is possible. In terms of article 365 of the CC of the RF we managed to do something that no one before or after did* [in fact, many post-Soviet countries "managed" afterwards]: *to "squeeze" the criminalized violations of all four Geneva Conventions, Protocol I, other international treaties and customary international law into one crime. Accordingly, the list of criticisms of article 36 is endless: confusing the law of The Hague and Geneva, omittance of customary international law, gaps or excessive reach of definitions, failure to distinguish international and non-international armed conflict etc."*[111].

The title of Chapter XX of the Special Section of the Criminal Code "Criminal offenses against peace, security of mankind and international legal order" is outdated and its contents are contradictory.

In our substantive analysis of conformity of Ukrainian criminal law with international law on core crimes, we should point out that the Special section of the CC has a chapter "Criminal offenses against peace, security of mankind and international legal order". Its title directly points to the fact that offences covered thereby have "connection" with international law. However, the contents, or even the title of this chapter, are disappointing.

111 Esakov G. A., Rusinova V. N., Bogush G. I. Mezhdunarodnye prestuplenija: model' implementacii v rossijskoe ugolovnoe zakonodatel'stvo [International laws: model of implementation in Russian criminal legislation]. M.: Prospekt, 2017. p. 8-9.

First, the title of this chapter follows the Draft Code of Crimes against the Peace and Security adopted by the International Law Commission in 1996. However, the wording "crimes against peace and security of humankind" did not find recognition in international law. Some international legal scholars consider it "one of the biggest mistakes" of the International Law Commission[112]. Today, core crimes under international law subject of concern for the entire international community are often called "international crimes", "crimes against international law", or "crimes under international law". Therefore, we should state that the title of Chapter XX of the Special Section of the CC of Ukraine is an homage to post-Soviet legal tradition lagging behind modern international law.

Second, the current version of Chapter XX of the Special Section of the CC is a compilation of heterogeneous provisions establishing liability for core crimes under international law (articles 437, 438, 442), the so-called crimes of international nature with liability aimed at fulfilling Ukraine's duties under international treaties (see articles 443, 444, 447), or even crimes that are neither crimes under international law nor crimes of international nature (see articles 436-1 and 441). On the other hand, the Chapter has no provisions establishing liability for crimes against humanity.

Ukrainian version of implementation of core crimes under international law has significant shortcomings.

Ukrainian criminal law establishes liability for three out of four core crimes under international law: aggression (article 437 of the CC), war crimes (article 438 of the CC), and genocide (article 442 of the CC). Unfortunately, there is significant room for improvement in each of these provisions.

Provisions of the Criminal Code on the crime of aggression follow the spirit of the Nurnberg and Tokyo tribunals. They do not meet modern ideas about this crime reflected in Article 8bis of the Rome Statute. In particular, the term "aggression" in international law has undergone serious transformation in the period following World War II[113], and it extends beyond aggressive war. In addition, according to Article 8bis of the Rome Statute, the crime of aggression is the so-called leadership crime, i.e. only persons exercising control or command over political or military actions of the state can be held responsible.

Article 438 of the CC lists separate violations of the rules and customs of war and a general reference to similar violations under international law, which is unacceptable for several reasons:

1) it contradicts the principle of legal certainty, especially since Ukraine has not submitted an official translation of the 1949 Geneva Conventions to the depositary[114];

112 O'Keefe R. International criminal law. OUP Oxford, 2015. P. 64.

113 See, for example, UN General Assembly Resolution 3314 (14 December 1974). Definition of Aggression // https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement.

114 The Domestic Implementation of International Humanitarian Law in Ukraine / Global Rights Compliance LLP. Kyiv. 2016. p. 48.

2) article 438 neglects violations of the rules and customs of war under customary IHL which is the main source of IHL for non-international conflicts;

3) at present time, the majority of states follow Article 8 of the Rome Statute regarding liability for war crimes (Article 8 is considered a tentative standard);

4) in certain parts, article 438 of the CC is unjustifiably broad (due to the wording "… other violations of the rules and customs of war…"). It defines any (even insignificant) violations of treaty IHL as crimes. For instance, it would apply to a fatigue duty of 2 hours 15 minutes (instead of 2 hours) in violation of Article 89 of Geneva Convention III. Under international law, war crimes are serious violations of IHL.

Article 442 on genocide is, perhaps, the most adequate in terms of current international law, i.e. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and Article 6 of the Rome Statute. However, it also has a series of errors that are difficult to explain. In particular, these include:

1) The absence of the words "as such" in the characteristics of the purpose of genocide;

2) Reference to "grave" rather than "serious" bodily harm (under international criminal law, the term "serious bodily harm" is broader than "grave bodily harm" under criminal law of Ukraine, for instance, it includes rape);

3) Lack of reference to "deliberately" in the context of "inflicting conditions";

4) Reference to a form of genocide unknown to the international law – "inflicting conditions aimed at reducing childbirth".

FINDINGS AND RECOMMENDATIONS

1

Ukrainian justice system had no algorithms for operating in armed conflict. The legislation does not provide any instructions for the functioning of the justice system in hostilities.

After the occupation of certain areas of Donetsk and Lugansk regions of Ukraine (hereinafter – ORDLO), the legislator took steps to ensure access to courts in the government-controlled areas for residents of the occupied territories. The legislator also introduced court summons and notices online, which can be used, inter alia, in cases of ORDLO residents.

The Military Prosecutor's Office has been reinstated upon the President's initiative but its powers are exercised outside the scope of military sphere more often. A possibility of

establishing military (war crime) courts has been declared. The Parliament took steps to increase effectiveness of criminal proceedings, including restrictions on certain rights that raise doubt about their constitutionality.

However, many existing and potential problems remain unsolved. Moreover, introduction of the measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions through Presidential orders with restricted access increased the level of legal uncertainty.

To solve these problems, the following steps are **necessary**:

- to revoke temporary provisions of the laws awarding some of the investigating judge powers to the prosecutors in the ATO area and possibility to detain a person for more than 72 hours (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to bring the authority of military prosecutor's offices in line with the Constitution of Ukraine and the aim of the law establishing this institution, in particular it should be removed from the control of the Headquarters of the Armed Forces of Ukraine (*competent authorities – Verkhovna Rada of Ukraine, Prosecutor General*);

- to introduce electronic storage of court case files (their copies) to prevent loss of files (*competent authorities – the High Council of Justice, State Court Administration of Ukraine*);

- to introduce legislative provisions allowing for prompt deployment of mobile justice authorities capable to ensure justice in special circumstances during escalation of hostilities (*competent authority – Verkhovna Rada of Ukraine*);

- to define the policy of justice system authorities (algorithms) for situations of blockade, seizure of premises, or hostilities through by-laws and subsidiary regulations (*competent authorities – Ministry of Justice of Ukraine, State Court Administration of Ukraine, the High Council of Justice, Council of Judges of Ukraine, Council of Prosecutors of Ukraine, Ministry of Justice of Ukraine, Security Service of Ukraine*);

- to introduce legislative amendments eliminating ambiguity in qualification of crimes committed in the armed conflict caused by the Russian aggression, in particular, crimes of terrorism, creation a criminal organization, illegal militarized and armed group, or participation in their activities (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to introduce legislative amendments addressing legal consequences of serving a sentence in the occupied areas, as well as the release from prison, taking into consideration that the person is not merely a criminal, but also a victim of Russian aggression (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to identify mechanisms for remote questioning of witnesses and other trial participants in the occupied territory, as well as methods to collect samples for forensic assessments (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to introduce legislative amendments to preserve specific legal safeguards of fair trial established in connection with ATO in case it is replaced by measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions in accordance with the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to publish the orders related to continuation or termination of the ATO with the start of the operation to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions (*competent authority – President of Ukraine*).

2

The case law regarding the obligation for Ukraine to compensate damages resulting from terrorist acts is inconsistent due to ambiguity of the legal framework (even at the stage of cassation). So far, it has not been in favor of the plaintiffs.

The case law in Ukrainian courts that obliges the RF to compensate damages in relation to events in eastern Ukraine is in favor of the victims. The Russian Federation authorities do not challenge court these court decisions. At the same time, the decisions have not been executed.

Ukraine is not applying sufficient effort to implement article 24 of the UN General Assembly Resolution "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (A/RES/60/147 adopted on 16 December 2005) regarding the development of means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines.

The following measures **should be taken** to ensure actual compensation of damages inflicted by the Russian aggression:

- to develop and offer an effective mechanism for compensation of damages resulting from the military aggression by the Russian Federation for individuals and legal persons based on legislation and case law; to hold an awareness-raising campaign to implement the mechanism; to develop a methodology for applications for recovery of property of the RF in execution of court judgements against the RF (*competent authority – Ministry of Justice of Ukraine*);

- to undertake more effective efforts on international level to create a mechanism for compensating victims of the armed aggression of the Russian Federation similar to the UN Compensation Commission established under the UN Security Council Resolution 687 (1991) (*competent authority – Ministry of Foreign Affairs of Ukraine*).

3

Once state authorities ceased operations in the occupied areas, execution of court decisions became more difficult if the authority was party to the case. Execution of court decisions where the debtor is in the occupied territory is complicated.

There is no extension of time limits for proceedings if the property or debtor are in the temporarily occupied areas. It is objectively impossible to execute these decisions, and time limits for execution of a court decision are likely to expire.

The procedure for the plaintiff to obtain an enforcement document in a case where materials are in the occupied areas is extremely complicated; it requires that lost files be restored. Courts often reject restoring lost documents even having accurate information about the court decision in the Unified State Register of Court Decisions.

In order to address problems with execution of court decisions caused by the aggression of the Russian Federation, Ukrainian authorities **should take the following steps**:

- to include temporary occupation and armed aggression of the Russian Federation into the list of grounds for postponement of presentation of enforcement letters for execution or renewal of time limits (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to prepare a compilation of case law on disputes related to execution of court decisions (*competent authorities – Supreme Court, courts of appeal*);
- to develop template algorithms for execution of court decisions in cases related to the aggression of the Russian Federation in the form of methodological recommendations to state and private executive services (*competent authority – Ministry of Justice of Ukraine*);
- to resolve the issue of plaintiff replacement in cases where state authorities remaining in the occupied areas are under temporary shutdown (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

4

The state is wasting resources by prosecuting persons for offences committed under constraints and threat to life.

Excessive caseload can increase significantly after de-occupation and reintegration of the areas of Donetsk and Luhansk regions.

In the process of optimizing caseload in the justice system during de-occupation, the state needs to strike a balance between allowing impunity and gaining trust of the residents of reintegrated territories.

To ensure justice and prevent incapacitation of legal system, it is **necessary**:

- to expand the list of legal remedies for exemption from liability on the grounds of coercion. In this situation, it is necessary to strike a balance between preventing impunity and establishing credibility with the residents of relevant areas (exemption from criminal liability for persons who voluntarily abandoned criminal activities; exemption from punishment for persons convicted of crimes (amnesty); special measures – reconciliation or pardon) (*competent authorities – Ministry of Justice of Ukraine, Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine, Verkhovna Rada of Ukraine*).

5

The status of the persons held in detention (captivity) in the territory outside of Ukraine's control remains undetermined.

Procedures for prisoner exchange in the armed conflict in Ukraine remain beyond the scope of legal regulations. For the purposes of exchange, Ukrainian authorities use various legal avenues within criminal and criminal procedure law (release from detention with subsequent search warrants, proceedings are closed by the investigator (following the exchange) while the decision to close proceedings is canceled by the prosecutor), verdicts based on agreements without imprisonment, prison sentence with subsequent pardon etc.).

In order to address the gaps, the following is **necessary**:

- to introduce legislative amendments determining the status of persons who took part in the armed conflict caused by the aggression of the Russian Federation along with legal safeguards for this category of persons, in particular during exchanges (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to define exchange procedures in line with criminal law and criminal procedure through by-laws and subsidiary regulations (*competent authorities – Ministry of Justice of Ukraine, Prosecutor General, Security Service of Ukraine*).

6

National criminal legislation of Ukraine in not in conformity with international law. The title of Chapter XX of the Special Section of the Criminal Code "Criminal offenses against peace, security of mankind and international legal order" is outdated and its contents are contradictory. Ukrainian version of implementation of core crimes against international law has significant shortcomings.

These shortcomings can only be eliminated through amendments to the legislation of Ukraine on criminal liability aimed to bring it in line with international law. Most importantly, it is necessary to define international crimes (genocide, crimes against humanity, war crimes, and the crime of aggression) as offences in a separate chapter in the Special Section of the Criminal Code in accordance with the Rome Statute, in particular:

- to bring article 437 of the Criminal Code of Ukraine (aggression) in compliance with Article 8bis of the Rome Statute;
- to establish liability for crimes against humanity based on Article 7 of the Rome Statute;
- to ensure comprehensive implementation of international law provisions on war crimes (key reference point – Article 8 of the Rome Statute);
- to eliminate discrepancy between the definition of genocide under the criminal law of Ukraine and international law (competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine).

4
ACCESS TO JUSTICE

4.1
RESTORING COURT FILES AND MATERIALS OF ENFORCEMENT PROCEEDINGS

There are no facts in court proceedings other than what is available in the case files. To establish the truth, the court first uses available evidence. Therefore, the court cannot fulfill its main purpose – ensuring the right to fair trial and respect for other rights and freedoms – in the absence of evidence and other case files.

According to questionnaire responses of judges and lawyers, the most relevant issue in administration of justice in armed conflict is the lack of access to court files and materials of enforcement proceedings in the occupied territories.

The delay on behalf of central authorities made it impossible to remove case files and materials of enforcement proceedings (ongoing and completed) from the occupied areas and the zone of hostilities.

The Council of Judges convened only on 11 July 2014 regarding this matter, during an active phase of hostilities. The Council stated that *"the regular operations of Donetsk Regional Court of Appeal were terminated, the premises of the Economic Court of Luhansk region have been seized by unknown individuals, and there were multiple attempts to take over the premises of general local courts in Luhansk region, and the Court of Appeal of Luhansk region"*. The Council of Judges asked the SSU and the MIA to take measures to secure the courts and documents[115]. However, there were no decisions to evacuate courts or documents.

115 Decision of the Council of Judges no. 2, 11 July 2014 // http://rsu.gov.ua/ua/site/download?doc=L3VwbG9hZHMvZG9jdW1lbnRzL3JzdTIxMTA3MjAxNDEucGRm.

On 12 August 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On administration of justice and criminal proceedings in relation to the anti-terrorist operation"[116] (entry into force -20 August) based on the President's initiative. The Law enabled the heads of higher courts to transfer the jurisdiction in cases in the occupied areas to the courts in government-controlled areas.

In September 2014, heads of three high courts changed the territorial jurisdiction of 60 courts and ordered the transfer of cases to relevant courts in government-controlled areas (Donetsk, Luhansk, Dnipropetrovsk, and Zaporizhzhia regions)[117]. There were no attempts to remove archives of these courts from the occupied areas since it would endanger the lives of court officials[118]. Though some judges reported attempts to evacuate case files, the pro-Russian armed groups at checkpoints turned the vehicles back. Only individual cases, case files were evacuated from the temporarily uncontrolled territory. For instance, it happened in Donetsk Administrative Court of Appeal.

Judge:

All cases, 100 percent, ongoing and completed in difficult conditions were all evacuated *[talking about the court where the judge was working]*. There was a large room left.

The impossibility of removing the case files in ongoing or completed case proceedings is one of the issues covered in the assessment of the state of justice in armed conflict:

> *"In fact, the High Specialized Court of Ukraine transferred jurisdiction to other courts on 2 September 2014 when there were active hostilities in those areas, and the courts stopped operating approximately in mid-July 2014 [the district courts in Luhansk]. It turns out that cases where proceedings were ongoing before the hostilities could not be physically transferred to the "new" court because responsible officials had no access to the registry and, accordingly, case files"[119].*

The OSCE Special Monitoring Mission in Ukraine in 2015 thematic report "Access to Justice and the Conflict in Ukraine" established the following facts regarding the loss of case files:

> *"One of the most significant effects of the sudden relocation of courts and prosecution offices was the loss of case files in ongoing and completed court proceedings. Case files were lost with the sudden departure, or forced removal, of staff from court and prosecution offices or the destruction of court and prosecution facilities by shelling. For example, the relocated Donetsk Administrative Appeals Court reported that gunmen took over the building, threw away case files, and staff were forced to rent a truck to transport whatever files they could find. Similarly, no case files were able to be transferred from the Yasynuvata City-District Court (Donetsk region) with some being destroyed or burnt. The Luhansk Regional Prosecution Office was unable to take any case files, with only some personal files able to be taken after their building was taken over by irregular armed groups. Often, courts and prosecution offices were required to prioritize which files to take given limited means. Case materials from the Donetsk Regional Prosecution Office were unable to be transferred as the materials were looted or destroyed during the seizure of the building by armed groups. Where files remained in former premises, staff reported that they are often prevented from removing files in "LPR"- and "DPR"-controlled areas"[120].*

The legislator attempted to solve the issue by introducing the following provision in article 1(3) of the Law of Ukraine "On administration of justice and criminal proceedings due to the anti-terrorist operation":

> *"If there is no possibility to transfer case files in accordance with the jurisdiction established by the Law, necessary procedural action shall take place pursuant to documents and materials submitted by the parties, provided that documents and materials are sufficient to issue a relevant decision".*

It is clear that in most cases the parties do not have sufficient materials for an adequate court decision. Therefore, the parties had to take extreme steps to obtain materials, including "buying" the files from the "authorities" in the occupied areas.

Investigator:

...I heard more about this in Donetsk region. It was in 2014. Files in several cases of grave crimes were purchased from a separatist because it was necessary to adjudicate them somehow. People are in detention.

Judge:

I heard, it is not confirmed though, that some people occupying the court in Donetsk realized that parties have an issue with that, and were selling these cases. There were bankruptcy cases. They did not shy away from incomplete civil cases. They gave it to the parties in exchange for payment.

Sometimes, restoring lost court proceedings is an unnecessary bureaucratic procedure. For instance, it is used to obtain a verified copy of a court decision. However, the Unified State Register of Court Decisions has copies of all court decisions. It would be easier to issue certified copies of court decisions using this Register. One visit to the court would be enough instead of wasting resources for a procedure of restoring lost proceedings.

Another issue is that the procedure for restoring proceedings is used only for completed proceedings. The law does not say how to restore files in a lost ongoing case, for instance in criminal proceedings. In civil, economic and administrative proceedings, case files lost before the completion of trial cannot be restored, but it is possible to submit a new claim. Of course, it makes proving more difficult if evidence was los.

116 The Law of Ukraine "On administration of justice and criminal proceedings due to the anti-terrorist operation", 2009.

117 Official website of the judiciary // http://court.gov.ua/ato.

118 Pravosuddya v ekzyli. Dotrymannya prava na spravedlyvyj sud na Sxodi Ukrayiny, vklyuchno iz terytoriyeyu, tymchasovo nepidkontrolnoyu ukrayinskomu uryadu [Justice in exile. The right to fair trial in the East of Ukraine, including the territories temporarily outside the control of the Ukrainian authorities]. – K: 2016. – p. 6 // https://court.gov.ua/userfiles/zvit_sp_sud.pdf.

119 Kak byt s iskovym zajavleniem, kotoryj ne byl rassmotren v sude, vvidu provedenija ATO na territorii gde raspolozhen sud. Sovet advokata [What to do with a law suit that was not considered by a court due to the ATO. Lawyer's.

120 Thematic report "Access to Justice and the Conflict in Ukraine" // http://www.osce.org/uk/ukraine-smm/212321?download=true.

In criminal proceedings, the standard of proof is the highest, which makes the situation with criminal cases the most difficult.

According to article 17(2) of the CPC, no one shall be required to prove their innocence of having committed a criminal offence and shall be acquitted unless the prosecution proves their guilt beyond any reasonable doubt. Therefore, the courts have to acquit suspects in the absence of all case files, or revoke convictions.

Prosecutors:

Everyone was released. The court does not have grounds or proof .The court cannot establish the commission of a crime. What if did not happen and was made up, and the person is arbitrarily detained. And everyone was released.

There is another problem – when the verdict is appealed, and case files are in those areas. The court of appeal grants the bandit's request and orders a new trial. The case enters the court. The paper, the indictment and that is all. All witnesses are in the occupied areas, all evidence is in the occupied areas. As a result, the prosecutor refuses to support prosecution and the case is closed. The bandit even applies for compensation of material damages by the prosecutor's office. We have to pay him. We had cases like these. A prosecutor discontinued prosecution on the third. There are bandits, there is a lawyer saying, «I have access to criminal case files» but we have no access and cannot provide anything to the court. The prosecutor drops prosecution, and they benefit from it.

If the victim or the representative, or even other parties to proceedings have copies of some materials, it is possible. If they don't – they don't... If the law enforcement, police, SSU, prosecutor's office or court do not have copies, it is impossible to restore.

For instance, the Court of Appeal in Donetsk region in the ruling issued on 19 October 2016 no. 267/6365/13-к revoked the decision of the first-instance court and directed the case for re-trial even though some criminal case files had been restored:

> *"Since the materials were lost due to the ATO in Donetsk region, the acting prosecutor of Hirnytsky district in Makiivka town, Donetsk region, on 26.10.2015 asked Kramatorsk City Court to restore lost criminal proceedings.*
>
> *The ruling of Kramatorsk City Court in Donetsk region dated 01 February 2016 restored the lost criminal case files [...] concerning charges against PERSON_2 and PERSON_3 under art. 213(1) of the CCU based on provided procedural documents, extract from the Unified Register of Pre-Trial Investigations, ruling concerning the search, notice of suspicion against PERSON_2, indictment, and a ruling of the court of appeal.*
>
> *[...] The restored criminal proceedings do not include written evidence referred to in the verdict, technical records, minutes of court hearings, materials of investigative actions. Therefore, the court of appeal did not receive any written or other evidence to make a conclusion about the guilt of the accused persons [...] Materials and documents in the restored criminal proceedings are insufficient for the appeal court to make a final decision since it's impossible to verify arguments of the accused persons and their representative. It is impossible to verify evidence without examining it, since it would violate article 23 of the CPC of Ukraine mandating direct examination of evidence in court"*[121].

During the re-trial, the prosecutor withdrew state prosecution, and the court closed the proceedings since:

> *"Materials of the criminal case no. 12013050980001244 were lost in the temporarily non-government controlled areas in Ukraine. According to the ruling of Kramatorsk City Court of Donetsk region dated 01.02.2016, restored materials include only the following: extract from the Unified Register of Pre-Trial Investigations no. 120130503980001244; ruling on the search dated 23.04.2013; notice of suspicion concerning PERSON_2; indictment in criminal proceedings no. 120130503980001244; verdict of Hirnytsky district in Makiivka town, Donetsk region, dated 15.04.2014; and the ruling of the appeal court of Donetsk region dated 19.08.2014. The prosecution does not have any other materials of criminal proceedings. During the trial in criminal case no. 12013050980001244, PERSON_2 and PERSON_3 did not admit their guilt. Moreover, witnesses in the criminal case are residents of Makiivka, Donetsk region; it is impossible to question them in court since their personal data, place of residence and contact phone numbers are unavailable"*[122].

In addition, focus groups revealed that authorities had to release persons from remand prisons in the government-controlled areas if their case files had remained in the occupied areas. In addition, when case files were in the government-controlled areas, but suspects or accused persons were in detention in the occupied areas, they were put on wanted list.

Investigators:

It is a problem, but it has improved. During the first year, it was like this: either these persons are in this territory while the criminal case is there, or vice versa. There is proof of guilt. As a rule, these persons are on the wanted list. The prosecution is there.

Now, if there is a search warrant, the prosecution is there, they person is detains when crossing the checkpoint and the person is detained based on the wanted list data. However, there are no files.

Judges:

Authorities of Artemivsk remand prison once made a decision to release everyone.

Yes, if we received a case, we issued a search warrant. If we do not have the case, it is unresolved.

Human rights defender:

In my experience, before last year, more than 80 people were in the remand prison in Starobilsk, but their cases were in Luhansk.

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121 Decision of Donetsk Region Court of Appeal, 19 October 2016 // http://www.reyestr.court.gov.ua/Review/62198403.

122 Ruling of Kramatorsk City Court of Donetsk region, 20 October 2017 // http://www.reyestr.court.gov.ua/Review/69672042.

Representative of the Ombudsman's Office:

There is an issue with those accused of "grave" crimes, murders, membership in organized criminal groups, armed assault. Judges understand there are no grounds to continue detention, but how can you simply release a person charged with murder?

The situation of persons who served their sentence in the temporarily occupied areas and returned to Ukraine is also unregulated. In most cases, courts choose to protect the rights of convicted persons.

Prosecutors:

The courts found a solution. Together with the prosecutor's office, they see the grounds for release. The person is arrested, the prosecutor's motion is satisfied, and the court releases the person on the same grounds under the Ukrainian law.

For instance, Novopskovsk District Court in Luhansk region has released on probation a person who served the punishment in Petrovske correctional prison no. 24 in Luhansk region (located in the non-government controlled territory):

"The convicted person was serving the punishment in Petrovske correctional prison no. 24 in Luhansk region which has been in the areas temporarily outside of government control since April 2014.

On 21.09.2015, PERSON_1 was granted parole by the administration of the illegal facility. In this regard, PERSON_1 submitted a request for parole to the competent local court under articles 537(1)(2) and 539 of the CPC of Ukraine.

According to article 81(1) and (2) of the Criminal Code of Ukraine, parole may be applied if a sentenced person displays decent behavior and diligence in work as a proof of his/her reformation. Parole may be applied after a sentenced person has actually served not less than two-thirds of the term imposed by a court for an intended grave offense.

According to the court verdict, PERSON_1 was sentenced for an intended grave offense and has served more than two thirds of the term imposed. The remaining sentence is 1 year 6 months 27 days. Therefore, there are formal grounds for granting parole to PERSON_1.

The state authorities have not disproved the claims of PERSON_1 about performing his duties imposed by the verdict. PERSON_1 is also not responsible for the fact that the state penitentiary service of Ukraine has not offered him to serve the sentence outside the occupied area.

Having no possibility to serve the sentence, PERSON_1 contacted the state authorities of Ukraine, which proves he had no intent to avoid punishment.

According to article 81(2) of the Criminal Code, the state must provide documents to confirm or disprove the statement that the person displayed decent behavior and diligence in work as a proof of his/her reformation.

According to the reference from the place of residence, PERSON_1 had a satisfactory characteristic at his place of residence.

Since the facility where PERSON_1 served his sentence is in the temporarily occupied areas, there is no guilt of PERSON_1 in the absence of characteristics about his behavior or attitude to labor in detention facilities.

Under these circumstances, the court considers that PERSON_1 shall be granted parole because he has served more than two thirds of his sentence and there is no information to suggest undiligent behavior or attitude towards labor in detention facilities"[123].

Appellate courts also support this position, for instance:

"According to article 539 of the CPC, the sentenced PERSON_5 has the right to file motions for parole with the court. The first-instance court had to review the motion in accordance with art. 537 on merits and, if necessary, invite the representative of the penitentiary facility, verify based on materials provided whether there are grounds for parole under article 81 of the Criminal Code and make a relevant decision. However, the court failed to fulfill this obligation. The lack of possibilities to verify the person's behavior in the penitentiary facility located in the non-government controlled area cannot serve as justification for not considering a motion for parole and be used against the person. The first-instance court has violated the criminal procedure norms and these violations prevented the court from making a lawful and reasonable decision. Accordingly, pursuant to articles 407, 412 of the CPC, the ruling shall be revoked"[124].

However, appellate courts sometimes supported the view on the need to continue the sentence:

"Parole may be applied after a sentenced person has actually served not less than two-thirds of the term imposed by a court for an intended grave offense or reckless special grave offense, and also where that person had previously served a sentence of imprisonment imposed for an intended offense but committed another intended offense before the conviction was canceled or revoked and had been sentenced for that offense to imprisonment. Therefore, article 81(3) requires that parole be granted after the person has served a certain part of the sentence.

At present time, the panel of judges does not have sufficient credible data on the actual sentence served by PERSON_1.

In addition, another criterion for parole is decent behavior and diligence in work as a proof of his/her reformation.

The local court has not received official data regarding the above. The ruling of Khartsyzsk Inter-District Court of "Donetsk People's Republic" dated 10 August 2015 granting the motion for parole filed by PERSON_1 and, accordingly, parole for 1 year 7 months and 9 days has been rightly recognized as illegitimate"[125].

Investigators:

I had a case in 2014. The person killed his wife, and he was detained in the remand prison in Luhansk. He is detained there. The case files are here. After the war,

123 Decision of Novopskov District Court of Luhansk Region, 24 March 2016 // http://www.reyestr.court.gov.ua/Review/56652807.

124 Decision of Donetsk Region Court of Appeal, 3 February 2016 // http://www.reyestr.court.gov.ua/Review/55626509.

125 Decision of Donetsk Region Court of Appeal, 22 December 2015 // http://www.reyestr.court.gov.ua/Review/54627224.

the court extended his term. Of course, he was not informed about that. In 2017, he was released from the remand prison in Luhansk and received a certificate. He comes here. We detain him. We detain him for the second time, in fact. The court did not recognize that he served the sentence in the remand prison. The court did not find the certificate legitimate.

I heard about such cases. For instance, the person was sentenced by Ukraine; he serves until a certain moment. He remained in the uncontrolled territory. The courts there consider the motion for parole. He is released. He comes here. Here, he is detained and sentenced. He has not served the sentenced in full. He is sent to prison.

In civil cases, courts also face issues related to restoring case files.

It applies, for instance, to cases when judges recuse themselves from initiating the process:

"When considering the claim of "PUMB" PJSC in the absence of the materials of civil case of "PUMB" PJSC against PERSON_5, PERSON_3, PERSON_6 on revocation of housing loans, where the decision was issued by Budionivskyi District Court of Donetsk of 26.03.2013, the court did not take into account that article 403 of the Code of Civil Procedure of Ukraine provides an exhaustive list of person entitled to file claims to restore proceedings with the court.

According to this provision, lost proceedings in civil cases can be restored upon request of the parties or the court's initiative.

Case files show that "PUMB" PJSC participated in the case of "PUMB" PJSC against PERSON_5, PERSON_3, and PERSON_6 on revocation of housing loans as a plaintiff.

Accordingly, based on provisions of article 403 of the Code of Civil Procedure of Ukraine, the first-instance court had to consider the issue of restoring lost court proceedings in civil case of "PUMB" PJSC against PERSON_5, PERSON_3, PERSON_6 on revocation of housing loans or a court decision in this case both pursuant to PJSC "PUMB" application and upon the court's own initiative. Only after that, the court could had to review the application of PJSC "PUMB" for receiving copies of enforcement letters and restoring the terms for their delivery.

Under these circumstances, the ruling of the first-instance court dismissing the application of "PUMB" PJSC is premature and shall be revoked; the matter shall be sent to the first-instance court for re-trial"[126].

"Indeed, article 403 of the Code of Civil Procedure of Ukraine provides an exhaustive list of persons who can file claims to restore proceedings with the court. PERSON_2 is not on the list because she did not take part in the case in which she is asking to restore proceedings.

However, when the first-instance court returned the application to restore lost court proceedings to PERSON_2, it did not take into consideration that restoration of the lost proceedings is necessary for PERSON_2 to appeal the decision of Hirnytsky District Court of Makiivka, Donetsk region, issued on 11 December 2013 in accordance with article 296 of the Code of Civil Procedure along with the case to the appellate court, and in this case the lost proceedings in civil case can be restored with the court's initiative in accordance with article 403 of the Code of Civil Procedure.

Clearly, judicial discretion (initiative of the court) is an element of judicial independence in certain procedural actions. However, limits to these freedoms are determined by the court's tasks"[127].

We also identified a problem in disputes on loans when copies of agreements or documents are available only in electronic format:

Judges:

There was a serious problem. The bank disputes. The archives of majority of large banks remained there. They took the electronic records, of course. Loan agreements, housing loans and other payment receipts, and original copies remained. When they bring some extract of unclear origin about a loan, printed from a computer, not even a photocopy without the respondent's signature, with a stamp "True to the original", but where this comes from and where the original copy is, I do not understand.

The respondents try to take procedural steps saying, "No, I did not take anything, there is no agreement". He took the loan. The bank can prove the fact of issuing the loan. It will find it, print out and put the stamp but there is no agreement. There are no terms for return. The documents are in that area. Of course, the respondent has it. However, the agreement indicated the interest rate, the return date, the timeframe for fulfilling obligations, as well as whether the bank had the right to file a complaint to the court.

In 2017, the High Specialized Court on Civil and Criminal Cases prepared an overview of case law on issues related to restoring lost court proceedings, in particular, in the temporarily occupied areas and in the ATO zone[128]. The overview concerns proceedings in civil cases. Prior to that, overviews on restoring civil case materials were done by the Courts of Appeal of Donetsk and Luhansk regions.

In the overview, the High Specialized Court for Civil and Criminal Cases highlighted three issues related to restoration of lost proceedings.

First, courts that received jurisdiction from courts in the occupied territories sometimes returned requests to restore lost proceedings stating that these requests should be submitted to courts located in the ATO zone after they resume their operations.

Second, courts sometimes demanded that plaintiffs prove that materials were lost though plaintiffs alleged that materials were in the court buildings in the occupied areas.

Higher courts have cancelled such decisions and decided in favor of the applicant, i.e. these issues were resolved in practice.

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126 Decision of Donetsk Region Court of Appeal, 1 December 2016// http://www.reyestr.court.gov.ua/Review/63097289.

127 Decision of Donetsk Region Court of Appeal, 9 February 2016 // http://www.reyestr.court.gov.ua/Review/55587746.

128 Overview of case law on issues related to restoring lost court proceedings, in particular, in the temporarily occupied areas and in the ATO zone // sc.gov.ua/.../УЗАГАЛЬНЕННЯ_відновлення%20втраченого%20провадження.doc.

The third problem was caused by the obstacles to informing parties in the occupied areas in accordance with the law. Courts used publications in the media (similar to the law) or on the court's website. At the same time, the new procedural legislation of 15 December 2017 legitimized summons and notifications through publication on an official site.

In the field of economic court proceedings, local courts often refused to restore lost case files even when parties actively provided copies of relevant documents.

At the same time, courts of higher instances fixed these mistakes:

> *"[…] the economic court of Donetsk region listed the documents attached to the case in description and argumentation, but did not provide any assessment of these documents as to whether they were sufficient for restoring proceedings in the case.*
>
> *Conclusions of the local court on the absence of necessary documents are unfounded, have no reference to evidence examined by court or procedural action taken (except obliging the debtors and the executor of estate to provide them) to restore the lost case and defend the rights and legitimate interests of the parties to the bankruptcy case.*
>
> *The court also did not specify why, in its view, restoration of the case was related specifically to these documents while the court considered all other documents insufficient.*
>
> *Accordingly, the first instance court did not take into account the possibility to restore the case to the extent necessary for consideration of a complaint or claim with sufficient materials for such consideration"*[129].

For administrative courts of cassation, there was a problem connected with systemic error in cassation courts related to closing proceedings in administrative cases in the absence of sufficient materials for accurate restoration of lost proceedings.

This problem appeared when the High Administrative Court, a court of cassation, received complaints in cases that later remained in the occupied areas. The court of cassation requested cases, but the courts had moved and lost the cases. Therefore, there were attempts to restore the cases based on the documents in the Unified State Register of Court Decision. In a number of cases, the High Administrative Court refused to consider a cassation complaint if it recognized that the restored materials were insufficient for its consideration.

The Supreme Court of Ukraine identified a flaw in this position[130]. The cassation court reviewing a cassation complaint about the decision on merits is not in the position to revise the court ruling on restoration of the lost court proceedings.

> Judges:
>
> At first, the High Administrative Court supported this practice: we restore what we have, and they see the description of the decision. If it is not restored sufficiently, they close it. If it is sufficient, they consider it. First, they had this approach. Then, the Supreme Court said that the High Administrative Court has no right to close; only the first-instance court restoring the proceedings could close, and everything was cancelled…
>
> Overall, we restored a bit less than 25 percent of cases. We tried our best to do it.

129 Ruling of the High Economic Court of Ukraine, 11 May 2016 // http://www.reyestr.court.gov.ua/Review/57645165. See also the ruling of the High Economic Court of Ukraine, 20 April 2016 // http://www.reyestr.court.gov.ua/Review/57366392.

130 Ruling of the Supreme Court of Ukraine, 15 November 2016 // http://www.reyestr.court.gov.ua/Review/63427670.

The positive aspect is that participants of focus groups from different categories said that issues related to restoring proceedings were no longer relevant in most cases.

The fact that materials of enforcement proceedings remained in the occupied areas created significant obstacles to executing court decisions.

> Lawyer:
>
> There is a decision. Chornobyl veterans received a decision… in administrative case… When they came here (to Starobilsk), there was a mess… Artemivsk Pension Fund was supposed to execute the court decision (Artemivsk, Luhansk region, temporarily occupied), but the Fund in Artemivsk is not fully functioning. We had to restore administrative proceedings, receive a letter of enforcement and do it all over again.

Administrative courts often side with the parties in enforcement proceedings that cannot obtain necessary documents if the latter are in the occupied area:

> *"The appellate court established that the plaintiff had to receive a certificate on received (not received) alimony at the State Enforcement Service of Perevalsk District Justice Directorate in Luhansk region located in Perevalsk, Luhansk region.*
>
> *The panel of judges states that the conduct of the anti-terrorist operation in Luhansk region, in particular, Perevalsk, is a well-known fact (at the time of the plaintiff's claim for support dated 10.07.2014 and ever since). Therefore, according to article 72(2) of the Code of Administrative Procedure, it is not subject to proving.*
>
> *In addition, according to the decree of the Cabinet of Ministers of Ukraine dated 7 November 2014 no. 1085-p, localities in Perevalsk district of Luhansk region are included in the List of places where state authorities are temporarily not performing (to the full extent) their functions.*
>
> *The panel of judges, therefore, considers that the plaintiff's inability to submit a certificate about received (not received alimony) to the social protection directorate at the time of application on 10.07.2014 an established fact"*[131].

Economic courts had certain difficulties with decisions on production of duplicates of orders due to the location of enforcement proceedings in the uncontrolled areas:

> *"Article 120(2) of the Code of Economic Procedure establishes a list of documents that shall be attached to the request for a duplicate order. According to this provision, in particular, a certificate from the bank, state enforcement agent or communications authority confirming the loss of the order shall be attached to the application.*

131 Decision of Donetsk Administrative Court of Appeal, 26 January 2015 // http://www.reyestr.court.gov.ua/Review/42444881.

The plaintiff attached a certificate of the Unit of Forced Execution of Judgements of the Directorate of the State Enforcement Service of the Main Territorial Department of Justice in Luhansk region no. 1123/027-30/10 dated 21.05.2015 to the application no. 522/06-901 dd. 07.04.2015 for a duplicate order. According to the certificate, enforcement proceedings nos. 38793046, 38793046, 40678460 in the case no. 28/182/2011 are located in the temporarily occupied areas, and restoration of enforcement proceedings required a duplicate court order.

Therefore, the court of first instance based its decision to dismiss the claims solely on the lack of documents listed in art. 120(3) of the Code of Economic Procedure of Ukraine.

We should note that according to article 43 of the Code of Economic Procedure, an economic court should provide the parties and other participants of the case with necessary conditions for establishing the facts in the case and correctly applying the law.

For instance, due to the lack of evidence for consideration of the application, the first-instance court requested the plaintiff and other entities, including the State Enforcement Service, to provide evidence. It received a conformation about the launch of enforcement proceedings (decision dated 28.08.2013), decision to recover enforcement fees dated 05.09.2013 and decision to seize the debtor's funds dated 07.04.2014.

In addition, the plaintiff submitted the application for a duplicate order not due to the loss of original order by the plaintiff or the State Enforcement Service, but because the entire enforcement proceedings, including the order, are in the area of the anti-terrorist operation. As a result, the files of enforcement proceedings are considered lost since the enforcement service is unable to perform executive action until the case files are restored.

Taking into account the above, the panel of judges of the appellate court concludes that the appeal of "PBP Azovinteks" LLC shall be granted and the ruling of the Economic Court of Luhansk Region in the case no. 28/182/2011 dated 02.06.2015 shall be revoked"[132].

Judges in focus groups supported the simplified procedures for issuing enforcement documents:

Judge:

Court decisions must be executed. There are dozens, hundreds of thousands of cases that have not been executed. They entered into force; there is a record in the register that it entered into force. It concerns civil, economic and administrative cases. We suggested that if the register has an entry "entered into force", we could issue the enforcement letter based on the register since it is the original electronic database. We could issue enforcement letters. We raised this issue but did not find support.

132 Decision of Donetsk Economic Court of Appeal, 8 July 2015 // http://www.reyestr.court.gov.ua/Review/46609419. See also Decision of Donetsk Economic Court of Appeal, 14 May 2015 // http://www.reyestr.court.gov.ua/Review/44241024.

4.2
ACCESS TO JUSTICE FOR RESIDENTS OF THE ORDLO

Administration of justice in the ORDLO became almost impossible due to the Russian aggression and the illegal armed groups under its control. In May-August 2014, all authorities providing services in the field of justice in the ORDLO stopped functioning. Damage to the court buildings, pressure on judges from the members of the illegal armed groups, real threat to the lives of court officials and citizens in need of court protection, as well as further decisions of Ukrainian state authorities concerning these threats – all these factors deprived residents of the ORDLO of access to justice in these territories.

Questionnaire results:

BARRIERS TO ACCESS TO JUSTICE IN UKRAINIAN TERRITORY FOR THE RESIDENTS OF THE TEMPORARILY OCCUPIED AREAS

1 - most common barrier, 5 - least common barrier

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Crossing the contact line	1,25	1,7	1,8	1,45	1,6
Material costs of travel	1,55	1,85	1,9	2,1	2
Inability to inform a person about planned activities	1,4	3	2,05	2,8	2,7
Court fees	2,5	3,45	2,8	3,05	2,15
Difficulties (lack of possibility) to execute a decision	2,15	2,65	2,5	2	2,2
This category has no barriers to access to justice	-	-	-	-	-
All the above barriers are equally significant	-	-	-	-	-
No response	-	-	-	-	-

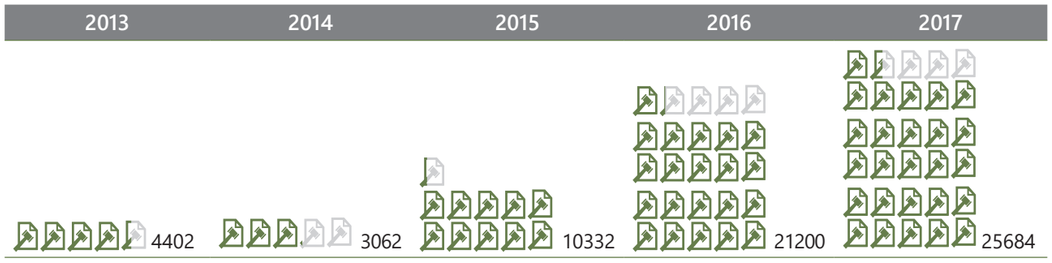
While ORDLO residents are not deprived of access to court in the government-controlled areas, physical access is significantly impeded.

To apply to court, the person has to come to the nearest post office in the government-controlled area in Ukraine (Ukrainian mail stopped working in the ORDLO) or directly to the court.

There are five vehicle entry-exit checkpoints in Donetsk region and one pedestrian checkpoint in Luhansk region. Therefore, residents of the non-government controlled parts of Luhansk region often have to reach the government-controlled areas of Ukraine through the Russian Federation. They first cross the uncontrolled part of the border between Russian and Ukraine in Luhansk region, and then enter Ukraine in Kharkiv region. During passport control, Ukrainian border guards draw up multiple reports on administrative violations for illegal border crossing.

Statistics:

COURT CASES CONCERNING ILLEGAL CROSSING OF UKRAINIAN STATE BORDER



ORDLO residents who cross the contact line through checkpoints have difficulties with finances for travel/accommodation/meals, time resources necessary to receive the mandatory permit from the SSU for crossing the checkpoints, as well as weather conditions in the lines at checkpoints. There is also an important issue of personal security of citizens.

Reduced mobility groups (persons with disabilities, elderly people) find it especially difficult to access the government-controlled area of Ukraine, which affects their right to fair trial.

For instance, Donetsk Administrative Court of Appeal stated:

> *"PERSON_3 in his application stated that he cannot leave Luhansk due to health condition and the anti-terrorist operation. State authorities of Ukraine are currently not operating in the city.*
>
> *Having reviewed the materials attached to the application, the panel considers that the first-instance court issued a premature decision regarding expiration of deadlines for application to the court. The first instance court did not establish when the plaintiff learned or had to learn about the violation of his rights; did not check the grounds for missing the deadline for application; and did not establish whether these are significant reasons; did not take into consideration that the applicant is challenging illegal failure to act that has a lasting nature. Under these circumstances, the first-instance court issued the ruling prematurely; therefore, it shall be revoked"*[133].

133 Decision of Donetsk Administrative Court of Appeal, 31 May 2016 // http://www.reyestr.court.gov.ua/Review/58015300.

Inability of ORDLO residents to reach the court in time affects compliance with the period for consideration of cases.

Judge:

> Very often, people cannot come from the uncontrolled areas, they have to spend 4-6 hours at the contact line, and then reach the court. Logistics is complicated, the time is limited, and we postpone cases. Legislation does not account for these details.

Following the changes in territorial jurisdiction, residents of ORDLO towns have to apply to relevant courts in the government-controlled areas in accordance with the orders of the head of the High Specialized Court for Civil and Criminal Cases. For example, a resident of Alchevsk (ORDLO) can only apply to Lysychansk city court in Luhansk region, resident of Snizhne (ORDLO) – to Kuibyshev District Court of Zaporizhzhia region[134].

Lawyer:

> Distribution of these new courts was not exactly reasonable… Now, Zhovtnevy court of Luhansk is assigned to Troitsky district court of Luhansk region. Artemivsk [district court of Luhansk] - to Bilokurakyne. In this case, people from the non-government controlled territory also have to go to a different part of the region to file a claim with Zhovtnevyi court...

During the monitoring of material condition of buildings and administrative resources of courts in Donetsk and Luhansk regions, monitors found it easy to locate courts. They reached the court from a different locality in 54 percent of cases. However, there were difficulties with finding transportation, lack thereof in certain areas, and absence of address signs and inconvenient location of courts. Three inspected courts had two buildings and did not include this information on their website. Their working hours were available online, but it would be more difficult to find out without having access to the Internet. For instance, in 58 percent of courts, all information about the court's work is placed inside of the building. Therefore, it is impossible to obtain this information after working hours without Internet access.

Judges:

> There are displaced persons with temporary registration, and there are others without temporary registration. The person left, he has to go to Slaviansk. He has family in Vinnytsia. He can apply in Vinnytsia. He can come and submit the lawsuit. It is easier to have a power of attorney for someone there.

> Or there was at least a suggestion: those who can move but do not have means to pay for transport and appear before the court could reach the checkpoint at minimum costs and have a video conference with the court from an office of an international organization ….

134 See Order of the Head of High Specialized Court of Ukraine on Civil and Criminal Cases no. 27/0/38-14, 02.09.2014 "On territorial jurisdiction of cases" // http://zakon2.rada.gov.ua/laws/show/v2710740-14.

We should note that when ORDLO residents take part in court hearings, they have to cross the contact line in both directions several times, for instance to obtain a court decision because mail is not delivered to the non-government controlled areas.

Due to the lack of institutions providing services in the field of justice, residents of the non-government controlled areas face significant restrictions in their ability to receive such basic services as notarization of documents or receiving birth or death certificates.

Authorities of the so-called DPR and LPR provide these services. Documents notarized by the notaries working in the ORDLO are not valid in Ukraine or other states. Citizens are therefore forced to go to the areas controlled by Ukraine.

To organize this category of cases and simplify the procedure for establishing such facts, on 4 February 2016, Verkhovna Rada of Ukraine adopted a law on establishing the facts of birth or death in the temporarily occupied territory of Ukraine (entry into force - 24 February 2016)[135]. This law recognized the specifics of cases on confirmation of birth or death of a physical person in the temporarily occupied territory of Ukraine.

Since then, an application to establish the fact of birth or death can be submitted to any court in Ukraine. Courts have to consider applications to establish the facts of birth or death in the ORDLO immediately upon receipt. The court issues a copy to the applicant immediately after the decision is announced and promptly sends the decision to the registration authorities in the area of the court for state registration of birth or death. This procedure was included in the amended Civil Procedure Code of Ukraine dated 3 October 2017.

Judges:

Artemivsk court replaces Horlivka. Horlivka has a population of 350 thousand. They started to look at amendments to article 257-1 of the CPC "Establishing the fact of birth and death in the temporarily occupied territory". These cases are considered immediately. The courts have almost no time. Everything is booked with the panels, [there are] these cases, very big caseload. One has to find time somehow. The court's jurisdiction expanded from 120-thousand town by 350 thousand. There are also many of those cases: births, deaths, they come to us daily.

Citizens provide birth certificates issued by the ORDLO, medical certificates, and photos of the pregnant woman to prove birth. To prove the facts of death, they submit certificate of death issued by the authorities of the so-called DPR and LPR, medical certificates, a contract for burial services and even pictures of the grave. In both cases, the grounds for applying to court is a letter from any civil registry office refusing to register birth or death of an individual. However, this approach creates additional formal obstacles on the way to court.

135 Law of Ukraine «On amendments to the Code of Civil Procedure of Ukraine on establishing the birth or death of a person in the temporarily occupied territory of Ukraine", 2016.

Residents in the non-government controlled areas apply to Ukrainian courts to establish birth and receive social assistance in case of childbirth. The purpose of establishing the fact of death is to receive inheritance.

However, there is another aspect related to birth in the territory of the so-called DPR or LPR. According to the Family Code of Ukraine (article 144(1)), parents have the duty to register the child with the civil registry office within one month. The Code of Administrative Offences (art. 212-1) includes sanctions for failing to meet this obligation, including for the residents of ORDLO. It is therefore possible that, in addition to dealing with the court hearing to establish the birth of a child, young parents will also have to pay a fine for delayed registration.

The Law adopted on 3 September 2015 eliminated court fees for applications to establish the facts of death of a person who died or disappeared in the zone of hostilities or anti-terrorist operations[136]. At the same time, applicants have to pay a court fee for requests to establish birth or "natural death" in the ORDLO. It is difficult to justify this difference in treatment.

Article 2(3) of the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" provides the following:

> *"Activities of the armed groups of the Russian Federation and the occupying administration of the Russian Federation in Donetsk and Luhansk regions violate international law and are illegal. Any document issued in connection with these activities is illegal and null except for documents that confirm the birth or death in the temporarily occupied areas of Donetsk and Luhansk regions. These documents are attached to the application for state registration of birth or death".*

It is unclear whether this provision would result in state registration of births or deaths without the need to establish facts in court but only based on the document issued by the occupying authorities.

If an ORDLO resident wants to use legal services without entering the government-controlled area, there are problems with the power of attorney for legal representation in courts and other authorities. The person has to go to the government-controlled territory to notarize this document.

Judge:

If the person hired a lawyer, who notarized the power of attorney? There are no notaries on that side. The person has to come here to sign the power of attorney, as well as the agreement. The lawyer signed it. Where is the guarantee that this person signed it?

136 Law of Ukraine «On amendments to the Law of Ukraine «On court fees» concerning exemption from court fees for participants of anti-terrorist operations and family members of the deceased», 2015.

Earlier, the law on legal profession stated that the lawyer could certify documents, but it does not exist anymore. I do not know who signed this document. Often, these documents entail serious consequences. What if this person is dead? What if he didn't want this? There are different situations. Do we take this document unconditionally? It is not that simple. It is not because we support bureaucracy but because there is an order. Perhaps, we should simplify the procedure specifically for this territory and legalize this.

It has been simplified to eliminate the notary costs but allow power of attorney through a Secondary Legal Aid Center. However, they did not write it correctly – that the head of the center has the right to issue power of attorney documents.

The right of physical and legal persons in the ORDLO to take part in court hearings is significantly curtailed due to the lack of possibilities to ensure direct notification about the date, time and place of a court hearing.

Accordingly, these persons are at a disadvantage compared to those outside of the ORDLO who can make full use of their procedural rights.

During trial monitoring, monitors looked at the information about hearings on bulletin boards and websites of relevant courts. In most cases, this information was available both on the website, and the bulletin board inside the court, namely in 135 (63 percent) of all analyzed hearings, including 77 hearings (36%) in Donetsk and Luhansk regions, and 58 hearings (27 %) in other parts of Ukraine.

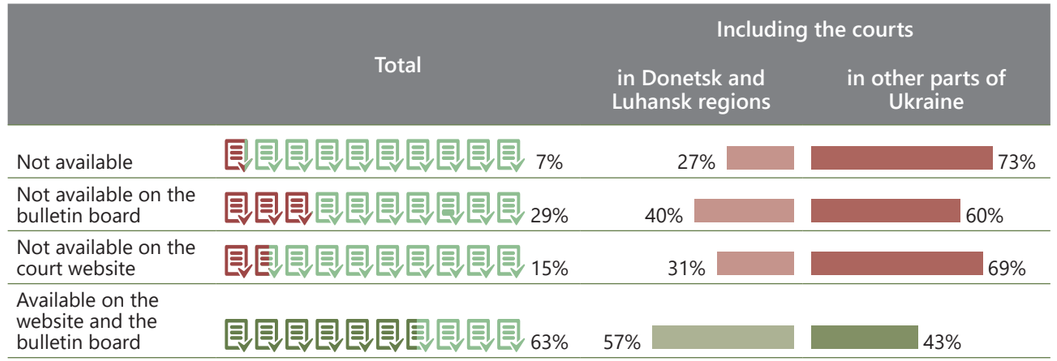
There were no announcements for 32 hearings (15% of all hearings), including 10 hearings (31%) in courts of Donetsk and Luhansk regions, and 22 hearings (69 %) in other parts of Ukraine. Among these cases, there were announcements on bulletin boards in 17 instances (53 %). Sixty-two hearings (29 % of all hearings) were not announced on the bulletin board (25 hearings (40% of hearings not announced on the bulletin board) in courts in Donetsk and Luhansk regions, 37 hearings (60 %) – in other parts of Ukraine). However, 47 of these hearings (76 %) were announced on the website.

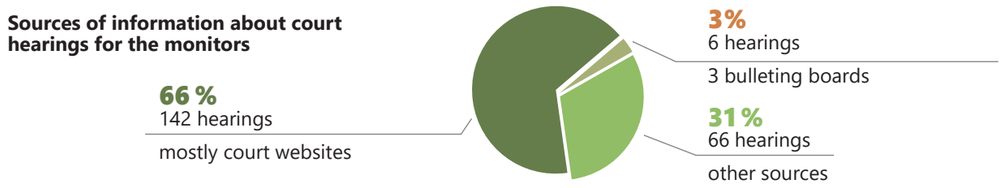
In 15 hearings (7%), information was unavailable neither on the website, nor on the bulletin board (4 hearings (27%) in Donetsk and Luhansk regions, 11 hearings (73 %) – in other parts of Ukraine).

Therefore, in most cases, monitors received information about court hearings from court websites (142 hearings, 66 percent of all hearings, including 86 hearings (61%) in Donetsk and Luhansk regions and 56 hearings (39 %) in other parts of Ukraine). The bulletin board was used only 6 times (3%) (3 times (50%) in courts in Donetsk and Luhansk regions and 3 times in other parts of Ukraine). In other cases, monitors received information from the court staff, previous hearing, civil society, or parties in other cases (66 hearings – 31 % of all cases).

Monitoring results:

AVAILABILITY OF INFORMATION ABOUT COURT HEARINGS





The court staff in Donetsk and Luhansk regions reported difficulties in notifying persons in the non-government controlled areas, issuing documents for them. In one case, the staff said that they used a certificate from Ukrposhta (mail service) with a stamp and date stating that there was no mail delivery in those areas (Economic Court of Luhansk Region). In another court, the staff did not see it as an issue and solved everything through electronic means of communication and the court website (Zhovtnevyi District Court in Mariupol, Krasnyi Lyman City Court in Donetsk region).

Lawyer:

While the High Economic court issued a statement back in 2014 on notifications in cases, including delivery of decisions in the ATO zone, neither the High Administrative Court, nor the High Specialized Court, nor the Supreme Court provided any clarifications. Accordingly, every judge is trying to solve these issues in their own way.

Notification-related issues often served as grounds for revocation of court decisions:

"According to certified copies of printouts of the list of "Notifications for trial participants in the ATO zone" provided by the plaintiff from the official website of the Economic Court of Donetsk region of the official website "Judiciary of Ukraine" (http://dn.arbitr.gov.ua/sud5006/pov/) for 23.12.2015 to 28.01.2016, there is no notification for parties in a bankruptcy case located in the ATO zone, including the day, time and place of court hearing on 28.01.2016 where the decision in question was adopted.

Taking into account the above, the panel of judges decided that the local economic court failed to notify in a proper manner the LLC "Mehapolis", Donetsk, and LLC "Donetskmiskhaz", Donetsk, about the time and place of a court hearing"[137].

"In the appeal, PERSON_1 represented based on the power of attorney by PERSON_5 is asking to revoke the ruling of Kostiantynivskyi City District Court of Donetsk region dated 23 November 2015 dismissing the application of PERSON_1 against PERSON_2 concerning forced exchange of premises.

To support the appeal, PERSON_1 refers to the violation of procedural law concerning notification of the parties to the case on the time and place of the court hearing. The applicant stated, in particular, that mail is not delivered to his place of residence in Makiivka due to the active phase of the anti-terrorist operation. Therefore, the plaintiff sent procedural documents to Kostiantynivskyi City District Court of Donetsk region, including statements about hearings in the case in his absence. Therefore, the plaintiff considers that the first-instance decision is not in line with the circumstances of the case.

...

Case files include an extract from the official website of the judiciary of Ukraine, which shows that Kostiantynivskyi City District Court of Donetsk region published announcement about a hearing in the case concerning the claim of PERSON_1 on 23.11.2015 (vol. 2a, p. 143). There are no other documents showing proper notification of parties about the time and place of the hearing in accordance with articles 74, 76 of the CPC of Ukraine"[138].

"...The panel of judges states that the first-instance court when imposing a penalty on the respondent, the Directorate of Labor and Social Protection of Budionivsky district council in Donetsk could not have notified the respondent about the court hearing. According to the letter of the Main Directorate "Ukrposhta" UDPPZ no. 522-31/205 dated 22.07.2014, mail delivery to addresses in Donetsk was terminated on 22.07.2014 due to escalation of the social and political situation in Donetsk and Luhansk regions, hostilities in the ATO zone, heightened risk to the life and health of mail service staff, and access to Donetsk and Luhansk being blocked by illegal armed groups"[139].

Human rights defenders:

There is a situation when the person learns post factum about a year-old decision in some court that had entered into force, and the appeal process starts. Sometimes these decisions are being enforced when it comes to material cases. For instance, inheritance. I faced situations where the wrong person inherited the object pursuant to a court decision. It had been already sold several times...

I would like to agree. From the criminal procedure point of view, it is a big problem, since victims have to know everything that is happening, have the opportunity to exercise their rights. Do we have this in practice? It is impossible to notify the victims because it is not always possible to find out their whereabouts. Prosecutors never provide this information; they confirm with alleged letter that they had been notified. No one knows where they get the signatures. And from the point of view of persons who should have access to justice, I don't understand at all how they can have this access in the occupied territory?

137 Ruling of Donetsk Economic Court of Appeal, 18 March 2016 // http://www.reyestr.court.gov.ua/Review/56578923.

138 Decision of Donetsk Region Court of Appeal, 19 January 2016 // http://www.reyestr.court.gov.ua/Review/55118616.

139 Decision of Donetsk Administrative Court of Appeal, 29 July 2015 // http://www.reyestr.court.gov.ua/Review/47799643

For a long period, there was no understanding of the correct method: placement of announcements in "Uriadovyi kurier", sending text messages, using the official website of the court, making phone calls and recording it as telephone messages etc.

Only the law adopted on 3 October 2017 (entry into force on 15 December 2017)[140], established that the court shall summon and notify persons through official website of the judiciary in cases where residential or employment address of a party is located in the temporarily occupied areas or in the area of anti-terrorist operation (see Chapter 3.1).

Modern technologies allow for administration of justice even in the absence of a person. As stated in Chapter 3.1, the law provides for establishment of an Integrated Judiciary Information System for "electronic court" in Ukraine. The system could facilitate access to justice for residents of the temporarily occupied areas. It requires a large-scale information campaign and conditions for easy access to generating an electronic digital signature.

Addressing the issue of access to courts for ORDLO residents and protecting their rights is necessary for successful reintegration of these areas.

4.3
ACCESS TO COURT FOR VICTIMS OF THE ARMED AGGRESSION

Multiple violations of the rights and freedoms envisioned by the Constitution and the legislation of Ukraine caused by the armed conflict in eastern Ukraine require access to court for the victims, in particular displaced persons and persons who sustained harm as a result of hostilities.

Analysis of court decisions shows the following most common problems brought by the victims of armed conflict before the courts:

1) compensation of damages caused by the ATO;
2) different application of the law in cases of denial to issue a certificate for persons temporarily relocating from the temporarily occupied area or the ATO zone;
3) different application of legislation on monthly targeted assistance to persons temporarily relocating from the temporarily occupied area or the ATO zone;

140 Law of Ukraine "On amendments to the Code of Economic Procedure, Code of Civil Procedure, Code of Administrative Procedure of Ukraine and other laws», 2017.

4) disputes concerning recognition of the ATO as force major conditions by the Chamber of Commerce of Ukraine;
5) cases concerning access to documents remaining in the temporarily occupied territory etc.

When seeking court protection, victims of the military aggression faced obstacles affecting their ability to access the court including:

1) the need to pay court fees when defending the rights violated due to the ATO;
2) remote jurisdiction over cases;
3) difficulties in informing internally displaced persons about hearings.

International organizations have also addressed the issue of access to justice for the victims of hostilities.

According to the OHCHR report on Ukraine released on 15 December 2014, there is a need to develop a simplified procedure for the victims of crimes committed by armed groups to apply to law-enforcement (for example, without a link to territorial jurisdiction to the place where the crime was committed)[141].

Court fees were a significant problem for victims trying to bring their applications before the courts. The problem was only solved in 2018 with the Law of Ukraine "On court fees".

Hundreds of thousands of Ukrainian citizens[142] were displaced and had to change their place of residence and way of life because of the military aggression by the Russian Federation. Many of them turned to courts to defend their rights violated during the ATO. In courts, IDPs and citizens with permanent registration in the government-controlled areas who suffered damages from the military action (damaged housing, injuries etc.) had to pay court fees. At the same time, they were victims of the armed aggression by the Russian Federation and Ukraine's inability to protect its borders.

According to Article 8 of the Law of Ukraine "On court fees", the court can take into account the material status of a party and issue a ruling to postpone the payment of court fees or allow payment in installments, reduce the fee or allow exemption from payment.

Courts expressed different views on applications of this category of persons for postponement, separation into installments, reduction or cancelation of court fees:

> *"The plaintiff asks to revoke the ruling of the first-instance court due to violations of material and procedural law. In the appeal, the plaintiff argued that she had submitted a motion for exemption from court fees due to inability to pay them in response to the court ruling denying action in the case. However, the first-instance court did not take into account the provide evidence and returned her application"*[143].

141 Report on the human rights situation in Ukraine of 15 December 2014. Office of the United Nations High Commissioner for Human Rights // http://www.un.org.ua/images/stories/OHCHR_Report_on_Ukraine_15_December.pdf.

142 According to official data as of 5 March 2018, 1 489 659 displaced persons or 1 215 068 families from Donbas and Crimea registered // http://www.msp.gov.ua/news/14908.html.

143 Decision of Donetsk Administrative Court of Appeal, 26 August 2015 // http://www.reyestr.court.gov.ua/Review/49207268.

Questionnaire results:

IMPACT OF COURT FEES ON THE ADMINISTRATION OF JUSTICE

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
In some cases, court fees prevented administration of justice for IDPs and residents of the temporarily occupied areas	8,00 %	15,00 %	10,00 %	55,29 %	57,14 %
In some cases, court fees prevented administration of justice for IDPs	2,00 %	1,00 %	11,00 %	2,35 %	2,86 %
In some cases, court fees prevented administration of justice for residents of the temporarily occupied areas	4,00 %	4,00 %	4,00 %	4,71 %	7,14 %
There were such situations but there was a solution found	49,00 %	8,00 %	15,00 %	11,76 %	17,14 %
There were no such situations	37,00 %	72,00 %	60,00 %	25,88 %	14,29 %
No response	0,00 %	0,00 %	0,00 %	0,00 %	1,43 %

Lawyers, human rights defenders:

For instance, we have some cases in court regarding the return of deposits through the Deposit Security Fund. The plaintiff is an IDP with limited finances. The amount of the court fee for applying g to the court of appeal is one minimum wage. We wrote a statement asking to exempt the plaintiff from the court fee but the court denied it. We had to pay court fees not to miss the deadlines. However, there are other cases when the court fee is postponed or paid in installments. Unfortunately, it is not very widespread.

In my practice, there are over 100 cases like this. In most cases, they are exempt. You just need to collect evidence that the pensioner receives no other payments, and if you collect relevant evidence, in most cases, the court allows exemptions from the court fee. It means you do not just write that the plaintiff is a pensioner and has no funds, but you need to provide proof, some certificates that the person does not receive any social benefits. It really helps. If the claim concerns the failure to pay pension, it is the letter from the Pension Fund that the person had not received any pension for several months...

Even if you confirm difficult material condition, the court is unwilling to cancel or postpone. We have not seen this once.

Judge:

Relevant documents were attached to the statement with the motion, including a pensioner ID, bank statement showing that the person received pension of one thousand six hundred hryvnia one month ago, and a copy of the passport to show she was living in the occupied areas. There were all grounds to exempt her from court fees.

We should note that in many cases internally displaced persons wanted to go to court and defend their rights but gave up on the idea after learning about the court fee amount, as it was too expensive for them at that time. Accordingly, the court fees designed to prevent ill-faith applications, became an obstacle for vulnerable groups trying to access justice.

The problem was partially resolved by the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (entered into forced on 24 February 2017). According to the introduced amendments to the Law of Ukraine "On court fees", there is exemption from court fees for plaintiffs in cases against the Russian Federation, the aggressor state, for compensation of inflicted material and/or moral damage related to the temporary occupation of Ukrainian territory, military aggression, armed conflict that led to forced displacement from the temporarily occupied area of Ukraine, death, injury, captivity, illegal detention or kidnapping, and violations of the right to property, including movable and/or immovable property. There is also an exemption from court fees for plaintiffs in cases concerning establishment of legal facts in relation to the temporary occupation of Ukraine, natural or technological emergencies causing forced displacement from the temporarily occupied areas of Ukraine, death, injury, captivity, illegal detention or kidnapping, and violations of the right to property, including movable and/or immovable property[144].

Courts are often geographically remote from displaced persons, which impedes their physical access to court.

As stated above, territorial jurisdiction of more than fifty courts in the occupied areas of Donetsk and Luhansk regions or in the area of hostilities has been changed in September 2014. Jurisdiction was transferred from these courts to the corresponding courts in the government-controlled areas.

Jurisdiction in cases in the ATO area directly affects the possibility of protecting the rights of victims.

Lawyers, human rights defenders:

Another category. Some people live at the contact line in Ukraine: Avdiivka, Zolote-4, Marinka and so on. Very often, they do not complain about damaged houses or injuries specifically because the state authorities are located far away. They say, 'Where can we go? It is impossible to get out of here. You have to travel 200 km to Svatove or Stanytsia Luhanska'.

144 Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions", 23 February 2018

There has to be logistics to make the courts closer to those territories. Almost no one files complaints about damages or destruction of property. It is so widespread. When you ask, 'Are you going to complain? Do you need anything for that?' 'Well, where to complain. We received roofing, some tiles to cover'. They live like that until the next shelling. No one does that. It is one of the problems.

Transfer of jurisdiction has had a significant impact on judicial authorities who had obtained "additional" jurisdiction. It had an impact on the quality of trials.

We should note that persons who received IDP certificates have the right to apply to court where the certificate had been issued:

Lawyer:

There is also a problem with jurisdiction in cases. We applied to the court at the place of actual residence, which was confirmed by the IDP certificate. However, Sievierodonetsk City Court refused to open proceedings referring to the place of registration indicated in the passport.

Some internally displaced persons have not applied for a status. In this case, they have to go to the court of assigned jurisdiction.

Judges:

There are displaced persons with temporary registration, and there are "non-displaced persons" who did not complete temporary registration.

I think that in this case it would be better to provide them with the possibility to address any court in Ukraine. For instance, persons registered in Voroshylovskyi district of Donetsk can only apply to Krasnoarmiiskyi City District Court in Donetsk region. Even if they live, for instance, in Lviv. It is a problem.

Participants of criminal proceedings whose cases were lost in hostilities also mentioned remote jurisdiction in their questionnaires.

Internally displaced person:

I live in Slaviansk, Donetsk region. Tokmak District Court that performs the duties of Starobesheve District Court is in Zaporizhzhia region. It is challenging to attend hearings and participate. My mother has a first-degree disability. It would be correct to indicate that cases should be tried at the place of residence of the displaced person.

Remote location of courts from the contact line has significant impact on the citizens' access to court and ability of the state to respond to offences.

Representative of the Ombudsman's Office:

Accessibility of courts near the contact line. There is no court in Stanytsia-Luhanska. People have to go to Belovodsk, 80 km away. If the hearing is scheduled for 3-4 pm, the person cannot physically return home.

This issue was partially addressed in the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" whereby a provision on alternative jurisdiction was added to the Code of Civil Procedure of Ukraine:

> *"Claims regarding violated, unrecognized or disputed rights, freedoms or interests of legal persons (including claims for compensation of damages resulting from restrictions on the right to property concerning immovable property, or its damage or destruction) in relation to the armed aggression of the Russian Federation, the armed conflict, temporary occupation of the territory of Ukraine, natural or technological emergencies, can be submitted at the place of residence of the plaintiff".*

Notification of IDPs taking part in trials is often difficult since it is impossible to establish their place of residence.

The Ministry of Social Policy of Ukraine has the duty to register displaced persons and maintain the Unified Register of Internally Displaced persons in accordance with the law. Locally, the Directorates of Labor and Social Protection perform this duty. De facto displaced persons include the following categories:

1) people with valid IDP certificate and indicated actual place of residence;
2) people with valid IDP certificate who changed their place of residence and did not inform the Directorates of Labor and Social Protection in order to amend the certificate and the register;
3) people who moved from the ORDLO to the non-government controlled areas of Ukraine who never registered as internally displaced persons;
4) persons who received a certificate before 13 January 2016 (the certificate used to have a 6-months validity period) and indicated the address of the authority or another place where they no longer live as their place of residence and have not renewed the certificate. In fact, they lost their IDP status while remaining displaced persons.

Accordingly, Directorates of Labor and Social Protection often have outdated information about the actual place of residence of the internally displaced person, if any.

The record in the register of internally displaced persons does not guarantee that the IDP will be informed properly about the court hearing or receive the decision in mail.

Human rights defender:

There is another aspect – when the person moves from the uncontrolled territory to the government-controlled area and became a displaced person, courts do not make any requests or have access to the register of internally displaced persons. Therefore, even if the person lives here, it would be possible to notify through a record in the register, but it is not happening because there is no such mechanism in the legislation.

Judge:

There is a register of temporarily displaced persons. It is located at the main office of the Directorate of Labor and Social Protection [possibly a reference to the Ministry of Social Policy] in Kyiv. We are trying to establish cooperation with them. We submit requests as not only the Code of Civil Procedure says, but also the case law recommends writing requests to them though this is not envisioned. If the person is temporarily displaced, her temporary place of residence becomes known.

Issues related to access to justice for internally displaced persons could be largely solved by the "electronic court".

4.4
ACCESS TO COURT FOR PARTICIPANTS OF THE ATO

As a rule, participants of the ATO are involved in administrative court cases related to obtaining the status of a participant in hostilities and exercising the rights or obtaining benefits and social guarantees related to this status; civil cases related to establishment of legal facts, as well as criminal cases where they are being prosecuted. However, there are many specific obstacles in access to courts for this category of persons.

There are exemptions from court fees, but the regulations are contradictory.

In general, the legislation treats the ATO participants favorably. Members of armed forces, persons liable for military duty, and mustered reservists are exempt from court fees in cases related to performance of military duty, as well as on duty. Participants in hostilities and Heroes of Ukraine are exempt from court fees in any cases related to violations of their rights. However, the ATO participants received the right to submit applications concerning arguments on provision of the status of participant in hostilities only with the adoption of the law of 3 September 2015[145].

Other war veterans, including persons with disabilities caused by war and participants of war, do not have any benefits regarding court fees in accordance with the Law of Ukraine "On court fees". However, according to the Law of Ukraine "On the status of veterans of war and safeguards of their social protection", veterans of war and persons subject to this Law are exempt from court fees in cases concerning their social benefits.

145 Law of Ukraine «On amendments to the Law of Ukraine «On court fees» concerning exemption from court fees for participants of anti-terrorist operations and family members of the deceased", 2015.

This discrepancy led to different case law regarding court fees. For instance, some judges use the Law "On court fees" as a *lex specialis* determining legal principles of court fees and exemptions. Other judges do not demand court fees based on the law on the legal status of war veterans[146].

The Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (entry into force – 24 February 2018) expanded the list of persons exempt from court fees. New categories include plaintiffs in cases against the Russian Federation, the aggressor state, for compensation of inflicted material and/or moral damage related to the temporary occupation of Ukrainian territory, military aggression, armed conflict that led to forced displacement from the temporarily occupied area of Ukraine, death, injury, captivity, illegal detention or kidnapping, and violations of the right to property, including movable and/or immovable property. There is also an exemption from court fees for plaintiffs in cases concerning establishment of legal facts submitted in relation to the temporary occupation of Ukraine, natural or technological emergencies that led to forced displacement from the temporarily occupied area of Ukraine, death, injury, captivity, illegal detention or kidnapping, and violations of the right to property, including immovable property[147]. The ATO participants are also entitled to these benefits.

The term for applying to court in personnel disputes for participants in hostilities during the ATO is too short.

If the management of law enforcement authorities violates the duty to provide proper documentation for recruitment or confirmation of the exercise of service duties, the participant in hostilities, similar to a public servant, can challenge such actions in court within one month. The term is too short for the person returning from the ATO, moreover if one needs rehabilitation after sustained injuries[148]. Unfortunately, this time limit has remained unchanged in the new version of the Code of Administrative Procedure of Ukraine (3 October 2017): *"a term of one month shall be set for applications to court in cases related to recruitment for public service, employment, and dismissal from public service" (art. 122(5)*.

Participants of the ATO face restrictions in their direct participation in court hearings.

Some persons serving in military units are involved in civil or administrative cases as parties or third parties, but their participation in the ATO or other military tasks prevents them from attending court hearings and exercising their rights in trial[149].

146 See explanatory note to the draft Law on amendments to Article 5 of the Law of Ukraine "On court fees" (on expanding the list of persons exempt from the court fees) no. 4393, 12 April 2016// http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58688.

147 Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions", 23 February 2018

148 See explanatory note to the draft Law on amendments to the Code of Administrative Procedure on enhancing protection for persons involved in the anti-terrorist operation or hostilities no. 1662, 28 December 2014 // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53234.

149 See explanatory note to the draft Law on amendments to the Code of Civil Procedure of Ukraine (on terminating court proceedings in case of the applicant's or defendant's service in the units of the Armed Forces of Ukraine, internal affairs bodies, the National Guard, the State Border Guard Service, or other military groups, specialized law enforcement bodies established in accordance with the laws of Ukraine and directly involved in counterterrorist or other combat tasks) no. 2999, 3 June 2015 // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55428.

It seems that the legislator has resolved this issue. New versions of procedural codes (except the Criminal Procedure Code of Ukraine) of 3 October 2017 recognized participation in mobilized military units or engagement in anti-terrorist operation as a ground for mandatory suspension of proceedings. However, this version does not allow an ATO participant to delegate a representative and continue proceedings if s/he is interested in a speedy trial.

Moreover, there can be problems in the implementation of a more recent law[150] if the anti-terrorist operation is replaced by the measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions. Codes of procedure do not recognize it among grounds to suspend proceedings.

Often, the defendant cannot exercise his/her right to participate in appeal proceedings.

Human rights defenders who represent the ATO participants in court cases complained that the building of the Court of Appeal of Donetsk Region does not have a room for convoy detainees. As a result, authorities tend to avoid bringing detained suspects, except when they request participation in person.

Human rights defender:

> There is this trend in the Court of Appeal of Donetsk region. They do not think that the suspect has the right to participate at all. If you have not submitted a request from the remand prison that you want a video conference or participation in person, they consider the appeal even… not only in the absence but sometimes without notifying. It happens often, I see it specifically in the court of appeal. First-instance courts bring them for the most part.

In some cases, the absence of an accused ATO participant caused the "support groups" to block court hearings.

ATO participants face strict prosecution for (alleged) crimes.

Human rights lawyers who represent the ATO participants reported in focus groups that prosecution of the ATO participants is much more severe than that of persons linked to separatism.

Human rights defenders:

> In cases under articles 109, 110 *[articles of the Criminal Code of Ukraine concerning trespass against territorial integrity and inviolability of Ukraine and actions aimed at forceful change or overthrow of the constitutional order or take-over of government]* everything is serious. There is proper defense, everything. More or less, there are no illegally detained persons. For the most part. When the charges are against our volunteer battalions, they really go all out against them.

150 Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions", 23 February 2018

It seems to me that the military prosecutor's office, the prosecution has very strict stance against military service members charged with some illegal actions. If the article has a sanction of 3-4 years, they ask for maximum. If there is a possibility of bail or personal commitment, they choose the strictest measure – detention. They say, "I came to fight as a volunteer".

There are many of these military people in remand prisons. There are Ukrainian flags in their cells, 'we are patriots'. Why does the state treat us so cruelly? There is a problem with this. They are chasing statistics trying to justify their existence.

Yes. For separatists who were shouting and inciting hatred, he signs the motion. The society is appalled by this.

Human rights defenders thought the state violated the rights of ATO participants when they were in the shelling zone for over 60 days, and these conditions could have affected their psychological condition. It should be necessarily taken into account in their cases.

According to human rights defenders, one of the possible explanations for stricter prosecution of the ATO participants (those who defended territorial integrity of the country) in comparison with the separatists (who supported the aggressor state) is that the military prosecutor's office (working in the first category of cases) does a better job trying to justify their existence while regular local prosecutor's office is working on the latter category of cases.

Prosecutors explained lenient attitude towards separatists by weak evidence base, frequent change of testimony by prosecution witnesses under the influence of the accused.

Prosecutors:

The evidence is weak and we have to make informal deals with the separatists. Shelling. How do you call an expert? Again, it is all so... Yet, he still has to face at least some liability, at least somehow. He is a bandit, we understand.

A case from Kramatorsk was sent to court. During pretrial, witnesses said, 'Yes, we saw him'. Ten different locals could not see the same thing wrong. When they came to court, it's 'maybe', I do not know. My personal opinion is that they received '10 kilos of oranges and sweets'. In court, these ten witnesses say, 'No, please'. Yes, it was a mistake of the pretrial investigation. We questioned the judges, but who knew. The person was acquitted.

Judges in focus groups rejected allegations of bias towards the ATO participants and said that every case was individual, and the crime was equally as grave if committed by the ATO participant.

Judges:

All crimes are the same in essence, regardless of whether they are committed by participants of the ATO or not. When it goes like 'This one is good, this one is not'. Soldiers commit crimes when they return.

Pecherskyi court sentenced someone for violating the terms for appearance to the unit. Pecherskyi Court sentenced him to 3.5 years in prison. There was such an outcry. It turned out that he was on probation. The court sanctioned him to a fine and three years in prison for inflicting bodily injuries of moderate severity with postponement for two years. This man was serving in the army and was fined like others. The court has no right to assign a lesser penalty. After that, the harassment started.

4.5

APPREHENSIONS, ARRESTS AND ENFORCED DISAPPEARANCES DURING MILITARY AGGRESSION

One of the most serious human rights violations in the zone of the conflict caused by the Russian aggression was widespread illegal detention. The UN Reports on the human rights situation in Ukraine[151] and the statement of the Council of Europe Commissioner for Human Rights, Nils Muižnieks, following his visit to Ukraine from 21 to 25 March 2016[152] mentioned enforced disappearances in the armed conflict in Donbas and the occupied Crimea. These reports emphasized the violations of the right to fair trial and liberty for the illegally detained persons.

The qualification of the armed conflict as an antiterrorist operation created an issue with the legal status of all participants (terrorists, combatants, occupants etc.). It has direct impact on the status of imprisoned persons (see also Chapter 3.5).

Recognition of the status is directly linked to safeguards for their rights. Accordingly, without a status, these persons are outside of the legal framework and the level of legal protection is significantly lower (sometimes, it is non-existent). It leads to various brutal violations of human rights. These were recorded, in particular, in 2015 Report of Justice for Peace in Donbas Coalition ("Surviving Hell")[153], or in the report published by Human Rights Watch on 21 July 2016 ("You Don't Exist" Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine)[154].

151 Reports on the human rights situation in Ukraine // http://www.ohchr.org/EN/Countries/ENACARegion/Pages/UAReports.aspx.

152 Ukraine: accountability for serious human rights violations is key to reconciliation process // https://www.coe.int/en/web/commissioner/-/ukraine-accountability-for-serious-human-rights-violations-is-key-to-reconciliation-process.

153 "You Don't Exist" Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine // https://www.hrw.org/uk/report/2016/07/21/292289.

154 "You Don't Exist" Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine // https://www.hrw.org/uk/report/2016/07/21/292289.

Since the de facto war in eastern Ukraine has not been recognized as such, prisoners of war from the Armed Forces of Ukraine or representatives of Ukrainian volunteer battalions are not covered by this term. They have the status of illegally detained persons held in detention facilities by illegal armed groups. Documents, statements and published reports of international organizations monitoring the situation in Donbas, including the OSCE, the UN, the Council of Europe, and the International Committee for Red Cross, do not use the term "prisoner of war" in relation to any participants of the armed conflict in places of detention.

There can be no prisoners of war during an anti-terrorist operation. Instead, there are hostages of terrorists defined in article 1 of the Law of Ukraine "On combating terrorism", and perpetrators of illegal deprivation of liberty should be charged as terrorists under article 147 (hostage taking) of the Criminal Code of Ukraine. However, there have been no examples of prosecution under article 147 of the CC of persons involved in illegal deprivation of liberty in the context of the military aggression by the Russian Federation in eastern Ukraine.

Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" adopted in 2018 provides for a legal regime of the "measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions". The Law declared that the Hague Convention respecting the Laws and Customs of War on Land, the Geneva Convention relative to the Protection of Civilian Persons in Time of War apply to the armed conflict. Accordingly, the status of persons involved in hostilities may change.

A separate issue leading to detention is the lack of alternatives for measures of restraint for "grave" articles of the Criminal Code, for example, Article 110 (trespassing against the territorial integrity or inviolability of Ukraine).

Courts regularly extend the initial period of detention for individuals held on national security grounds for 60 days without providing sufficient and relevant reasons to justify detention. Grounds for continued detention are almost never stated, and parole is rarely granted. Many defendants are detained for long periods, up to 20 months, and eventually charged with minor offenses, such as "hooliganism"[155].

Investigation and prosecution of allegations of arbitrary detention and enforced disappearances is mostly ineffective.

The 'Donetsk people's republic' and 'Luhansk people's republic' continued to deny OHCHR access to places of detention. OHCHR is concerned about the situation of individuals deprived of their liberty in the territories controlled by armed groups, due to the complete absence of due process and redress mechanisms. Of particular concern are those currently held in the former Security Service building in Donetsk and in the buildings currently occupied by the 'ministries of state security' of the 'Donetsk people's republic' and 'Luhansk people's republic'[156]. The OHCHR also documented allegations of enforced disappearances, arbitrary and incommunicado detention, and torture and ill-treatment, perpetrated with impunity by Ukrainian law enforcement officials, mainly by elements of the Security Service of Ukraine (SBU). OHCHR urged the Ukrainian authorities to ensure prompt and impartial investigation into each reported case of human rights violations, as well as the prosecution of perpetrators[157].

Investigators:

There is also a problem, in our territory, when the special units of the Security Service of Ukraine apprehend people during special operations, they stay there for some time, and then they are released. Accordingly, there is a report from the person, there are criminal proceedings. It simply "freezes". Because we receive no documents: where he was, on what grounds he was detained and so on. We conduct an interrogation. The case is frozen. The person complains, 'Deal with it, punish them'. He complains to us. He complains about us. The case is unsolved.

There are cases like these. Here is a practical example. A woman came and wrote a statement that her husband was missing. She said that the SSU officials took him. We send a request to the SSU. Couple of days later, this person showed up. He was released.

I will tell you about two flagrant cases. One person was serving a sentence of 11 months. The staff took him, he was living for 11 months, and no one knew anything about him. He was released 11 months later. The second example. Our colleagues also took the person, and we still do not know where he is. He has not been exchanged. His domestic partner was messaging him. She has not seen him, only messaged. Then she went to complain. She complained, and the messages stopped. It was not published anywhere, in any documents.

On 17 June 2015, Verkhovna Rada of Ukraine ratified the International Convention for the Protection of All Persons from Enforced Disappearance. According to the Convention, the widespread or systematic practice of enforced disappearance constitutes a crime against humanity[158].

Article 3 of the Convention states that each State Party shall take appropriate measures to investigate acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

155 Report on the human rights situation in Ukraine 16 November 2015 to 15 February 2016. Office of the United Nations High Commissioner for Human Rights // http://www.un.org.ua/images/stories/UKR_13th_OHCHR_Report_-UA_-_3_March.pdf.

156 Ibid. – p. 8.

157 Ibid. – p. 9.

158 Law of Ukraine "On accession to the International Convention for the Protection of All Persons from Enforced Disappearance", 17 June 2015.

Ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance provides additional opportunities for investigation of enforced disappearances in Donetsk and Luhansk regions since 2014 due to the armed aggression of the Russian Federation. However, the Russian Federation has not signed or ratified the Convention.

4.6
PUBLIC COURT HEARINGS

The right to public hearings is based on the concept of transparency in administration of justice, an important safeguard of the interests of individuals and society. Public hearings ensure transparency and diligence in court proceedings and prevent violations. Public oversight can encourage judges and prosecutors to act impartially and professionally, motivate witnesses to tell the truth, as well as support public trust in the justice system.

In contemporary realities, "hiding" court proceedings in important matters such as the armed conflict can lead to additional escalation of conflicts in society and further deterioration of trust in the court system. We should take into account the impact of public hearing on access to justice for new categories, such as IDPs, persons living in the non-government controlled areas. For instance, it concerns publication of information about upcoming hearings.

Adherence to the judicial procedure affects publicity of trial significantly. The use of automated system of case distribution is an important component of trial transparency. Neglect or improper implementation of procedures prescribed by law leads to reasonable doubt about objectivity and impartiality of hearings.

Publicity of court hearings also includes proper examination of evidence in the case. Failure to interrogate a witness with information about relevant circumstances, issuing court decisions based on written testimony available in the case and provided outside of court hearings violate the principles of public, complete and comprehensive trial.

When hearings take place in premises that serve other purposes, such as the judge's chambers, it limits possibilities for public monitoring of court hearings. The lack of space, inadequate facilities in these premises can deprive the public of the possibility to attend court hearings, which is a violation of the general principle of open court hearings.

Plea deals in criminal proceedings, including determination of penalty, are not public.

It creates risks of abuse by investigation authorities and/or formalistic approach by the court to approving plea deals.

The lack of physical access to court hearings for reduced mobility groups also has negative impact on openness of trial.

We should note positive examples in this regard, such as online trial broadcasts with the technical means of courts (for instance, in the case of Oleksandr Yefremov, no. 426/4/17), additional comments for the press from the court staff, allowing international observers attend courts hearings, as well as the support provided by some courts to monitoring of material and technical condition of court buildings in Luhansk and Donetsk regions.

Court hearings in Donetsk and Luhansk regions start with delays more often than in other regions.

Despite the possibility to obtain information about scheduled court hearings, in practice, it is difficult to attend hearings due to frequent changes in the schedule. For example, monitoring showed delays in trials (over 10 minutes) in Donetsk and Luhansk regions – 73 percent, compared to 63 percent in other parts of the country. In 13 percent of monitored trials in Donetsk and Luhansk regions, as well as in other parts of Ukraine, there were delays exceeding 1 hour. Main reasons included late arrival of the parties, participation of the judge in other court hearings. In some cases, there has been no explanation provided.

In many cases, there is no announcement of the case being heard and composition of the court.

Taking into account the absence of information (or incomplete information) about hearings in official sources, we should also note that courts do not always announce the case or composition of the court. According to monitoring results, in 11 percent of cases the courts did not announce the case, and in 26 percent – composition of the court. This practice was also recorded in cases where information about the hearing was not available on the website or bulletin board in court.

There were individual cases when trial observers (monitors) were denied or restricted in access to court or court hearings, which gives rise to concern.

Though these are individual cases, they still give rise to concern. OSCE member states have agreed to use presence of monitors from other OSCE states and non-governmental organizations at court hearings as trust-building instrument. Therefore, preventing access to court hearings for monitors is a sign of disrespect for international community, local actors, and the law.

Access to court hearings was partially restricted in four instances (2 percent, Druzhkivka City Court in Donetsk region, Kramatorsk City Court in Donetsk region, Novozavodskyi District Court in Chernihiv, and Shevchenkivskyi District Court in Kyiv). Monitors were not allowed to attend six court hearings (3 percent) in Donetsk and Luhansk regions (Kramatorsk City Court in Donetsk region, Svatove District Court in Luhansk region). Restrictions were applied in hearings in all types of cases, except administrative cases.

The courts established special requirements for attendance of court hearings, for instance submission of written request before the hearing, which is not envisioned by the law. The court staff tried to prevent monitors from attending hearings using different arguments:

- the need to have a special permission for presence during a preparatory hearing;
- the lack of free spaces in the judge's chambers where the hearing took place;
- prohibited entry to the judge's chambers for third parties, despite the fact that the court hearing was in the office.

Judges or court staff tried to prohibit monitors from attending court hearings without any explanation or on the following grounds:

- third parties are prohibited from attending preparatory hearings;
- monitor is not a party to the case.

For example, a monitor noted in her report that the secretary of Svatove District Court in Luhansk region, in response to a question about presence in a hearing, raised her voice and said, "Why do you bother us all the time? We just finished the hearing", "Are you a lawyer? Can I see your license?" The monitor learned from people in the hall (summoned by court) that this is a regular practice in relation to the parties as well. They have difficulties finding out necessary information about court hearings.

There were no requirements, restrictions or prohibitions justified by legal instruments.

During other court hearings, the public, including OSCE observers or the media, were allowed to attend hearings without restrictions.

Monitors had no difficulties in accessing court buildings. In certain cases, they had to take additional action to enter the building, for instance, indicate the purpose of their visit, the person they were visiting, or the court hearing they were planning to attend in the registry, in addition to personal data. In the Court of Appeal in Donetsk region (Mariupol), the monitor was not allowed inside the court after explaining her intent to conduct monitoring. The court required a written explanation of the aims of monitoring and confirmation of the monitor's affiliation with the project.

We should also mention the closed criminal proceedings in case of plea deals.

According to Chapter 35 of the CPC, there is a possibility for a plea agreement between the prosecutor and the suspect/accused. The court reviews the agreement during a preparatory hearing involving mandatory participation of the parties to the deal with notification of all parties to the case. If the agreement is reached during court proceedings, the court shall immediately postpone procedural actions and move to review the agreement.

Monitors recorded cases when plea agreements were considered in closed proceedings, with formalistic approach to the process.

For instance, in one case, the monitor found out that the case resulted in an agreement about a conditional sentence. However, it is unclear how this decision was pronounced since the monitor was not allowed to attend a preparatory hearing (case no. 234/16178/16-к under article 260(2) of the CC, "Creation of unlawful paramilitary or armed formations", Kramatorsk City Court in Donetsk region, hearing on 8 December 2016).

Monitors have also recorded the following situation in that criminal case:

> *"In a hallway before the hearing, representative of the prosecutor's office in the presence of defenders gave the accused an agreement for a conditional sentence in exchange for learning the Ukrainian anthem".*

Plea agreements outside of court hearings, in particular, with consent to the choice of penalty, create risks due to the closed nature of the negotiation process.

In several cases, there were attempts made by judges to obstruct audio recording of the hearing.

The Constitution of Ukraine lists the openness of trial among main principles of judicial proceedings. Article 11(4) of the Law of Ukraine "On the Judiciary and Status of Judges" provides persons present in the courtroom the right to conduct audio and video recording in the courtroom, using portable video and audio devices without a specific permission of the court.

Violations of these provisions were recorded both in hearings where monitors and observers were restricted in accessing the courtroom, and in hearings with unimpeded access. This practice was recorded only in courts in Donetsk and Luhansk regions.

In two cases, the court issued an oral ruling prohibiting audio recording of the trial. In another hearing, the judge prohibited the monitor from placing a recording device (mobile phone) closer to the center of the room. She demanded a written motion for audio recording before the hearing in violation of current legislation.

Monitors managed to avoid restrictions of audio recordings by not reporting the recording.

In hearings where the right to open hearings and court proceedings was observed, monitors noticed additional measures taken to ensure this right:

> *"The judge not only allowed photo and video recording for the media, but also allowed the observer to put the recorder next to her when she was reading the sentence. She also had a press conference after the proceedings* (criminal case no. 233/1488/15-к, Kostiantynivka City District Court in Donetsk region, hearing on 23 December 2016).

Importantly, high profile case against Yefremov no. (426/4/17) concerning offences under articles 27(3), 341, 27(5), 110(3), 258-3, 111 (1) of the CC in Starobilsk District Court in Luhansk region is broadcast online with the technical means of the court[159].

159 Video is available at the official You Tube channel «Sudova Vlada Ukrainy» [Judiciary of Ukraine] - https://www.youtube.com/channel/UCFDRcAmACu5ljF-YUMGctnA.

In one out of three cases, courts do not follow the proper procedure for announcement of the decision after the trial.

Public pronouncement of judgements is an important condition for transparency of trials. Court proceedings in 68 monitored hearings had been finished. However, in 22 cases (32 percent of all competed cases) monitors had remarks about pronouncement of the decision, including lack of publicly pronounced decision or pronouncement of the decision in a way that no all present persons could hear the decision.

For instance, in five court hearings, the court did not pronounce the decision and provided information about the date of pronouncement, and in three court hearings, there was no decision pronounced or date provided. Monitors wrote in their reports:

> *"The court did not pronounce the decision allegedly to prevent the applicant from waiting for the court to issue a decision. The judge then promised that copy of the decision would be available in the nearest time";*

> *"... The court went to the deliberations room and did not indicate when the verdict would be pronounced";*

> *"Since there was a big delay in the court hearing (almost two hours), it was not finished property, and the decision was not published. We were told it would possibly happen at the end of the week".*

In two cases, the decision was not publicly announced. After the hearing, parties received printouts. A copy of the operative part was provided in one case, and a copy of the ex parte decision was given to the plaintiff in the other case.

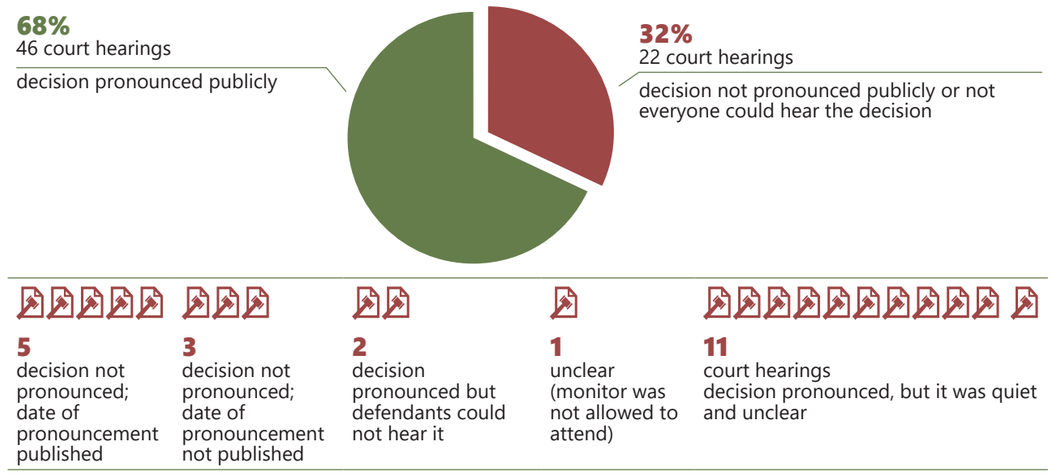
During two hearings in Novomoskovsk City District Court in Dnipropetrovsk region, the parties could not hear the decision when it was pronounced. In both cases, the accused persons took part in the hearing through a video conference. In one case, there were technical problems in the process, in another – the decision was pronounced after the video session, in another room with the prosecutor present.

In one case, the monitor found out that the case resulted in a plea agreement for conditional sentence. However, it is unclear how this decision was pronounced since the monitor was not allowed to attend a preparatory hearing.

In 11 cases (7 hearings in Donetsk and Luhansk regions and 4 hearings in other regions, including 9 hearings in criminal cases, 1 hearing in administrative case, and 1 hearing in civil case), monitors stated that though the court decision was pronounced publicly, it was quiet and unclear. In addition, the court provided additional explanation regarding the decision after the pronouncement only in two cases.

Monitoring results:

PUBLIC PRONOUNCEMENT OF COURT DECISIONS



In some cases, court decisions are based on testimonies of witnesses who had not been questioned in court.

Analysis of court decisions showed that courts in administrative cases established circumstances of the offence based on written testimony of persons who had not testified in court as witnesses.

According to Article 245 of the Code of Administrative Offences, if a person has knowledge of the circumstances, s/he shall be summoned by court as a witness. All information obtained from a witness shall be evaluated and compared to other evidence from other sources. Article 272 provides for participation of witnesses in court hearings.

In cases on administrative offences, the courts did not conduct adequate examination of the person's guilt, which can serve as a direct ground for revoking such decisions in accordance with the domestic and international law applicable to Ukraine.

For instance, the Court of Appeal of Luhansk region decided the following:

> *"The judge in the first instance court failed to meet these procedural requirements: circumstances of the offence that PERSON_2 was found guilty of having committed, were described in the court decision based on references to written explanations from PERSON_3 and PERSON_4 who were not questioned as witnesses in accordance with the law, which is as an unconditional ground for revoking the judge's decision"*[160].

In particular, the court's refusal to summon and question witnesses in court contradicts article 6(1) of the Convention for the Protection of Human Rights and Fundamental

160 Ruling of the Court of Appeal of Luhansk Region, 17 October 2016 // http://www.reyestr.court.gov.ua/Review/61991460.

Freedoms in conjunction with Article 6(3) of the Convention. These violations are sufficient and necessary to declare outcomes questionable, unreliable and inaccurate[161].

There is widespread illegal practice of holding court hearings outside of courtrooms – hearings in every fifth case took place in judge's chambers.

Monitoring of court hearings in conflict-related cases revealed that hearings were sometimes held not in designated premises, which led to restricted access to public court hearings.

According to Article 11(8) of the Law of Ukraine "On the Judiciary and Status of Judges", the court proceedings shall be conducted exclusively in a courtroom specifically equipped for that — in a courtroom suitable to accommodate the parties and other trial participants, and enables them to exercise the granted procedural rights and fulfill procedural obligations. Other codes of procedure include similar provisions.

The law allows attendance of open court hearings. In particular, Article 11(3) of the Law of Ukraine "On the Judiciary and Status of Judges" states that consideration of cases in courts shall be open, except in cases stipulated by law. Any person may be present at an open court hearing.

In 45 instances (21 percent), hearings did not take place in specifically equipped courtrooms; they were held in the judge's chambers (24 hearings in Donetsk and Luhansk regions (53 percent), 21 hearing in other areas of Ukraine (47 percent)). In particular, it resulted in restricted access for the public.

In 17 hearings (8 percent), the public had limited or no access because the hearing took place in the judge's chambers where the space was limited or due to restrictions created by the court staff. In particular, there was limited or no access to hearings for monitors in 10 hearings. Restricted access was recorded in 14 hearings in Donetsk and Luhansk regions and 3 hearings in other regions. These issues were observed in 2 administrative cases, 1 case of an administrative offence, 4 civil cases, and 10 criminal cases. Monitors were restricted in access to hearings in all types of cases above, except administrative.

In three hearings, court staff tried to prevent monitors from attending court hearings in the judge's chambers:

- the hearing secretary attempted to find out the monitor's name, purpose of attending the hearing, and then tried to prevent him from attending because it was a preparatory hearing, and a special permission of the court was mandatory (case no. 234/19212/16-к, Kramatorsk City Court in Donetsk region, hearing on 28 December 2016);
- there was a chance there would not be enough room in the chambers (case no. 751/10178/16-ц, Novozavodskyi District Court in Chernihiv, hearing on 14 December 2016);
- access the judge's chambers is prohibited for third parties, despite the fact that the court hearing was in office (case no. 757/52878/16-к, Shevchenkivskyi District Court in Kyiv, hearing on 26 January 2017).

161 Ruling of the Supreme Court of Ukraine no. №5-49кс13, 3 March 2014 // http://www.reyestr.court.gov.ua/Review/37908429.

Every second court building in Donetsk and Luhansk regions does not accommodate the needs of persons with disabilities.

Monitoring of the material and technical condition of courts in Luhansk and Donetsk regions showed that 44 percent of courts were not equipped with ramps or other types for reasonable accommodation for access to the building. In 50 percent of cases, persons with disabilities could not use court services after entering due to various reasons, such as the walk-through metal detector that is impossible to avoid, absence of courtrooms on the first floor lack of elevators, narrow doors, staircases etc.

The above circumstances violate current construction norms and have significant impact on access to open court hearings for reduced mobility groups.

FINDINGS AND RECOMMENDATIONS

1

The delay on behalf of central authorities made it impossible to remove case files and materials of enforcement proceedings (ongoing and completed) from the occupied areas and the conflict zone. Leaving materials of enforcement proceedings in the temporarily occupied territory led to obstacles for execution of court decisions. Legal mechanisms for restoring lost cases and documents have significant gaps.

To reduce the negative impact of these issues, it is **necessary**:

- to introduce legislative amendments providing possibility to issue certified copies of court decisions and enforcement documents and duplicates based on the Unified State Register of Court Decisions without restoring lost case files; to introduce a possibility to restore lost proceedings in cases without a final court decision (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);
- to prepare a compilation of case law on restoring court cases and enforcement proceedings for all categories of cases (*competent authorities – Supreme Court and relevant courts of appeal*);
- to develop recommended algorithms for justice system authorities in relation to persons who were in remand prisons in Donetsk and Luhansk regions at the beginning of the aggression of the RF, persons convicted by the "courts" of the so-called DPR and LPR, and persons who served sentences in the occupied (*competent authorities – Ministry*

of Justice of Ukraine, Prosecutor General, Ukrainian Parliament Commissioner for Human Rights, Supreme Court);

- to launch the Integrated Judiciary Information System, ensure that electronic court is fully operational, and integrate the system with information systems and registers used for execution of court decisions and operations of the criminal justice system (*competent authorities – The High Council of Justice, State Court Administration of Ukraine*).

2

Addressing the issue of access to courts for ORDLO residents and protecting their rights is necessary for successful reintegration of these areas. While ORDLO residents are not deprived of access to court in the government-controlled areas, physical access is significantly impeded.

Due to the lack of institutions providing services in the field of justice, residents of the non-government controlled areas face significant restrictions in their ability to receive basic services, such as notarization of documents or receiving birth or death certificates.

The right of physical and legal persons in the ORDLO to participate in court hearings is significantly curtailed due to lack of possibilities to ensure direct notification about the date, time and place of a court hearing.

In order to improve access to justice for ORDLO residents, the following measures **should be taken**:

- to accompany the launch of the Integrated Judiciary Information System with an awareness-raising campaign on access to justice provided by the System, as well as create conditions for obtaining electronic digital signature or other methods for identification of persons (for instance, near entry-exit checkpoints – in Ukrposhta (mail service) offices, courts, state banks, etc.);

- to provide clarification as to whether state registration of birth or death in the occupied territory can take place based on documents issued by the occupation authorities without preliminary establishment of such facts by courts pursuant to article 2(3) of the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (*competent authority – Ministry of Justice of Ukraine*); in case the procedure for establishment of these facts by courts is still valid – to exempt ORDLO residents from the court fees (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

3

Court fees were a significant problem for victims trying to bring their applications before the courts. Courts are often geographically remote from displaced persons, which impedes their physical access to court. These issues were partially solved in 2018 with the Law of

Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions".

Notification of IDPs taking part in trials is often difficult since it is not possible to establish their actual place of residence.

In order to improve access to justice for internally displaced persons, the following measures **should be taken**:

- to launch the Integrated Judiciary Information System, ensure that electronic court is fully operational (*competent authorities – the High Council of Justice, State Court Administration of Ukraine*);

- to envision additional measures in procedural codes for the court to establish place of residence of a party to proceedings (respondents, third parties etc.) who is a displaced person, in particular, to add possibility to use the State Register of Voters and the State Register of Internally Displaced Persons along with the Unified Register of Internally Displaced Persons (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

4

There are exemptions from court fees for ATO participants, but the regulations are contradictory.

The term for applying to court for participants in hostilities in personnel disputes during the ATO is too short. Participants of the ATO face restrictions to their participation in court hearings in person. Often, the defendant cannot exercise his/her right to participate in appeal proceedings.

ATO participants face strict prosecution for (alleged) crimes.

In order to improve access to justice for ATO participants, the following measures **should be taken**:

- to eliminate discrepancies in regulations on court fees for war veterans (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to establish a rule that the time of service and rehabilitation is excluded from the period for application to court concerning rights in employment relations (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to introduce legislative amendments preventing situations where participation in hostilities of a party to proceedings will not result in suspension of civil, economic or administrative case proceedings except when the party has a representative (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*);

- to ensure direct participation of a suspect in appellate review of the case or rulings of the first-instance court by default, i.e. if the suspect or his/her representative has not

submitted a motion for videoconference participation or relevant consent (*competent authorities – courts, Ministry of Internal Affairs of Ukraine*);

- to prepare a compilation of case law on proceedings related to the conflict caused by the Russian aggression in order to ensure consistent application of the law and evaluation of prosecution actions (*competent authorities – Supreme Court and courts of appeal, National School of Judges of Ukraine, Prosecutor General's Office, National Academy of Prosecution Service of Ukraine*).

5

The following issues were identified in relation to arbitrary arrest, detention, as well as enforced disappearance.

Qualification of the armed conflict as an antiterrorist operation created an issue with the legal status of all participants (terrorists, combatants, occupants etc.). It has direct impact on the status of imprisoned persons. The problem will persist or even exacerbate with the introduction of the measures to ensure national security and defense, response and deterrence of the military aggression by the Russian Federation in Donetsk and Luhansk regions.

Other problems include arbitrary arrest and detention, as well as lack of alternatives to custodial measure of restraint in case of "grave" articles of the Criminal Code of Ukraine, such as article 110 (trespass against territorial integrity and inviolability of Ukraine).

Investigation of arbitrary arrests, detention, enforced disappearances, as well as prosecution of perpetrators, is usually ineffective.

Ukraine has ratified the International Convention for the Protection of All Persons from Enforced Disappearance. According to the Convention, the widespread or systematic practice of enforced disappearance constitutes a crime against humanity, and each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

In order to improve counteraction to arbitrary arrests, detention, and enforced disappearances, the following measures are **necessary**:

- to ensure effective prosecution and fair trial in all cases of enforced disappearances (*competent authorities – investigation authorities, prosecutor's office, courts*);

- to ensure access to detention facilities and detainees for representatives of relevant international mechanisms (*competent authorities – Security Service of Ukraine, Ministry of Justice of Ukraine*);

- to take appropriate action for comprehensive implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, in particular to establish criminal liability for enforced disappearance as defined in Article 2 of the Convention, namely arrest, detention, abduction or any other form of deprivation of liberty

by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

6

There were also issues concerning public hearings in cases related to Russian aggression.

There is widespread illegal practice of holding court hearings outside of courtrooms – hearings in every fifth case took place in judges' offices. Court hearings in Donetsk and Luhansk regions start with delays more often than in other regions.

There were individual cases when trial observers (monitors) were denied or restricted in access to a court or a court hearing, which gives rise to concerns.

In many cases, there is no announcement of the case or composition of the court. In several cases, judges attempted to obstruct audio recording of the hearing. In one out of three cases, courts do not follow proper procedure for announcement of the decision following trial.

Plea deals in criminal proceedings outside of court proceedings, including determination of penalty, are not public.

In some cases, court decisions are based on testimonies of witnesses who had not been questioned in court.

Half of all court buildings in Donetsk and Luhansk regions do not accommodate the needs of persons with disabilities.

In order to improve the situation related to the openness of court proceedings, the following steps **should be taken**:

- to take measures to equip court buildings for unimpeded access and participation in court hearings of persons with reduced mobility; to provide courts with appropriate number of courtrooms (*competent authority – State Court Administration of Ukraine*);

- hearings in cases following plea agreements in court proceedings should be held in accordance with the general rule on open court hearings (*competent authorities – courts*);

- to continue the positive practice of broadcasting trials online though technical means of the courts in open cases with public importance (*competent authorities – courts, State Court Administration of Ukraine*);

- to improve the training of judges and court staff on the following issues: implementation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular, the right a public hearing; implementation of legislative provisions

on unrestricted video- and audio recording of court hearings; public pronouncement of court decisions etc. (*competent authority – National School of Judges of Ukraine and local experts*);

- to raise awareness among chiefs of administrative staff of courts on the requirement of public hearings, to ensure regular monitoring of compliance with the requirement and impose disciplinary sanctions for violations thereof (*competent authorities – chiefs of administrative staff of courts*).

5
PROSECUTION OF CRIMES COMMITTED DURING THE MILITARY AGGRESSION BY THE RUSSIAN FEDERATION

5.1
CERTAINTY OF PUNISHMENT FOR CRIMES COMMITTED IN THE FRAMEWORK OF THE ARMED AGGRESSION

The strength of the country is probed by different challenges, such as environmental and technological disasters, revolutions and armed coups, terrorist acts and crimes… An armed aggression by another country can be one of such challenges.

In case of any of these events, state authorities, local self-government, their officials have to perform their functions and duties directed, in particular, towards ensuring human rights and freedoms and safety of the population.

Responsibility for crimes, as well as other offences has to be inevitable to guarantee proper exercise of these functions and duties. Otherwise, the lack of such responsibility leads to disrespect towards the state and its authorities and increases the prevalence and severity of crime.

However, according to the OHCHR Report, no entity has taken responsibility for any civilian deaths caused by the conduct of hostilities while some murders are recognized as war crimes and/or crimes against humanity[162].

162 OHCHR Report on accountability for killings in Ukraine from January 2014 to May 2016 // http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf.

The Report states that impunity for killings remains rampant, encouraging their perpetuation and undermining prospects for justice and includes the following recommendations to the Government of Ukraine:

- Ensure investigations into all alleged acts of arbitrary deprivation of life are prompt, independent, impartial and effective;
- Allocate necessary human and technical resources to the National Police and Security Service of Ukraine (SBU) investigative bodies and to the prosecutor's offices investigating alleged cases of arbitrary deprivation of life, including in the conflict zone;
- Systematically interview people who were deprived of their liberty by the armed groups to document cases of alleged acts or arbitrary deprivation of life which they may have witnessed;
- Ensure that no illegal armed formations are taking part in the hostilities on the side of Governmental forces;
- Ensure that judges, lawyers and other justice professionals are fully protected from threats, intimidation and other external pressures that seek to challenge and threaten their independence and impartiality;
- Ensure that the 'all for all' release envisaged by the Minsk Agreements or any other forms of "exchanges" or "simultaneous releases of detainees" do not lead to impunity for those suspected of killings or other violations, abuses or crimes, either directly or as accomplices, or as superiors;
- Ensure that no impunity to perpetrators complicit with acts of arbitrary deprivation of life and other gross violations of human rights and serious violations of international humanitarian law shall take place in the context of amnesty and pardoning envisaged by the Minsk Agreements or any other amnesty or pardoning.

Establishing and recognizing truth about grave human rights violations is an important component of any reconciliation process.

Analysis of legislative and institutional changes in the justice system revealed shortcomings in procedural mechanisms relating to effective response to violations caused by the aggression of the Russian Federation.

These include, in particular:

- possibility to avoid criminal liability for suspects (accused) absconding from investigation authorities and courts outside of Ukraine;
- possibility to avoid justice while hiding in the temporarily non-government controlled territory of Ukraine;
- lack of possibilities for effective pre-trial investigation in the ATO zone;
- Ukrainian legislation is not adapted to address contemporary terrorist threats with regard to apprehension of terrorism suspects;
- the loss, destruction or confiscation of materials during relocation or change of jurisdiction leading to termination of proceedings in many cases.

For instance, the ruling of the Court of Appeal of Donetsk region of 19 October 2016 states:

> *"In the appellate proceedings, the defendants and their representative insisted that in the first-instance court they and witnesses mentioned in the verdict provided different testimony from that mentioned in the disputed court decision. Therefore, testimonies of suspects and witnesses are not true and deviate from the facts of the case. The panel of judges has no means to verify these claims since the written evidence referred to in the verdict, technical records, court transcripts, and investigation files are missing from the criminal case files. Accordingly, the appellate court did not receive any written or other evidence to make a determination of the suspects' guilt. Materials and documents in the restored criminal proceedings are insufficient for final decision of the court of appeal. [...] It is impossible to verify evidence without examination since it would contradict article 23 of the CPC of Ukraine on direct examination of evidence in court"*[163].

During focus groups with representatives of the justice system, almost all participants agreed that the number of committed, registered, investigated and prosecuted crimes has increased significantly since 2014.

Judges noted that the actual caseload in courts, including appellate courts, had increased. This fact is mostly confirmed through the analysis of statistical data.

For instance, according to the High Qualification Commission of Judges of Ukraine, events in the East have led to a decrease in the number of judges in Donetsk and Luhansk regions. It was one of the factors contributing to deviations from the principle of certainty of criminal liability.

Statistics:

CASELOAD IN COURTS IN DONETSK AND LUHANSK REGIONS

		2013	2014	2015
Actual number of judges	Donetsk region	481	232	232
	Luhansk region	261	270	112
Average monthly number of incoming cases	Donetsk region	13,4	9,6	14,51

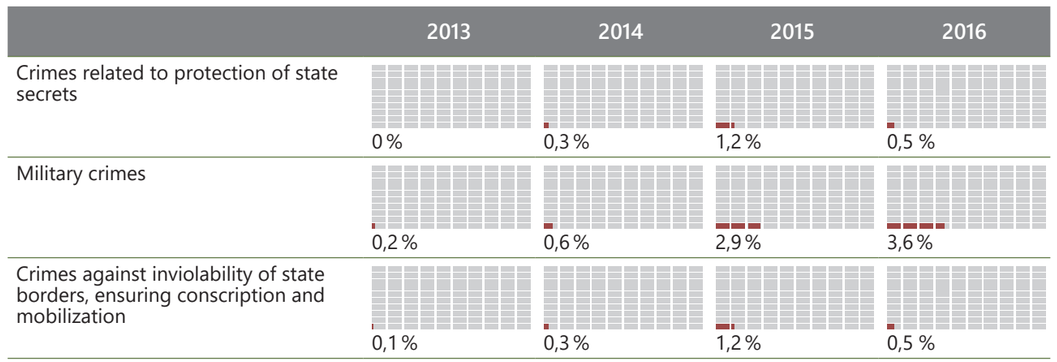
163 Decision of Donetsk Region Court of Appeal, 19 October 2016 // http://www.reyestr.court.gov.ua/Review/62198403.

Accordingly, the average monthly number of incoming cases per judge has increased (in criminal proceedings). In 2016, these were highest in Bilovodsk district court in Luhansk region (127.71) and Svatove district court in Luhansk region (161.05).

Statistics also showed that situation in Donetsk and Luhansk regions led to an increase in convictions for certain categories of cases and "new" categories of cases.

Statistics:

INCREASED IN CONVICTIONS FOR CERTAIN CATEGORIES OF CASES



Number of crimes against national security of Ukraine has increased from 0.002 % in 2013 to 0.09 % in 2016.

Since 2014, the Verkhovna Rada of Ukraine tried to establish conditions to ensure certainty of punishment for the crimes committed during the armed aggression by the RF against Ukraine.

In particular, there was no separate criminal offence of financing actions committed with the intent for violent change or destruction of constitutional order or seizing state power, changing territorial boundaries or state border of Ukraine. Though financing of these actions could be qualified as aiding commission of such crime, Verkhovna Rada of Ukraine nevertheless adopted a separate law "On amendments to the Criminal Code of Ukraine (on liability for financing separatism)" on 19 June 2014. The Law added article 110-2 to the Criminal Code of Ukraine "Financing actions committed with the intent for violent change or destruction of constitutional order or seizing state power, changing territorial boundaries or state border of Ukraine"[164].

164 Law of Ukraine «On amendments to the Criminal Code of Ukraine on criminal responsibility for financing separatism", 2014.

To ensure inevitable criminal liability for perpetrators of crimes during the military aggression of the RF against Ukraine, on 7 October 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendments to the Criminal and Criminal Procedure Codes of Ukraine on certainty of punishment for crimes against national security, public safety, and corruption"[165] proposed by the government. The law introduced changes to the Criminal Code of Ukraine and the CPC of Ukraine enabling the following":

- applying confiscation of property for crimes against national security of Ukraine and public safety regardless of their severity;
- legal compromise of exemption from criminal liability for threats to commit terrorist act for those who took action to prove repentance;
- criminal proceedings in absentia and their specifics.

It also enabled application of measures of restraint of personal commitment, personal guarantees, house arrest, and bail for persons suspected or accused of committing crimes under articles 109–1141, 258–2585, 260, and 261 of the Criminal Code of Ukraine.

Verkhovna Rada of Ukraine tried to underline the need for certainty of criminal liability in the names of individual laws. For instance, on 15 January 2015, the parliament adopted a law[166], clarifying grounds for special pre-trial investigation or special court proceedings. In addition, the Law of Ukraine "On administration of justice and criminal proceedings due to the anti-terrorist operation" determines that avoiding summons by investigator, prosecutor or court summons by an investigating judge (failure to arrive without a significant reason for more than two times) by the suspect/accused in the ATO zone and inclusion of the person into the wanted list serve as grounds for special pre-trial investigation or special court proceedings in accordance with the CPC of Ukraine and specific characteristics established by this law. The condition related to domestic or international search list does not apply to determination of the question about special criminal proceedings in relation to these persons.

Therefore, this law extended special pre-trial investigation and special court proceedings to suspects and accused persons absconding from investigation or trial in the ATO zone.

Verkhovna Rada of Ukraine adopted other important legislative decisions but they were not always prompt and had different practical implications (see Chapter 3.1 for details).

Were all perpetrators of these crimes prosecuted because of these laws? Do these convictions protect the rights of victims? Practice shows that the answer is "no".

More than half of respondents in questionnaires for the legal community stated that they knew about cases when someone should have faced liability but was not prosecuted since the start of the armed conflict.

165 The Law of Ukraine "On amendments to the Criminal and Criminal Procedure Codes of Ukraine on certainty of punishment for crimes against national security, public safety, and corruption", 2014.

166 The Law of Ukraine "On amendments to laws of Ukraine on certainty of punishment for perpetrators absconding in the temporarily occupied areas of Ukraine or in the area of the anti-terrorist operation", 2015.

Questionnaire results:

AVOIDING LIABILITY IN RELATION TO THE ARMED CONFLICT IN EASTERN UKRAINE

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Such situation are still common	10,00 %	19,00 %	11,00 %	36,47 %	68,57 %
Such situations are common, most of them are connected with events of 2014-2015; there is a recent downward trend now	6,00 %	13,00 %	13,00 %	17,65 %	10,00 %
Such situations are common, but there is a recent downward trend now	2,00 %	5,00 %	5,00 %	2,35 %	21,43 %
Such situations are rare	6,00 %	19,00 %	14,00 %	22,35 %	0,00 %
There were no such situations	76,00 %	44,00 %	55,00 %	21,18 %	0,00 %
No response	0,00 %	0,00 %	2,00 %	0,00 %	0,00 %

Many cases are tried ex parte as the suspects are in the non-government-controlled areas.

The law allows for trial in absentia if the suspects intended to avoid court hearings provided they have a lawyer and under the following charges: destruction of constitutional order, violation of territorial integrity or funding of such activities, treason, attempts to kill a state official, sabotage, espionage, murder, including murder in the heat of passion and murder exceeding boundaries of self-defense, and a number of corruption offences.

Prosecutor:

We still have militants who fight there but when they widely advertise themselves in their media, where they are, and then we talk about trial in absentia.

In March 2017, the Parliament made amendments to the Criminal Procedure Code[167] entering into force on 13 April. They are aimed at solving practical issues in criminal prosecution in absentia against the former President of Ukraine Viktor Yanukovych and other absconding former officials. In particular, the amendments expanded the list of crimes allowing criminal proceedings to be carried out in absentia, including the offence of establishing a criminal organization, assistance to members of criminal organizations

167 Law of Ukraine "On amendments to the Criminal Procedure Code of Ukraine related to improving mechanisms for ensuring objectives of criminal proceedings", 2017.

and covering up of their criminal activity, and gangsterism. They also extended the period of validity of modified conditions for criminal proceedings in absentia introduced in May 2016 as temporary measures[168]. The modified conditions, however, appear to lack sufficient safeguards, which may lead to violations of due process and fair trial rights. For instance, an individual staying in the area of "anti-terrorist operation", which includes the localities controlled by the Government, may be subjected to proceedings in absentia having no knowledge about criminal charges against him/her.

The prevalence of crime and concealment of crimes are relatively high while investigation is ineffective.

During interviews, judges stated that crimes committed during the military aggression of the RF are actively persecuted. In response to the questions whether they think that law enforcement ignores certain categories of crime, they responded 'definitely no'. Judges added that, on the contrary, when acting as investigating judges they started issuing relevant decisions more often due to increased number of crimes against national security of Ukraine.

Judge:

Actual caseload in appellate courts in Kramatorsk, Slaviansk has increased. Because there is a big portion of cases concerning national security. Some of them are related to war crimes in many aspects. In fact, caseload increased also due to actions in pre-trial investigation of these crimes… In addition, there is judicial oversight.

With regard to specific categories of proceedings, the following was noted.

Judge:

The majority are about standing at the roadblock "with sticks" – article 260. There were 11 percent of such cases in 2014-2016.

Investigator:

With regard to the military, if something happened in the unit, everyone has arms; they are all human. Sometimes, someone can be shot in a fight. Before it is reported to relevant authorities, police, they destroy all possible evidence. The reasons are covered up… They understand that the person is dead, and will not come back… Their own laws. It happens. The group comes there, you have to get access, pass the roadblock. You come with all permissions to the unit to look at the site, but you can only establish the fact, that is all. There is no material evidence; we cannot use identification… We still solve such crimes. However, it is difficult to prove anything in most cases. It is a war zone, a conflict. Everyone has arms… Difficult. Therefore, here the Armed Forces of Ukraine do not have a specific authority to ensure order there… You need to have a service working on these issues – exercising control over performance of duties etc.

168 See Report on the human rights situation in Ukraine 16 February to 15 May 2016. Office of the United Nations High Commissioner for Human Rights, p. 49 // http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf.

However, according to exchanges between focus group participants, these issues are not common for all locations of the Armed Forces of Ukraine.

There is also a related issue where some state authorities work 'for indicators', and, accordingly, 'in vain'.

Investigator:

In our Donetsk region, the SSU officers have the task to identify offences, including corruption and economic crimes. However… the facts are unconfirmed. It is unclear what the source was. To make a decision, you need to conduct the full range of all activities. In fact, the case slows down because, among 100 cases, ninety should be closed… He *[the SSU official]* has the goal to make a record in the Integrated Register of Pre-Trial Investigations… In 90 percent of cases, we are doing useless work.

Of course, these activities takes away forces and means of pre-trial investigation bodies and the prosecutor's office from investigation and prevention of dangerous crime.

Human rights defenders suggested additional reasons for impunity, such as fear of revenge and esprit de corps.

Human rights defenders:

In relation to crimes committed by the Ukrainian military, fear that the military will stay in that area is a very important factor. Often, even the suspect keeps his position in the same area where he committed a crime. The applicant is simply afraid to continue with the case. He is afraid for his life and health, "They will come, shoot and we will be gone", and so on.

In 2016, the number of non-combat loss was three times higher than the number of combat casualties. Suicides in military units are a big question and a big problem... Contraband, different internal conditions of the military service when commanders can remove their subordinates... Local police, local prosecutor's office are all in on this. They say it is suicide. There is no investigation even though there is visible evidence of violent death instead of a suicide.

Human rights defenders also referred to the issue of alcoholism and drug addiction among military personnel.

Practitioners interviewed in the summer of 2017 expressed their opinion about the increase of the number of criminal proceedings, especially particular categories.

Lawyer:

The number of criminal cases has increased because of ATO related cases and treason. There are new categories of cases that we had not dealt with before the hostilities.

Human rights defender:

The number of crimes related to the armed conflict in eastern Ukraine in our region has increased, and the caseload of judges is higher. In addition, after the judiciary reform, some judges have resigned, retired, the number of judges has decreased significantly, and they have big shortage. It has serious impact on the quality of their decisions; they have to take less time for each case. Judges from other regions should be seconded to help, or it is possible transfer cases to other cities to decrease the caseload of the local court.

Prosecutors:

With regard to proceedings that have increased in number since the beginning of the armed conflict, there is a new category of crime. First, these are crimes connected with illegal armed groups acting in the occupied areas and committing crimes against Ukrainian citizens remaining in that area. These include murders, illegal detention or kidnapping, robberies, theft, takeover of state institutions and public buildings, as well as crimes of creating terrorist groups or organizations, or armed groups.

The caseload is very high. Compared to the peaceful time, the number of military crimes, for instance, evasion of military service, has increased by 6-7 fold; there are many cases of negligent handling of weapons.

Investigator:

The number of criminal proceedings has increased because of the armed conflict. The categories include theft, carjacking. Large-scale for-profit offences, against property. There are more robberies and illegal expropriation of vehicles. There are also more cases of illegal detention, kidnappings. If you talk specifically about these robberies, carjacking cases, mostly the people in that territory commit them. Where the AFU is concerned, these are mostly crimes of negligence. Was cleaning the gun… In general, these categories, not many intentional crimes.

Judges:

The number of proceedings related to trespass against territorial integrity and inviolability of Ukraine has increased. There is a very large number of cases under articles 258, 260.

[Number of] criminal cases has increased … due to the conflict.

Statistics also supports the above statements.

For example, 2013-2017 statistics of the Prosecutor General's Office and State Court Administration of Ukraine shows an increase in the number of proceedings sent to court with indictment and convictions (in cases with verdicts that have entered into force).

Table 1. 1

PROCEEDINGS SENT FOR TRIAL

Article of the Criminal Code of Ukraine	Number of cases sent for trial with indictment [169]	Number of convictions [170]
Art. 109 (Actions aimed at forceful change or overthrow of the constitutional order or take-over of government)	2013 – 5 2014 – 13 2015 – 16 2016 – 7 2017 – 22	2013 – 0 2014 – 7 2015 – 18 2016 – 7 2017 – 10
Art. 110 (Trespass against territorial integrity and inviolability of Ukraine)	2013 – 0 2014 – 49 2015 – 62 2016 – 33 2017 – 63	2013 – 0 2014 – 23 2015 – 40 2016 – 46 2017 – 59
Art. 110-2 (financing actions, committed with the purpose of the violent change or overthrow of constitutional order or the assumption of state power, change of the territorial measures or state border of Ukraine)	2014 – 0 2015 – 1 2016 – 0 2017 – 6	2014 – 0 2015 – 1 2016 – 0 2017 – 1
Art. 113 (sabotage)	2013 – 0 2014 – 2 2015 – 10 2016 – 2 2017 – 0	2013 – 0 2014 – 0 2015 – 2 2016 – 1 2017 – 4
Art. 114-1 (obstructing lawful activities of the Armed Forces of Ukraine and other military groups)	2014 – 3 2015 – 0 2016 – 0 2017 – 0	2014 – 0 2015 – 11 2016 – 2 2017 – 1
Art. 258 (Act of terrorism)	2013 – 0 2014 – 11 2015 – 35 2016 – 20 2017 – 6	2013 – 1 2014 – 0 2015 – 1 2016 – 7 2017 – 14
Art. 258-3 (Creation of a terrorist group or terrorist organization)	2013 – 0 2014 – 34 2015 – 203 2016 – 66 2017 – 59	2013 – 0 2014 – 0 2015 – 12 2016 – 59 2017 – 63
Art. 258-4 (Facilitating the commission of a terrorist act)	2013 – 0 2014 – 4 2015 – 5 2016 – 0 2017 – 1	2013 – 0 2014 – 3 2015 – 1 2016 – 1 2017 – 1
Art. 258-5 (Financing of terrorism)	2013 – 0 2014 – 3 2015 – 5 2016 – 3 2017 – 7	2013 – 0 2014 – 0 2015 – 2 2016 – 4 2017 – 4
Art. 263-1 (Unlawful handling of weapons, ammunition or explosives)	2013 – 141 2014 – 167 2015 – 132 2016 – 79 2017 – 151	2013 – 134 2014 – 218 2015 – 143 2016 – 121 2017 – 180
Art. 294 (Riot)	2013 – 0 2014 – 10 2015 – 14 2016 – 1 2017 – 0	2013 – 0 2014 – 73 2015 – 11 2016 – 8 2017 – 3
Art. 349 (Hostage taking of a representative of public authorities or a law enforcement officer)	2013 – 0 2014 – 0 2015 – 1 2016 – 1 2017 – 1	2013 – 0 2014 – 0 2015 – 2 2016 – 0 2017 – 0
Art. 402 (Disobedience)	2013 – 6 2014 – 194 2015 – 214 2016 – 48 2017 – 35	2013 – 5 2014 – 77 2015 – 372 2016 – 57 2017 – 40
Art. 403 (Failure to comply with orders)	2013 – 0 2014 – 0 2015 – 1 2016 – 1 2017 – 0	2013 – 0 2014 – 0 2015 – 1 2016 – 2 2017 – 0
Art. 404 (Resistance to a commander or coercion of a commander into breaching the official duties)	2013 – 1 2014 – 3 2015 – 7 2016 – 4 2017 – 2	2013 – 1 2014 – 2 2015 – 8 2016 – 6 2017 – 4
Art. 405 (Threats or violence against a commander)	2013 – 2 2014 – 33 2015 – 60 2016 – 27 2017 – 16	2013 – 2 2014 – 10 2015 – 58 2016 – 30 2017 – 17
Art. 406 (Violation of statutory rules of conduct of military servants not subordinated to each other)	2013 – 33 2014 – 26 2015 – 44 2016 – 44 2017 – 29	2013 – 28 2014 – 20 2015 – 30 2016 – 44 2017 – 27
Art. 407 (Absence without leave from a military unit or place of service)	2013 – 21 2014 – 312 2015 – 1556 2016 – 1572 2017 – 2173	2013 – 22 2014 – 153 2015 – 1545 2016 – 1937 2017 – 2128
Art. 408 (Desertion)	2013 – 2 2014 – 69 2015 – 159 2016 – 107 2017 – 185	2013 – 2 2014 – 29 2015 – 171 2016 – 307 2017 – 381[171]
Art. 409 (Absence without leave from a military unit or place of service)	2013 – 13 2014 – 44 2015 – 24 2016 – 6 2017 – 7	2013 – 11 2014 – 23 2015 – 92 2016 – 25 2017 – 6
Art. 410 (Stealing, appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special enginery, or other munitions, or abuse of office, by a military serviceman)	2013 – 54 2014 – 62 2015 – 68 2016 – 38 2017 – 38	2013 – 63 2014 – 58 2015 – 80 2016 – 33 2017 – 37

169 Statistics of the Prosecutor General's Office of Ukraine //https://www.gp.gov.ua/ua/stst2011.html?dir_id=113281&libid=100820&c=edit&_c=fo.

170 Court statistics: https://court.gov.ua/inshe/sudova_statystyka.

171 The discrepancy between the number of proceedings sent to court and the number of convictions can be explained due to the change of qualification of the offence from Article 407 to Article 408 of the Criminal Code of Ukraine.

Art. 411 (Willful destruction or endangerment off military property)	2013 – 1 2014 – 3 2015 – 2 2016 – 1 2017 – 0	2013 – 2 2014 – 5 2015 – 3 2016 – 1 2017 – 0
Art. 412 (Negligent destruction or endangerment of military property)	2013 – 0 2014 – 0 2015 – 3 2016 – 4 2017 – 0	2013 – 0 2014 – 0 2015 – 1 2016 – 3 2017 – 1
Art. 413 (loss of military property)	2013 – 2 2014 – 52 2015 – 79 2016 – 73 2017 – 39	2013 – 1 2014 – 28 2015 – 79 2016 – 76 2017 – 51
Art. 414 (Violation of rules related to handling of weapons, and also substances and objects of increased danger to the surroundings)	2013 – 3 2014 – 27 2015 – 72 2016 – 37 2017 – 23	2013 – 1 2014 – 14 2015 – 69 2016 – 48 2017 – 33
Art. 415 (Violation of rules related to driving or vehicle operation)	2013 – 2 2014 – 5 2015 – 17 2016 – 10 2017 – 9	2013 – 0 2014 – 2 2015 – 19 2016 – 8 2017 – 12
Art. 419 (Violation of statutory rules of border guard duty)	2013 – 2 2014 – 0 2015 – 1 2016 – 2 2017 – 1	2013 – 1 2014 – 0 2015 – 1 2016 – 2 2017 – 0
Art. 421 (Violation of statutory rules of routine duty)	2013 – 1 2014 – 3 2015 – 5 2016 – 3 2017 – 2	2013 – 1 2014 – 1 2015 – 3 2016 – 4 2017 – 2
Art. 422 (Disclosure of military information that constitutes state secret or loss of documents or materials that contain any such information)	2014 – 0 2015 – 10 2016 – 0 2017 – 0	2015 – 2 2016 – 1 2017 – 1
Art. 426 (Omissions of military authorities)	2013 – 4 2014 – 3 2015 – 2 2016 – 3 2017 – 2	2013 – 2 2014 – 1 2015 – 3 2016 – 1 2017 – 2
Art. 426-1 (Abuse of power or authority by a military official)	2013 – 0 2014 – 0 2015 – 8 2016 – 16 2017 – 11	2013 – 0 2014 – 0 2015 – 2 2016 – 15 2017 – 10
Art. 436-1 (preparing or circulating communist or Nazi symbols and propaganda of communist and Nazi totalitarian regimes в)	2015 – 1 2016 – 0 2017 – 3	2015 – 1 2016 – 0 2017 – 3
Art. 437 (Planning, preparation and waging of an aggressive war)	2014 – 0 2015 – 10 2016 – 4 2017 – 10	2014 – 2 2015 – 5 2016 – 7 2017 – 2

Crimes in the non-government controlled areas remain unpunished.

A thematic report of the Office of the United Nations High Commissioner for Human Rights on accountability for killings in Ukraine from January 2014 to May 2016[172] states:

> *«None of the armed groups or the Government of Ukraine has taken responsibility for any civilian deaths caused by the conduct of hostilities. OHCHR is not aware of any cases where alleged perpetrators – either those who carried out attacks or those who bore command responsibility – have been brought to justice. As noted by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, instead of responding to, investigating or prosecuting cases of indiscriminate shelling by their own military forces, "each side is dedicating time to documenting in laudable detail the violations of the other side with a view to continuing their confrontation in national or international courtrooms».*

In regard to Ukraine, OHCHR has consistently affirmed that the 'officials' of the 'Donetsk people's republic' and 'Luhansk people's republic' are responsible and shall be held accountable for human rights abuses committed on territories under their control, including individuals bearing command responsibility for the actions of perpetrators[173].

Participants of focus groups also mentioned impunity of crimes in the non-government controlled areas.

Lawyers, human rights defenders:

In the occupied territory, there is no access to any investigation authorities; there is no possibility to report a crime. In any case, there is fear factor, and also the lack of access to state authorities. So we document what we have.

Even in the cases we see in the press, military prosecutor's office has a very convenient excuse that they had no access to the site and could not take any action. There are many cases where they register a criminal case and even use it as PR... They are not doing anything, in fact.

If I may, I will speak about the occupied areas... People there slowly build trust to the government-controlled areas. In which way? In terms of the ability to initiate a criminal case, in terms of compensation, or penalties, or other measures... The second factor is the fear factor. If, on the one hand, [the person] comes here, he is unlikely to be protected. Look at how our authorities work, including the SSU: if he is here, he is a snitch; he needs to be checked all around, in case he is performing some special task. This search for enemies, spies is all around. Especially at the crossing points... There are wagons of the border guards where they check documents, and next to them - the SSU wagon. If young people, 30-40 years old, are coming, they are taken aside, and spoken in you know which way for two-three hours.

172 OHCHR Report on accountability for killings in Ukraine from January 2014 to May 2016 // http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf.

173 Ibid.

Judges issue very lenient verdicts for crimes against national security and other crimes committed in war. Often, persons are exempt from liability for crimes against national security.

As a result of shortcomings in investigation and court proceedings, some perpetrators of crimes committed in the situation of armed conflict continue to enjoy impunity[174].

According to a hypothesis suggested during the study, there is lack of liability for dangerous crimes related to the Russian aggression in eastern Ukraine, namely:

- lack of criminal liability for financing terrorism;
- lack of criminal liability for financing separatism;
- lenient penalties for crimes against national security;
- lenient penalties for crimes against military service rules of duty;
- weak military discipline and order in the armed forces;
- lack of criminal liability for intentional abuse of disciplinary power by a military official.

These are only partially accurate. For instance, financing separatist activities before article 110-2 was introduced could be qualified as aiding commission of offenses under articles 109 and 110 of the Criminal Code. Sanctions for offences against national security and military crimes included arrest or detention along with other penalties, but the courts were reluctant to impose them.

Prosecutors in focus groups mentioned that judges who moved from the occupied areas were under pressure. Therefore, they changed qualification and issued lenient verdicts or exempted people from liability. Clearly, there is also pressure on witnesses and bribery.

Prosecutors:

We do not have the ration of actual punishment.

A case from Kramatorsk was sent to court. Witnesses in pre-trial stage said, 'Yes, we saw him'. Ten different local residents could not be wrong about seeing the same thing. When they came to court, it was 'maybe', 'I don't know'. My personal opinion is that they received '10 kilos of oranges and candy'. In court these ten witnesses say, 'No, no'. Yes, it was a mistake of the pre-trial investigation. The person was acquitted.

We had an even better situation. There was an LPR parliament member. He was charged with articles 258(3) and 110 [of the CC about terrorist act with casualties and trespass against integrity and inviolability of Ukraine]. His mission was the following. As the LPR Parliament member, he had to drive around different city district councils with a decree of the people's council subordinating these councils to the LPR. There is a video; you cannot make it any better, where he says, 'I, so and so, am the LPR Parliament member». And so on, you can see and hear him well. There are other videos where he is taking part in events. There is a linguistic assessment with clear calls to change the boundaries. Simply a beautiful case! He was acquitted. Why? Because the linguistic expertise was conducted by the expert institution of the SSU. That is it. You investigated it; you conducted the expertise, so it is not admissible. No one confirmed article 258 (3). Though there were witnesses, approximately 50 witnesses. Maybe not all of them, but some said, 'Yes, he said he was LPR parliament member. He was talking...' The case started with him under house arrest instead of detention. It is complete nonsense. The case was over. It was a laughing matter... His lawyer... said, 'What is wrong with this? He just wanted federalization'. He was acquitted.

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174 Ibid.

While prosecutors tend to blame judges for extremely lenient verdicts or exemption from liability, investigators blame prosecutors for not wanting to notify people of suspicion and send cases to court at all times.

Investigator:

There are many people who supported, who went to referendums. There are many files on people who went to referendums. But... The problem is there is no evidence. The prosecutor's office says there is no evidence. There are witnesses who said they saw but there is no sufficient evidence [for a notice of suspicion]. They are in Ukraine... These are bureaucrats. For instance, Zolkin was the head of the regional administration. He is still working. Everything is fine with him. I think it is corruption.

The corruption concerns only officials. When the moderator asked whether it was true for current officials, the investigator confirmed and added that the notice of suspicion would have been signed long time ago if it were a different category.

Human rights defenders confirmed the words of prosecutors and investigators:

Human rights defender:

In the area where I live, every person who contributed to this armed conflict, was an instigator and so on, was not held to account. All officials, prosecutor's office, court, the majority of these people are still in their positions. Cases fall apart when the person is actually guilty, but the pretrial authority, investigation authority is not doing enough, the prosecutor's office is also not doing enough.

- What types of cases are you talking about?

Articles 110, 109. For example, an official at the level of the deputy head of district administration who personally contributed to the conflict, worked for anti-Maidan. There is evidence, and the person is still working in that position... It is not simply a widespread crime. I do not know any mid-level official who was held to account. Maybe a head of the district council. For instance, we monitored Baranov, he is free now. It is the so-called minister of coal industry of the LPR.

At the same time, human rights defenders confirmed that members of Ukrainian volunteer battalions are "prosecuted with full force" in other types of cases.

Thirty percent of questionnaire respondents knew about cases when persons who contributed to occupation continued to work in the justice system (86% of human rights defenders, 36% of lawyers, 29% of investigators, 20% percent of prosecutors and 6% of judges).

Questionnaire results:

HOW OFTEN PERSONS WHO CONTRIBUTED TO THE OCCUPATION CONTINUED TO WORK FOR AUTHORITIES IN THE JUSTICE SYSTEM

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
These cases are common, and they impede administration of justice	0%	5%	3%	22,35%	57,14%
These cases are common, but these persons administer justice properly	0%	2%	2,00%	2%	0%
These cases are rare, and they impede administration of justice	6,00 %	10,00 %	12,00 %	2,35%	20,00 %
These cases are rare, and they impede administration of justice	0%	3%	4,00 %	9,41 %	8,57 %
I am not aware of such cases	92,00 %	79,00 %	77,00 %	63,53 %	14,29 %
No response	2%	1,00 %	2%	0%	0%

Perpetrators are able to abscond justice in the occupied areas.

Among the problems related to criminal prosecution, judges mentioned that many perpetrators abscond justice in the non-government controlled areas. At the same time, there are no mechanisms for searching for these persons in the government-controlled areas. There is neither proper cooperation between the National Police of Ukraine and the State Border Guard Service, nor a database of such persons. They can cross the contact line even through a Ukrainian checkpoint.

Judge:

> Checkpoints should have records for people on the search list. This mechanism is not working at all. He is on the search list in Sloviansk, in the city district, and no one is looking for him in the neighboring town… There is no information between [different] law enforcement bodies. They arrange for their pension while on the search list.

Prosecutors also mentioned this issue and said that corruption at checkpoints contributes to the practice of absconding justice in the non-government controlled territory.

Another related issue mentioned by prosecutors is desertion.

Prosecutor:

> Many deserters ran away from the units in the beginning of the ATO and moved there. They are either serving there, or living there. Counterintelligence finds the most active ones, tries to charge them with [article] 111 - treason. For ATO it is not so bad, and in Crimea, there are 10 thousand military service members. It is unclear when we will be done with the desertion article.

Investigators also confirmed the possibility to escape to the non-government controlled areas.

Investigator:

> The person committed a crime, the proceedings start, and he moves to that area. It is not far, 60-70 kilometers to the contact line. You cross, and that is it.

With regard to information about persons in the database, investigators had a different opinion than judges:

Investigators:

> *[Information about the person on the search list]* is available at the contact line and all roadblocks… There is an APB, stating which car it is… We go; they have already caught the bandit. Guys, have you apprehended him? We are coming. *[However]*, if the crime was not obvious, we do not know who committed it… The person has an entire day to cover traces. While the information is transferred to all checkpoints, he is already gone….
>
> If the criminal is not arrested quickly, he is very likely to cross the line of contact, and that is it… Especially if the crime is committed at the contact line.

The majority of respondents agreed that if the person was not apprehended promptly, s/he could definitely abscond by going to the occupied areas.

Questionnaire results:

POSSIBILITY TO ESCAPE JUSTICE BY ABSCONDING IN THE TEMPORARILY OCCUPIED AREAS

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
If the person is not apprehended promptly, s/he can definitely avoid justice by absconding in the occupied areas	76,00 %	79,00 %	68,00 %	76,47 %	75,71 %
Even if the person is not apprehended promptly, there is little possibility to avoid justice by absconding in the occupied areas	8,00 %	13,00 %	17,00 %	18,82 %	18,57 %

Even if the person is trying to avoid justice by absconding in the occupied areas, it is still possible to return him/her to the government-controlled area and hold accountable	16,00 %	8,00 %	15,00 %	4,71 %	5,71 %

Perpetrators can escape justice if the record of proceedings or data storage device with a record of proceedings is missing from case files.

The study of court practice revealed multiple instances when appellate courts in Luhansk and Donetsk regions revoked decisions because the record of proceedings or a data storage device with the record of proceedings was missing from the case files. According to article 412(2)(7), a court decision shall be in any case subject to setting aside if materials of proceedings lack the record of proceedings, or the data storage device with a record of proceedings of the first instance court.

For example:

> *"... criminal case files lack the technical audio record of the court hearing on 24.06.2016 from 9 hours 19 minutes until 12 hours 25 minutes, i.e. in relation to evidence referenced in the verdict by the first instance court, namely testimonies of witnesses PERSON_12, PERSON_9, PERSON_10, PERSON_13, PERSON_14, PERSON_15, PERSON_16 (volume 7, criminal case file p. 125-126). According to article 412(2)(7), a court decision shall be in any case subject to setting aside if materials of proceedings lack the record of proceedings, or the data storage device with a record of proceedings of the first instance court"*[175].

> *"Materials of criminal proceedings suggest that case files do not have a technical data storage device with the record of court proceedings in the first instance court, i.e. the CD in the said criminal proceedings does not include a record - technical record of the court hearing on 13 June 2016, namely debate, the last speech of the defendant, and the CD in the said criminal proceedings does not include a record - technical record of the verdict pronouncement on 13 June 2016 from 11:49:39 until 12:00:20 minutes. It is a violation of article 412(2) (7) of the CPC of Ukraine which constitutes grounds for revoking the court decision and depriving the panel of judges from the possibility to verify arguments in the appeal complaint of the defendant with regard to violation of articles 363, 364 of the CPC of Ukraine, as well as verify whether the first instance court followed the requirements of article 376 of the CPC of Ukraine"*[176].

> *"According to article 27(5) of the CPC of Ukraine, during trial, full recording of the court session with audio recording device is secured. Official recording of a court session is considered the only technical recording made by court as prescribed by the CPC of Ukraine. The court of appeal finds arguments listed in the appeal complaint of the defendant PERSON_1, defenders PERSON_2, PERSON_3, defender PERSON_4 regarding the lack of recording of criminal proceedings in court hearings on 10.09.2015, 24.09.2015, 30.10.2015 with the technical means to be reasonable"*[177].

> *"The technical data storage device does not have a record of court debate. The panel of judges considers that it is not possible to conduct a comprehensive review of the court hearing regarding PERSON_2 and give a proper legal assessment of his actions in the alleged criminal offence due to the absence of the record of proceedings, or the data storage device with a record of proceedings of the first instance court. Therefore, appeal claims of the prosecutor, defender and the accused shall be partially granted, and the verdict shall be revoked with a re-trial"*[178]

> *"The panel of judges found the following during the inspection of criminal case files: a court hearing was held on 27 March 2015, and, according to the hearing record from 27 March 2015 (vol. 1, a.c. 27), the hearing in criminal proceedings was rescheduled for 2 April 2015. However, the record of the hearing of 2 April 2015 is not found in the case files, and the next record is dated 3 April 2015. Based on these facts, the panel of judges concludes that the verdict of the first instance court shall be revoked as unlawful due to violation of the right of PERSON_4 to defense and absence of the court hearing record from the criminal case files. Criminal proceedings shall be directed for re-trial to the first-instance court"*[179].

Clearly, such shortcomings in judiciary procedure are unacceptable; they suggest that the issue is systemic and there may be an intent to use these grounds to revoke verdicts, create delays in criminal proceedings and help the suspects avoid punishment.

175 Decision of Donetsk Region Court of Appeal, 27 October 2016 // http://www.reyestr.court.gov.ua/Review/62272607.
176 Decision of Donetsk Region Court of Appeal, 19 October 2016 // http://www.reyestr.court.gov.ua/Review/62103914.
177 Decision of Donetsk Region Court of Appeal, 4 October 2016 // http://www.reyestr.court.gov.ua/Review/61854930.
178 Decision of Donetsk Region Court of Appeal, 4 October 2016 // http://www.reyestr.court.gov.ua/Review/61854930.
179 Decision of Donetsk Region Court of Appeal, 4 October 2016 // http://www.reyestr.court.gov.ua/Review/61854961.

5.2 CRIMINAL PROSECUTION OF ATO MEMBERS FOR ACTION COMMITTED DURING THE MILITARY AGGRESSION

The law has increased criminal liability for military offences.

The war in eastern Ukraine created the need to increase discipline in the military. Accordingly, the law adopted on 12 February 2015 increased penalties for several types of military crimes[180]. The law increased penalties for articles 402 (disobedience), 403 (failure

180 Law of Ukraine «On amendments to the Criminal Code of Ukraine concerning increased penalties for certain military crimes", 2015.

to comply with orders), 404 (resistance to a commander or coercion of a commander into breaching the official duties), 405 (threats or violence against a commander), 407 (absence without leave from a military unit or place of service), 408 (desertion), 409 (evasion of military service by way of self-harm or otherwise), 410 (stealing, appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special enginery, or other munitions, or abuse of office, by a military serviceman), 411 (willful destruction or endangerment of munitions), 418 (violation of statutory rules of guard or patrol duty), 420 (violation of statutory rules of alert duty), 421 (violation of statutory rules of routine duty), 426 (omissions of military authorities) etc.

The law covered the majority of all applicable types of military offences. The majority of these articles of the Criminal Code of Ukraine has been in active use since 2014.

In addition, the law of 7 April 2015[181] established criminal liability for abuse of power by a military official (art. 426-1 of the CC of Ukraine).

The law adopted on 7 February 2015[182] provided for the following:

1) administrative liability for members of the armed forces for several administrative offences: disobeying an order or other lawful requirements of a commander (superior), absence without leave from a military unit or place of service, negligent destruction or damage to military property, misuse of power by a military official, abuse of power by a military official, negligent performance of military duty, omissions of military authorities, violation of the rules of combat duty, violation of the rules of border duty, violation of the rules for handling weapons and hazardous substances and objects, consumption of beer, alcohol, and light alcohol drinks by military person (articles 172-10 – 172-20 of the Code of Administrative Offences of Ukraine), including sanctions up to arrest and detention at guardhouses;

2) the possibility to apply sanctions, such as disciplinary battalion service, to both the conscripts, and professional contract military personnel, professional military officers, conscript military officers, mobilized military personnel, during the special period (except female members of the armed forces).

Statistical data shows more frequent application of service restrictions for military personnel: 2013 – 46, 2014 – 94, 2015 – 247, 2016 – 103; disciplinary battalion service for military personnel: 2013 – 2, 2014 – 9, 2015 – 93, 2016 – 93. However, these two types of sanctions were not used in 2017. From 91 convictions of military service members in 2017, there were 75 conditional sentences with probation, 10 exemptions from punishment due to amnesty, 5 arrests and 1 fine.

There is widespread criminal prosecution of the ATO participants for actions that do not constitute criminal offences.

181 Law of Ukraine «On amendments to the Criminal Code of Ukraine on Abuse of power or authority by a military official», 2015.

182 Law of Ukraine «On amendments to the legislation of Ukraine concerning increased penalties for military officials, provision of additional authority to commanders and imposition of additional duties during the special period», 2015.

One of the situations brought up by prosecutors in focus groups is a possible indicator of the lack of knowledge of laws among representatives of the criminal justice bodies, or lack of skills in application of the law.

According to Article 43 of the CC of Ukraine, *"a compelled causing of harm to legally protected interests by a person shall not be a criminal offense, where such person was undertaking a special mission, pursuant to law, by way of participation in an organized group or criminal organization for the purpose of preventing or uncovering its criminal activities"*.

Instead of using this provision against a person and ensuring his/her safety in the future, the prosecutors mentioned being helpless. For instance, a prosecutor talked about a person who served undercover in the "people's militia of the LPR". The person was performing a special task behind enemy lines (providing information about location of equipment, fire positions, financing of terrorists, lists etc. to the Ukrainian authorities for two years). However, it was impossible to prove in court even with motions from the Security Service of Ukraine.

An investigator who took part in a focus group gave an example of a driver of a self-propelled artillery mount who was driving in a convoy near the frontline with his lights off. He did not notice when a car in front of him stopped, and another military service member died in the collision. Though the driver was following a commander's order to drive with the lights turned off and could not technically stop and avoid collision in the dark, he was convicted of violating the rules for operating a combat vehicle.

A representative of the military prosecutor's office mentioned cases of criminal prosecution of ATO participants for actions conducted out of absolute necessity.

Prosecutor:

Unfortunately, I know many such cases. One of vivid examples is the exit of 20 military service members to the Russian territory to avoid shelling from Russia. The trial against them is ongoing in Volyn. They are accused of abandoning military positions in combat. I think this was a matter of absolute necessity.

Questionnaire results:

CRIMINAL PROSECUTION OF ATO PARTICIPANTS FOR ACTIONS THAT INCLUDE ELEMENTS OF CRIME COMMITTED IN COMBAT TO PRESERVE MILITARY LIVES AND PROTECT CIVILIANS

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
ATO participants face the same liability as under regular conditions	6,00 %	18,00 %	24,00 %	40,00 %	31,43 %
Penalties for ATO participants are less strict than possible pentalties under regular conditions	3,00 %	12,00 %	22,00 %	34,12 %	24,29 %

Penalties for ATO participants are stricter than possible pentalties under regular conditions	0%	0%	0%	3,53 %	35,71 %
These situations are rare	28,00 %	9,00 %	10,00 %	2,35 %	4,29 %
I have not come across such situations	59,00 %	61,00 %	42,00 %	20,00 %	4,29 %
No response	4,00 %	0%	2,00 %	0%	0%

Only 91 percent of human rights defenders and 78 percent of lawyers gave a positive answer to the question on whether criminal prosecution of ATO participants for actions that include elements of crimes but were committed in combat to preserve the lives of combatants and protect civilians was widespread. At the same time, more than half of judges, prosecutors and investigators think that these cases are rare and they had not come across such cases in their work. Moreover, one third of human rights defenders is convinced that ATO participants receive stricter punishment than usual.

There are cases of unreasonable mitigation of punishment for dangerous crimes.

In some cases, there was pressure on the judiciary in high-profile cases. A hearing at the Kyiv City Court of Appeals on 3 July 2017, on the extension of the pre-trial detention of a commander of the 'Aidar' battalion, arrested and charged with abduction and other violent crimes, illustrates the nature and extent of such pressure. A group of 'Aidar' battalion soldiers and members of Parliament attended the hearing and demanded the defendant be released from custody[183]. The Prosecutor General also attended the hearing and expressed doubt that the investigation had sufficiently established the material facts of the case given that they took place "near the frontline." He supported the release of the detainee and stated that he expected Parliament to find a way to absolve soldiers from being subjected to civilian justice for acts committed in the course of their military duties[184]. Such interventions by the Prosecutor General undermine the independence of investigations and the judiciary. Activists supporting unity of Ukraine also exert pressure on the judiciary.

Participants of focus groups often pointed out that civilian (non-military) judges often do not understand the danger of military crimes.

Prosecutor:

There are many women *[working]* in courts. For example, when a soldier beats up a commander *[talking about article 405 of the CC – "Threats or violence against a commander"]*, they say, "Children got in a fight". While the sanctions are insane: if a soldier hits his commander – from five to ten, or seven during a special period. And judges take it as "The children got in a fight". In fact, they do not understand the depth, that discipline, hierarchy, or authority of the commander is then questioned and so on. It leads to chaos. It reduces the entire army's readiness for combat. Some civilian courts do not understand that.

183 Report on the human rights situation in Ukraine 16 May to 15 August 2016, p. 69. // http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport_ukr.pdf.

184 Rada maye zvilnyty vid vidpovidalnosti vijskovyh, yaki na vijni porushyly «myrni zakony» – Lucenko. TSN, 3 lypnya 2016 [Rada must release the military service members who violated 'civilian wars' in war, Lutsenko, TSN, 3 July 2016]. // https://tsn.ua/ukrayina/rada-maye-zvilniti-vid-vidpovidalnosti-viyskovih-yaki-na-viyni-porushili-mirni-zakoni-lucenko-685579.

Sixty-two percent of respondents said that conditions of the armed conflict were not taken into account when penalties are assigned. The majority of them consider it correct, while others think it is wrong.

Questionnaire results:

EFFECT OF THE MILITARY CONFLICT CIRCUMSTANCES ON DETERMINATION OF PENALTIES

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Considered as mitigating circumstances; and it is correct	12,00 %	8,00 %	3,00 %	2,35 %	41,43 %
Considered as mitigating circumstances; and it is wrong	0%	12,00 %	16,00 %	18,82 %	28,57 %
Considered as aggravating circumstances; and it is correct	8,00 %	4,00 %	4,00 %	2,35 %	0%
Considered as aggravating circumstances; and it is wrong	44,00 %	37,00 %	36,00 %	40,00 %	15,71 %
Not taken into account; should be considered as mitigating circumstances	0%	7,00 %	14,00 %	12,94 %	8,57 %
Not taken into account, should be considered as aggravating circumstances	24,00 %	30,00 %	24,00 %	3,53 %	0%

There are widespread cases of bias towards military service members.

Questionnaires revealed rather strict treatment of the members of armed forces in the justice system.

Representative of the Ombudsman's Office:

Since the beginning of the conflict in Luhansk region (in 2015-2016 I worked as a representative of the Parliamentary Commissioner), many members of armed forces appeared in the only remand prison in Starobilsk. They were accused of different crimes. There was a high number of new cases related to military service.

> The prosecutor's office is biased towards members of the armed forces. [For the military personnel], they ask for maximum penalties. In most cases, detention is assigned as a measure of restraint. In some cases, it was not necessary… They are accused of crimes committed in the state of alcohol intoxication, but charges are not always based on facts. I saw a case without a proper confirmation of intoxication.

In focus groups, judges mentioned proceedings against ATO participants where offences included elements of crime but were committed out of absolute necessity and borderline abuse of power. For instance, Starobilsk court considered five proceedings in cases of ATO participants: murders, negligent handling of arms, and illegal possession of arms.

The Law "On amnesty in 2016" created difficulties for members of the armed forces and other persons awaiting this law[185].

Relevant draft was registered in Verkhovna Rada back on 17 March 2016. It was adopted before the Independence Day, on 7 July 2016, and provided for President's signature on 15 July. However, more than a month later (in violation of constitutional norms), on 19 August 2016, President Poroshenko provided his suggestions for the Law. On 22 December 2016, the law was adopted with the President's suggestions. On 24 February, it was again provided to the President for signature with a significant delay. However, the President violated the Constitution again and waited for over six months to sign the law. The law was signed on 4 September 2017, and it entered into force on 7 September 2017.

The law provides, in particular, for release from punishment:

- in the form of imprisonment for a certain period or other non-custodial penalties for veterans of war (participants in hostilities, persons with disabilities caused by war and participants of war covered by the Law "On the status of veterans of war and safeguards for their social protection") convicted of intentional crimes, except grave or particularly grave crimes, persons convicted of negligent crimes, except particularly grave crimes as well as persons for whom criminal cases in relation to the said offences were considered by courts but verdicts have not entered into force (art. 1);
- In the form of detention in a disciplinary battalion for the members of armed forces: a) convicted for low and medium-gravity offences;
  a) convicted for low and medium-gravity offences;
  b) convicted for the first time for grave crimes provided they have served at least one half of their sentence at the time of entry into force of this Law (art. 6).

Amnesty does not extend, inter alia, to persons convicted of crimes against the order of military service (military crimes) under parts 2, 3, 4, and 5 of art. 404, part 1 of art. 406, parts 2, 3, and 4 of art. 408, art. 410, parts 2, 3, and 4 of art. 411, parts 2 and 3 of art. 420, part 3 of art. 422, parts 2, 3, and 4 of art. 426, parts 2, 3, 4, and 5 of art. 426-1, art. 433 of the Criminal Code of Ukraine (art. 9).

185 Law of Ukraine "On amnesty in 2016", 2017.

Commission of crime during the ATO is sometimes considered a mitigating circumstance (commission of crime by the ATO participant), in other cases – an aggravating factor (commission of a criminal offence during a special period).

For example, the same Donetsk Region Court of Appeal concluded the following in different decisions:

> *"The accused PERSON_6... according to UBD certificate no. 064072 is a participant in hostilities… The panel of judges concludes that the totality of circumstances that mitigate the penalty and significantly reduce the gravity of offence, allows to impose a core penalty for the accused PERSON_6 that is lower than the minimum penalty in accordance with article 69 of the Criminal Code of Ukraine"*[186].

> *"Taking into account that PERSON_4...is taking part in the anti-terrorist operation at the frontline of defense, the panel of judges considers it possible to apply articles 75, 76 of the CPC of Ukraine and release him from punishment on probation"*[187].

> *"PERSON_3 committed a crime in difficult time for our country, during an anti-terrorist operation. His deeds have significant negative impact on the personnel of the unit and the members of the Armed Forces of Ukraine in general"*[188].

> *"PERSON_1 was an officer on duty in the ATO zone; he was in the state of alcohol intoxication; therefore, the panel of judges considers that his correction and prevention of new crimes are impossible without isolation from society"*[189].

> *"When imposing a stricter penalty for PERSON_2, the panel of judges also took into account that the court did not consider that the accused, a member of armed forces, committed a crime while inebriated, which is an aggravating circumstance, and the crime was committed during extraordinary situation in the country"*[190].

> *"The first instance court did not consider the fact that PERSON_1 deserted during a special period for the Armed Forces of Ukraine covered by the Law of Ukraine "On mobilization training and mobilization" while on duty at a checkpoint in the area of the anti-terrorist operation"*[191].

186 Decision of Donetsk Region Court of Appeal, 11 October 2016 // http://www.reyestr.court.gov.ua/Review/61982280.

187 Decision of Donetsk Region Court of Appeal, 31 May 2016 // http://www.reyestr.court.gov.ua/Review/58090579.

188 Verdict of the Court of Appeal of Donetsk Region, 22 June 2016 // http://www.reyestr.court.gov.ua/Review/58471303.

189 Verdict of the Court of Appeal of Donetsk Region, 20 January 2016 // http://www.reyestr.court.gov.ua/Review/55084458.

190 Verdict of the Court of Appeal of Donetsk Region, 27 October 2016// http://www.reyestr.court.gov.ua/Review/62263822.

191 Verdict of the Court of Appeal of Donetsk Region, 17 December 2015 // http://www.reyestr.court.gov.ua/Review/54701961.

5.3

CRIMINAL PROSECUTION OF THE MEMBERS OF RF ARMED FORCES, MEMBERS OF THE SO-CALLED DPR AND LPR FOR ACTIONS COMMITTED DURING MILITARY AGGRESSION OF THE RF, THEIR LEGAL STATUS

The armed aggression of the RF is a so-called hybrid war, i.e. its main method is to create and incite internal arguments and conflicts by the aggressor in the state targeted with aggression with the aim of achieving political goals of the aggression. These goals are usually achieved through standard means and methods of warfare. Elements of the hybrid war include support for separatism and terrorism, facilitation of emergence of irregular armed groups, providing them with training, funding, equipment etc.

In response to the actions by the Russian Federation, Ukraine has waited to recognize the legal status of the hybrid war, the nature of the armed conflict in Donbas, and the legal status of participants of these events. Only on 18 January 2018, the Parliament of Ukraine adopted a law "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions" (entered into force on 24 February 2018). The law states that the Russian Federation committed an act of armed aggression against Ukraine and occupation of separate areas of Donetsk and Luhansk regions. Armed groups of the Russian Federation and the occupation administration of the RF have established and continue to exercise overall control in these areas. Therefore, with the adoption of this law, Ukraine recognized the existence of an international armed conflict with the Russian Federation.

Long before the adoption of the Law, on 27 January 2015, Verkhovna Rada of Ukraine approved the Appeal of the Verkhovna Rada of Ukraine to the United Nations, European Parliament, Parliamentary Assembly of the Council of Europe, NATO Parliamentary Assembly, OSCE Parliamentary Assembly, GUAM Parliamentary Assembly and national parliaments of the countries of the world on the recognition of the Russian Federation as an aggressor state[192]. The Appeal states, "*taking into account the provisions of the UN Charter and General Assembly resolution 3314 «Definition of aggression» of 14 December 1974, the Verkhovna Rada of Ukraine recognizes the Russian Federation as an aggressor state*".

Qualification of crimes committed by members of the armed forces of the RF, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities with arms depends on clear determination of the status of the armed conflict in eastern Ukraine and its participants.

192 Resolution of Verkhovna Rada of Ukraine "On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, European Parliament, Parliamentary Assembly of the Council of Europe, NATO Parliamentary Assembly, OSCE Parliamentary Assembly, GUAM Parliamentary Assembly and national parliaments of the countries of the world on the recognition of the Russian Federation as an aggressor state" // http://zakon2.rada.gov.ua/laws/show/129-19.

Currently, the legal status of the following groups has not been established:

- current members of the armed forces of the Russian Federation in the ORDLO areas (though military groups of the RF are recognized as occupation forces – those who have established and continue to exercise overall control of the temporarily occupied areas in Donetsk and Luhansk regions);
- Ukrainian and foreign citizens who take part in the so-called DPR and LPR and participate in hostilities using weapons.

Depending on their legal status, some of these people can be recognized as mercenaries (according to p. 2 of the commentary to article 447 of the CC of Ukraine, a mercenary is neither a national of a party to the conflict nor a person sent by a State which is not a party to the conflict).

Determination of the legal status of persons requires that the situation in Donbas be analyzed from the point of view of international humanitarian law (the law of armed conflict). It is evident that international humanitarian law should apply to events in Donbas from late April 2014, i.e. the time when armed conflict in Donbas started. In particular, the Office of the Prosecutor of the ICC in its Reports on Preliminary Examinations in 2016 and 2017 stated that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and anti-government armed elements in eastern Ukraine had reached a level that would trigger the application of the law of armed conflict (p. 168 of Report 2016, p. 94 of Report 2017). According to p. 169 of Report 2016 and p. 94 of Report 2017, additional information, such as reported shelling by both States of military positions of the other, and the detention of Russian military personnel by Ukraine, and vice-versa, points to direct military engagement between Russian armed forces and Ukrainian government forces that would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict[193]. For determining whether the otherwise non-international armed conflict could be actually international in character, the Office is also examining allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine.

In our view, the situation in Donbas is an international armed conflict between Ukraine and the Russian Federation caused by the armed aggression of the Russian Federation against Ukraine. Ukraine supported this qualification with the adoption of the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions".

In international armed conflict, members of the armed forces of the RF have the status of combatants, that is to say, they have the right to participate directly in hostilities[194]; they

193 The Office of the Prosecutor of the International Criminal Court. Report on Preliminary Examination Activities 2016 // https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf; The Office of the Prosecutor of the International Criminal Court. Report on Preliminary Examination Activities 2017 // https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

194 Article 43, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (Additional Protocol I).

are legally taking part in this conflict. According to IHL provisions, any combatant who falls into the power of an adverse Party shall be a prisoner of war[195]. Therefore, members of the armed forces of the RF when captured should be prisoners of war. The legal status and treatment of prisoners of war is determined by the Geneva Convention (III) relative to the Treatment of Prisoners of War (Geneva, 12 August 1949). A prisoner of war and may not be punished for taking part in the hostilities provided that this participation was in conformity with the laws of war. Accordingly, from the point of view of international humanitarian law, if the situation in Donbas is recognized as an international armed conflict, soldiers and officers of the armed forces and other military groups of the RF should not be prosecuted under articles of the Criminal Code of Ukraine directly related to their participation in hostilities (for instance, under article 437 "Planning, preparation and waging of an aggressive war"). Article 437 should be used against high-ranking military officers of the RF who can exercise effective control and command over political or military actions of the state and order an aggressive war. These actions would fall within the definition of aggression as a leadership crime[196].

Clearly, members of the armed forced of the RF are responsible for war crimes or regular crimes committed during their participation in hostilities against Ukraine. They should be held to account for every crime under the Criminal Code of Ukraine or international law. Penalties for these crimes should be pursuant to decisions of domestic courts or the International Criminal Court. Ukraine accepted the ICC jurisdiction over the situation in Donbas on 4 February 2015 through the Verkhovna Rada "Statement recognizing the jurisdiction of the International Criminal Court in order to prosecute crimes against humanity and war crimes committed on the territory of Ukraine by the highest officials of the Russian Federation and the leaders of the terrorist organizations DPR and LPR that led to particularly serious consequences and mass killings of Ukrainian citizens"[197]. On 8 September 2015, the Minister of Foreign Affairs of Ukraine sent the Statement to the International Criminal Court. In the Report on Preliminary Examination Activities 2016 (p. 177-183), the Office of the Prosecutor stated that alleged crimes committed in eastern Ukraine falling within the ICC jurisdiction (and, accordingly, constituting international crimes, i.e. crimes against humanity and war crimes) include killing, destruction of civilian objects, detention, disappearance, torture and ill-treatment, and sexual and gender-based crimes[198]. The Report on Preliminary Examination Activities 2017 stated that the Office had recorded more than 1,200 incidents involving crimes allegedly committed since 20 February 2014 in the context of events in eastern Ukraine. The Office of the

195 Article 44(1), Additional Protocol I.

196 For example, aggression is considered a leadership crime for the purposes of the Rome Statute. For example, under Article 8bis (adopted at the Kampala Conference in 2010), "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

197 Resolution of Verkhovna Rada of Ukraine «On the Statement recognizing the jurisdiction of the International Criminal Court in order to prosecute crimes against humanity and war crimes committed on the territory of Ukraine by the highest officials of the Russian Federation and the leaders of the terrorist organizations DPR and LPR that led to particularly serious consequences and mass killings of Ukrainian citizens" // http://zakon4.rada.gov.ua/laws/show/145-19.

198 The Office of the Prosecutor of the International Criminal Court. Report on Preliminary Examination Activities 2016 // https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

Prosecutor stated that alleged crimes committed in eastern Ukraine falling within the ICC jurisdiction included killings (in particular, between April 2014 and August 2017, at least 2,505 civilians were allegedly killed in armed hostilities), destruction of civilian objects, detention without due process, torture and ill-treatment, sexual and gender-based crime, and disappearance (pp. 104-110 of the Report 2017)[199].

At the same time, if the situation in Donbas is recognized as international armed conflict between Ukraine and the Russian Federation, military personnel and citizens of the Russian Federation cannot be considered mercenaries under international law (as stated briefly above). The term "mercenary" is defined in Article 47 of Additional Protocol I, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and Article 447 of the CCU. All these sources provide cumulative criteria for recognition of a person as a mercenary (i.e. all criteria provided in these instruments shall be present). One of the criteria is that the person is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict. Accordingly, if the Russian Federation is the Party to the international armed conflict with Ukraine, members of the armed forces and Russian citizens cannot be considered mercenaries.

With regard to criminal (or terrorist) nature of the organized armed groups of the so-called DPR and LPR, their activities violate Ukrainian laws and should be assessed from the criminal law perspective.

In particular, actions of these armed groups in many cases can be qualified as terrorist acts (art. 258), involvement in a terrorist act (art. 258-1), creation of a terrorist group or terrorist organization (art. 258-3), facilitating the commission of a terrorist act (art. 258-4). Without a doubt, from the point of view of domestic criminal law, perpetrators of these offences should receive fair punishment. International humanitarian law does not prohibit criminal prosecution under domestic legislation. However, it requires that their rights and safeguards prescribed by the IHL be preserved in armed conflict. These include two major groups:

1) humane treatment
2) the right to fair trial.

Therefore, after they finish participation in hostilities on behalf of anti-government armed groups, they can be held accountable for their crimes if the rights and safeguards under the IHL are observed.

The Criminal Code of Ukraine also provides for different elements of crime and, accordingly, different liability for the persons who:

1) established a criminal organization, leaders and members of the organization (art. 255), as well as persons who provide assistance (art. 256);
2) established a terrorist group or terrorist organizations, leaders or members of the organization (art. 258-3), as well as those who finance terrorism (art. 258-5).

199 The Office of the Prosecutor of the International Criminal Court. Report on Preliminary Examination Activities 2017 // https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

Analysis of court decisions shows that criminal courts often do not recognize the fact that DPR and LPR are terrorist organizations as common knowledge. They are not recognized as terrorist organizations in the law. Therefore, it is necessary to prove the "terrorist nature" of these organizations in each case. As a result, there is no consistency in qualification of similar crimes.

In some cases, representatives of the armed groups of the so-called DPR or LPR were charged under article 258-3 (participation in a terrorist group or terrorist organization), in others – under article 260 of the CC (participation in unlawful paramilitary or armed formations). Accordingly, they receive different penalties for identical actions. Often, qualification of an offence is within the prosecutor's discretion.

For instance, a ruling of Donetsk Region Court of Appeal (no. 221/3897/15-к, 25 August 2016) states:

> *"It is not common knowledge that "Donetsk People's Republic" is a terrorist organization. It has not been recognized as terrorist organization according to the law, therefore, this fact requires proving. However, the indictment and verdict have no information about where and how this organization committed or planned terrorist acts, or about its participants. Therefore, specific facts that could support a conclusion about terrorist nature of this organization are missing and were not subject to review. The panel of judges, therefore, considers that the first instance court reached a conclusion not based on evidence regarding facilitation of activities of a terrorist organization. Based on analysis of articles 28, 255, 256, 258-3 of the CC of Ukraine, assistance to members of such organization does not have to be pre-committed. Assistance to members of criminal organizations is not pre-committed if information about such assistance was not provided before creation of such organization. Therefore, assistance to an existing organization is not pre-committed, and its creation is not facilitated by the assistance. Otherwise, such assistance constitutes abetment to the crime under article 255 of the CC. These actions can take place in the following forms: providing premises, hideouts, vehicles, information, documents, technical devices, cash and securities, or other actions that create conditions for criminal activities of the said organizations, including obstruction of actions of officials combating such organization. Actions of PERSON_2 should qualified under art. 256(1) of the CC instead of art. 258-3(1) of the CC of Ukraine"*[200].

Another ruling of Donetsk Region Court of Appeal (221/368/16-к, 6 October 2016), repeats the above arguments:

> *"It is not common knowledge that "Donetsk People's Republic" is a terrorist organization. It has not been recognized as terrorist organization according to the law, therefore, this fact requires proving. … The panel of judges decided to change qualification of actions of PERSON_3 from art. 258-3(1) of the CC of Ukraine to art. 256(1) of the CC of Ukraine"*[201].

However, a verdict issued by Donetsk Region Court of Appeal (no. 225/6094/15-к, 11 November 2016) states:

200 Decision of Donetsk Region Court of Appeal, 25 August 2016 // http://www.reyestr.court.gov.ua/Review/60008631

201 Decision of Donetsk Region Court of Appeal, 6 October 2016 // http://www.reyestr.court.gov.ua/Review/61919357

> *"According to criminal case files, pre-trial investigation authority charged PERSON_3 with an offence under art. 258-3(1) of the Criminal Code of Ukraine, namely facilitating activities of a terrorist organization.*
>
> *The first-instance court correctly established the facts but incorrectly changed qualification of his actions to art. 260(2) of the CC of Ukraine, namely participation in activities of an illegal armed group.*
>
> *The lack of clear procedure for recognition of an organization as a terrorist group, in the court's view, impedes implementation of art. 24 of the Law of Ukraine "On combating terrorism" whereby a court decision is necessary to recognize an organization as a terrorist one, and article 258-3 of the Criminal Code of Ukraine on liability for creation of a terrorist group or terrorist organization.*
>
> *The first instance court pointed out that there are no Ukrainian court decisions recognizing the DPR as a terrorist organization.*
>
> *The panel disagrees with this conclusion since it is premature.*
>
> *For example, a terrorist organization under article 1 of the Law of Ukraine "On combating terrorism" is defined as a stable association of three or more persons created with the purpose of terrorist activities, which has distribution of functions, a set of rules of conduct mandatory for these persons during preparation and commission of terrorist acts. An organization is recognized as terrorist if at least one of its structural subdivisions carries out terrorist activity of which at least one leader (governing body) of the entire organization is aware.*
>
> *Given the above, the DPR exhibits the signs of a terrorist organization; it has a stable collective of leaders who maintain close relations, centralized subordination of political and power groups to the leaders, as well as a plan for criminal activities and clear distribution of duties assigned to fulfill the plan.*
>
> *At the same time, article 24 of the Law of Ukraine "On combating terrorism" refers to the organization's liability for terrorist activity and its consequences, as well as the procedure for dissolving an organization. We should note that responsibility for crimes committed by such organization could only happen after the court reviews the indictment for crimes under articles 258 – 258-5 of the CC of Ukraine against such organization on merits. However, provisions of article 24 of the law do not apply to the procedure for establishing the legal status of organizations that are organized for terrorist activity. Therefore, the court's arguments in relation to the norm are unfounded and unjustified.*
>
> *Taking into account the above, the court finds there is no need to recognize the so-called DPR and LPR as terrorist organizations by court, and it is not required by current legislation.*
>
> *Moreover, the State of Ukraine has recognized the DPR and LPR as terrorist organizations in the Verkhovna Rada resolution adopted on 27 January 2015.*
>
> *Under these circumstances, the arguments of the prosecutor about the unjustified change of qualification by the first instance court are rightful. The court's conclusions about the change of qualification of the actions of PERSON_3 listed in the decision are in discord with the facts of the criminal case. According to article 409 of the CPC of Ukraine, it serves as a ground to revoke the court decision on appeal.*
>
> *The panel of judges reached this conclusion based on evidence examined in the appellate court hearing; actions of PERSON_3 should be qualified under article 258-3 of the CC of Ukraine, namely participation in activities of a terrorist organization".*

In some cases, similar actions are qualified under other articles. For example, the ruling of Donetsk Region Court of Appeal (no. 221/128/16-к, 14 November 2016) states:

> *"Based on the analysis of evidence in the explanatory section, the first instance court found the absence of legal grounds to recognize the so-called "Donetsk People's Republic" a terrorist organization. The court stated that such organization falls within the legal status of a criminal organization and changed qualification of actions of PERSON_2 from art. 258-1(1) of the CC of Ukraine to art. 256(1) of the CC of Ukraine.*
>
> *At the same time, in description of charges against PERSON_2, the court stated that it was a terrorist organization, which contradicts the court's conclusions about the proof of charges presented by the pre-trial investigation authority.*
>
> *Under these circumstances, the panel of judges does not have the means to verify the appeal claims of the prosecutor about proof of charges against PERSON_2, qualification of his actions and imposed penalty"*[202].

Another issue in determination of the legal status of the so-called DPR and LPR will arise from the approach incorporated in the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions". The Law states that the RF is temporarily occupying parts of Ukraine, in particular, with the help of illegal armed groups, armed gangs and mercenary groups created, subordinated to, led and financed by the RF, as well as through the occupation administration of the RF which includes its state authorities responsible for the management of temporarily occupied areas of Ukraine, and the self-proclaimed authorities controlled by the RF that usurped power in the temporarily occupied areas of Ukraine. According to this approach, anti-government organized armed groups in Donbas, such as the DPR and LPR, will be recognized as agents of the RF, and their personnel will be considered as members of the RF armed forces. Alternatively, a different approach will be taken to determine their role and status. Time will provide answers to these questions, but there needs to be a broad discussion on this topic today.

Focus groups took place before the adoption and entry into force of the Law of Ukraine "On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions". Almost all participants pointed out that the parliament allowed uncertainty in the status of the so-called DPR and LPR, their representatives or officials, members of the Russian military located in these territories with arms, as well as the situation of the armed aggression by the RF against Ukraine, which had not been called a war, an armed conflict, and had no defined parties.

The judges complained about being dragged into political intrigues to solve problems on the state level while the legislature was standing by. In addition, judges noted that a clarification from the Supreme Court would not solve the problem.

202 BVerdict of the Court of Appeal of Donetsk Region, 11 November 2016 // http://www.reyestr.court.gov.ua/Review/62649201.

Prosecutors:

With regard to illegal armed groups, there is no understanding what and how to do with them. If the military prosecutor's office and the SSU were more active in relation to these mercenaries, there would be strong psychological influence on mercenaries and others. They would think twice before going to Donbas and fighting in a war. During 20 years of independence, the entire legislation eliminated all issues related to armed conflict. The academia was not working either. The wording of CC articles has many gaps in practice. The law, material and procedural, had been developed for the use in peaceful time and it was not ready for the time of war.

The country's leadership is trying to avoid somehow. It causes legal uncertainty. Special period – we are not at war somehow.

Yes, and terrorists with "Grad" systems.

We had such cases. A saboteur was arrested at the contact line. They attacked a checkpoint and stepped on a trip wire. Those who were injured could not escape; they were arrested, treated and transferred to us. We started a trial against them. The Prosecutor General's Office called, "You need to prepare them for exchange. Did you choose detention as a measure of restraint?" "Yes" "Change it" "On what grounds?" – "Well, write that the grounds have disappeared". We extended like this one week ago. In general, we set ourselves up. We write that the "risks are gone", and the court looks at us, "Are you insane?" They are exchanged. But proceedings in their cases remain open. We send it to court ex parte. The judge was afraid to issue a verdict under article 437, aggressive war. However, this verdict is appealed now, and we have the debate stage. The panel of judges asked me, "Was there an official exchange?" I said, "Of course, there are no documents". I am not going to be silent about the exchange because they are not in detention. "Yes, there was a phone call to exchange them". The judge started thinking, "if you let them go, cancelled the order, exchanged them, how are you still prosecuting them?" I do not know what the outcome will be. The problem is that there are no documents to prove this exchange happened.

During a focus group about legal definition of the status of the so-called DPR and LPR, participants mentioned that judges tried to avoid this wording (DPR, LPR, "temporarily occupied territory" etc.) and, at the same time, not call them "people's republics" or call their "authorities" with the word "authorities".

As to the recognition of the DPR and LPR as terrorist organizations, judges said they were not the ones to ask, the legislative branch was.

Human rights defenders who took part in a focus group on 18 July 2017 stated that they were waiting for a clarification from the court if the legislator would not provide clarity on this matter.

Human rights defenders:

... They are called “gang formations”, “terrorist organizations”. There was a high profile trial in 2015. They recognized the fact of aggression and that it was a gang formation. We will keep dealing with these problems until a relevant law is adopted. It does not matter what it is called. At least, it will recognize the military aggression, and that these are agents of the Russian Federation.

It is about legal qualification. Because the legal qualification affects punishment and other aspects. There is inconsistent approach to the same actions interpreted in different ways. It is a problem of investigators and military prosecutors who choose wrong qualification from the beginning. The judges lack time and expertise to figure it out. As a result, the practice is inconsistent.

The key issue is legal uncertainty. On the one hand, there are problems with qualification. On the second, in the legislative framework... There are facts – an armed man. On the other hand, there are two topics. One – it is a terrorist group. Two – it is a threat to territorial integrity of Ukraine. Therefore, even in cases and topics related to referendums in Luhansk and Donetsk, it was difficult to see whether these were calls to change territorial integrity.

Those who remained in the occupied areas used to work in municipal authorities, ensuring the functioning of towns, villages and so on. When they come to our territory, the SSU detains them and charges with participation in terrorist organizations. Is it really participation in a terrorist organization? It is a complicated question, because without a definition, they did not take up arms or fight, but there is a fact of participation in terrorist organizations.

This problem with the status should be solved at the top. Before we have a single state strategy in this regard and this conflict in general, we will never solve these problems: not through court decisions, clarifications etc.

About the legislation – this term “hybrid war” and people often have issues with this incitement of hatred in the media, that there is no liability. I asked prosecutors, why this system is not working, and they said there is no such law... There is a great need for the law defining hybrid war, and addressing incitement of and prevention of hatred.

The problem is that the legislation does not incorporate it anywhere; Minsk accords ... are solely political. When we talk about crimes, there are not only the accused, suspects, but also victims. In many cases, there are perpetrators of crimes against individuals, such as looting, murder and other grave crimes, not crimes against the state. When the SSU detains and exchanges them, victims ask about compensation, moral satisfaction related to conviction of perpetrators. It is a very difficult and complex issue.

5.4
“COME BACK HOME” PROGRAM

The program of the State Security Service of Ukraine “Home is waiting for you” (“Come back home”, “Come home”) was launched back in 2015. It is described on the dedicated page of the SSU website[203] and on Facebook[204].

According to this program, the State Security Service of Ukraine is taking measures to facilitate return and exemption from criminal liability for persons who voluntarily abandoned participation in illegal armed groups of the so-called DPR and LPR. More than 200 people have returned to civilian life through the program.

According to the SSU website, the program is offered to persons who voluntarily abandoned participation in activities of terrorist groups and illegal armed groups and had not been involved in acts of murder, torture, rape, attacks on enterprises, institutions and organizations, or other grave crimes. They must be sincerely willing to assist in solving crimes committed in relation to establishment or activities of such group and termination or their activities.

Those willing to join the program should contact the SSU officials directly or through relatives or friends through one of the channels of communication (contact information provided on the relevant page of the SSU website).

The SSU has recorded facts of active counteraction to the Program by the so-called DPR and LPR and their affiliated secret services. They take special measures to identify in short time the location and identity of a person calling the SSU helpline.

It is therefore advised not to call the phone numbers provided in earlier announcements, leaflets and other materials. For secure communication, it is necessary to use e-mail address doroga.mira.sbu@gmail.com or contact SSU through a trusted person in the government-controlled areas.

Information about the program is available on many information resources.

The scope of articles of the Criminal Code covered by the exemption within “Come back home” program is too narrow.

Grounds for exemption from criminal liability for members of the so-called DPR and LPR are envisioned by article 258-3(2) (relation of a terrorist group or terrorist organization), article 260(6) (creation of unlawful paramilitary or armed formations) and other articles of the Criminal Code.

203 SSU Program “Home is waiting” // https://ssu.gov.ua/ua/pages/206.
204 SSU Program “Home is waiting” // https://www.facebook.com/dorogamira.

These articles of the Criminal Code provide for exemption from liability for these crimes. In other words, the person will not face any penalty. Conditions for exemption are defined in the law, and the imperative formulation "shall be released" means that the court is obliged (not "can") release the person from criminal liability if the specific conditions are met.

According to article 258-3(2) of the CC, conditions for release from criminal liability for *participation in a terrorist group or organization* require that the person::

1) is not an organizer or leader of a terrorist group (terrorist organization);
2) has voluntarily informed the law enforcement authority about terrorist activity;
3) contributed to termination of terrorist activity or solving the crimes committed in relation to establishment or activities of the said group (organization);
4) has not committed other crimes.

Conditions for exemption from liability for an offence under art. 260 of the CC of Ukraine (creation *of unlawful paramilitary or armed formations*) are different. It is required that the person:

1) despite being a member of such group (or having created the group), was not a leader or a person financing, supplying weapons, ammunition, explosives or military equipment to these formations, and did not take part in these formations during attacks on enterprises, institutions, organizations, or citizens;
2) has voluntarily abandoned such formation; and
3) reported its existence to government agencies or local government authorities.

However, exemption from criminal liability is envisioned not only in articles 258-3 and 260 of the Criminal Code of Ukraine, but also in other articles, including articles 110-2 (financing actions, committed with the purpose of the violent change or overthrow of constitutional order or the assumption of state power, change of the territorial measures or state border of Ukraine), 111 (treason), 114 (espionage), 255 (creation of a criminal organization), 258-3 (financing terrorism), and 263 of the Criminal Code of Ukraine (unlawful handling of weapons, ammunition or explosives).

Majority of interviewed judges said mentioned that they heard about the program but they have not dealt with it personally. However, not all judges said that.

Judges:

It is working actively. The court in Sloviansk had over 30 cases during this year. This year only, I had three cases. I do not see any threats so far. People have repented these crimes. The state gave them a chance for correction.

We had such cases. If the person voluntarily abandoned such activities, repented, the criminal law provides for exemption, and the court has to release the person who voluntarily contacted the law enforcement and reported this. It also applies to cases that did not result in grave consequences. There were no murders or significant harm from these actions…

Prosecutors said in their responses that the program was really working.

Prosecutors:

There are such programs: "Home is waiting", "Come back home", and other titles. The main condition is not to have blood on your hands.

There are court rulings. Usually, people applied through their relatives in this area, controlled by Ukraine, where the person comes from. Whether it is Kramatorsk or Slaviansk, or Krasnoarmeisk… They simply submit an application to the city SSU unit, the police unit saying that their relative so-and-so, providing personal data, and they check the database. If he did not … take part in shelling, they check the database, arrange the time, exit, where and how he will leave. Afterwards, he leaves. Of course, there is a notice of suspicion under part one of article 258, the measure of restraint is not imposed. I had an example. There was a spy, he came, brought radios used by the DPR and provided information. Not simply to exit, but the person could have done or told something before exiting. Simply coming and repenting is one thing, and helping your country is another.

Investigators mostly confirmed information provided by prosecutors.

Investigators:

Programs are working. Very few people, but they come.

The SSU brings a person… Here is a person, here are interviews with witnesses, and here are materials under article 260 and "Come back home" program. There is proof he was seen at the checkpoint. One person came, "Yes, I took part". Probably, he had a guilty conscience. He was put in the remand prison for two months and then submitted a motion to release him from criminal liability under "Come back home" program".

Lawyers and human rights defenders heard about the program but the majority of them had not dealt with it in practice.

Lawyer:

It is necessary to have release from liability for people who were fighting against Ukraine and changed sides in order to not push them away… when the unrecognized republics will understand the lack of grounds for illegal formations, and it will become a common thing. You will have to deal with each person separately. There will be guilty and not guilty ones. People are consciously doing it now. Meaning that he does not see any threats. He just realizes… Later, they will all come in bulk to avoid responsibility. If they had not committed crimes against civilians, children, older people and did not use forbidden means and methods of warfare. However, participants should be vetted more thoroughly…

Human rights defender:

These proceedings are not public. The public is in fact unaware of what is happening, who are the parties in these cases. One of the biggest dangers is when the crime

is unpunished it will probably happen again. It is a serious threat to those who were opposed to illegal armed groups and pro-separatist people who go through rehabilitation within the SSU program "Come back home". These people are released from criminal liability and can become state officials or parliament members. I think that the program "Come back home" has flaws. Release on probation would be sufficient for these people but exemption from criminal liability was not a proper solution.

Representative of the Ombudsman's Office:

Implementation of the program by the SSU representatives, especially at checkpoints at the contact line has caused more harm. They pull people under 40 from the line for an interview. The interviews are quite harsh. They exert psychological pressure, try to find out who takes part in illegal armed groups, and give business cards at the end of the conversation.

Implementation of the program by the SSU representatives, especially at checkpoints at the contact line has caused more harm. They pull people under 40 from the line for an interview. The interviews are quite harsh. They exert psychological pressure, try to find out who takes part in illegal armed groups, and give business cards at the end of the conversation.

Questionnaire results:

PROCEEDINGS UNDER «COME BACK HOME» PROGRAM

	Judges	Prosecutors	Investigators	Lawyers	Human rights defenders
Many proceedings, no issues	0%	9,00 %	4,00 %	0%	0%
Several proceedings, no issues	8,00 %	24,00 %	11,00 %	3,53 %	14,29 %
Many proceedings; there were issues	3,00 %	1,00 %	4,00 %	0%	0%
Several proceedings; there were issues	6,00 %	4,00 %	6,00 %	5,88 %	11,43 %
No proceedings of this kind	79,00 %	62,00 %	75,00 %	90,59 %	74,29 %
No response	4,00 %	0%	0%	0%	0%

FINDINGS AND RECOMMENDATIONS

1

Responsibility for crimes, as well as other offences has to be inevitable – otherwise, it fosters disrespect towards the state and its authorities and increases the prevalence and severity of crime.

The number of committed, registered, investigated and prosecuted crimes has increased significantly since 2014. Existing procedural mechanisms are insufficient for effective counteraction to violations caused by the aggression of the Russian Federation. The prevalence of crime and concealment of crimes are relatively high while investigation is ineffective.

Since 2014, the Verkhovna Rada of Ukraine tried to establish conditions to ensure certainty of punishment for the crimes committed during the armed aggression of the RF against Ukraine.

Perpetrators can escape justice by staying in the temporarily occupied areas.

Crimes in the non-government controlled areas remain unpunished. Many cases proceed with trial in absentia when the defendants are in the non-government controlled areas.

Perpetrators can escape justice if the record of proceedings or data storage device with a record of proceedings are missing from case files. Appellate courts often revoke verdicts based on the lack of such records or storage devices in case files.

The following measures are **necessary** to address the problem of impunity:

- to take effective action to prevent underreporting of crimes committed by military personnel, in particular against civilians in the conflict zone, as well as crimes committed by military service members against their colleagues (*competent authorities – Prosecutor General, Minister of Defense of Ukraine*);
- to address disciplinary bodies with regard to imposing liability on judges, administrative court staff who allowed the absence of the record of proceedings or data storage device with a record of proceedings in case files (*competent authorities – Prosecutor General, courts of appeal*);
- to ensure proper mechanisms to search for persons who had committed crimes in Ukraine and prevent their escape to the areas temporarily outside of Ukrainian government's control (*competent authorities – Ministry of Internal Affairs of Ukraine, State Border Guard Service of Ukraine*).

2

The law has increased criminal liability for military offences for Ukrainian military service members.

In practice, there is widespread criminal prosecution of the ATO participants for actions that do not constitute criminal offences. However, there are cases of unreasonable mitigation of punishment for dangerous crimes, including under pressure. There are also widespread cases of bias towards military service members in determination of their liability. Commission of crime during the ATO in some cases is considered a mitigating circumstance and an aggravating factor in other cases.

To increase the fairness of criminal legal assessment of the actions of military service members, it is **necessary**:

- to ensure proper investigation of military crimes, in particular, taking into account circumstances for exemption from criminal responsibility (*competent authorities – State Bureau of Investigations of Ukraine, Prosecutor General*);

- to prepare a compilation of case law in criminal cases against members of the armed forces of Ukraine, in particular on application of the Criminal Code provisions on exemption from criminal liability, adherence to general principles of determination and exemption from punishment, as well as measures of restraint for members of the armed forces (*competent authorities – Supreme Court, courts of appeal*).

3

Qualification of crimes committed by members of the armed forces of the RF, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities depends of clear determination of the status of the armed conflict in eastern Ukraine and its participants. So far, there has been no such determination.

With regard to criminal (or terrorist) nature of the organized armed groups of the so-called DPR and LPR, their activities violate Ukrainian legislation and should be assessed from the criminal law perspective. However, courts often do not recognize the fact that DPR and LPR are terrorist organizations as common knowledge. Therefore, it is necessary to prove the "terrorist nature" of these organizations in each case. As a result, there is no consistency in qualification of similar crimes.

To ensure consistent practice in prosecution of the members of armed forces of the RF in the ORDLO, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities, the following measures are **necessary**:

- to define the legal status of the members of armed forces of the RF in the ORDLO, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

- to introduce legal amendments to define the procedure for compensation for victims of crimes when perpetrators are convicted in absentia, i.e. in special court proceedings (*competent authorities – Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine*).

- to prepare a compilation of criminal case law on cases of the members of RF armed forces in the ORDLO, citizens of Ukraine and foreign members of the so-called DPR and LPR who took part in hostilities; to ensure consistent application of the law in matters related to the armed aggression of the Russian Federation against Ukraine by courts with different specializations in accordance with the procedure established by the law (*competent authorities – Supreme Court, courts of appeal*).

4

The most serious obstacle for implementation of "Home is waiting for you" program is that it does not apply to persons who committed crimes under articles 110-2 (financing actions, committed with the purpose of the violent change or overthrow of constitutional order or the assumption of state power, change of the territorial measures or state border of Ukraine), 111 (treason), 114 (espionage), 255 (creation of a criminal organization), 258-3 (financing terrorism), and 263 of the Criminal Code of Ukraine (unlawful handling of weapons, ammunition or explosives) – if a person has taken action required by the law proving that s/he sincerely repented and facilitated prevention of harmful consequences of his/her illegal actions.

To increase effectiveness of "Home is waiting for you" program, it is **necessary**:

- to extend it to persons who had committed crimes and include a wider number of Criminal Code articles that allow exemption from criminal liability (*competent authority – Security Service of Ukraine*).

Annex 1

COURTS IN DONETSK AND LUHANSK REGIONS BEFORE AND AFTER THE BEGINNING OF THE ARMED CONFLICT

Donetsk region

Court	Location	Termination of activities	Authority that received jurisdiction	Resumption of activities	Repeat cessation of activities	Authority that received jurisdiction	Status (as of 1 January 2018)
Avdiivka City Court	Avdiivka	02.09.2014	Dobropillia City District Court, from 31.03.2016 – Selydove City Court				Not working
Amvrosiivka й District Court	Amvrosiivka	02.09.2014	Orikhiv District Court in Zaporizhzhia region				Not working
Artemivsk City District Court	Artemivsk						Working
Velyka Novosilka District Court	Velyka Novosilka village						Working
Volnovakha District Court	Volnovakha	02.09.2014	Velyka Novosilka District Court	26.11.2014			Working
Volodarske District Court	Volodarske village						Working
Vuhledar City Court	Vuhledar						Working
Debaltseve City Court	Debaltseve	02.09.2014	Oleksandrivka District Court	14.11.2014	27.03.2015	Kostianty-nivka City District Court	Не працює
Dzerzhynsk City Court	Dzerzhynsk						Working
Dymytrov City Court	Dymytrov						Working
Dobropillia City District Court	Dobropillia						Working
Dokuchaievsk City Court	Dokuchaievsk	02.09.2014	Polohy District Court in Zaporizhzhia region				Not working
Druzhkivka City Court	Druzhkivka						Working
Yenakiieve City Court	Yenakiieve	02.09.2014	Artemivsk City District Court				Not working
Zhdanivka City Court	Zhdanivka	02.09.2014	Artemivsky City District Court				Not working
Kirovske City Court	Kirovske	02.09.2014	Chernihiv District Court In Zaporizhzhia region				Not working
Kostiantynivka City District Court	Kostiantynivka						Working
Kramatorsk City Court	Kramatorsk						Working
Krasnoarmiisk City District Court	Krasnoarmiisk						Working
Krasnyi Lyman City Court	Krasnyi Lyman						Working

Court	Location	Termination of activities	Authority that received jurisdiction	Resumption of activities	Repeat cessation of activities	Authority that received jurisdiction	Status (as of 1 January 2018)
Marinskyi District Court	Kurakhove	02.09.2014	Pokrovske District Court in Dnipropetrovsk region, з 06.04.2015 – Krasnoarmiisk City District Court	25.01.2016			Working
Novoazovsk District Court	Novoazovsk	02.09.2014	Pryazovske District Court In Zaporizhzhia region				Not working
Novohrodivka City Court	Novohrodivka						Working (not actually operating between 22.09.2016 and 03.04.2017)
Oleksandrivka District Court	Oleksandrivka village						Working
Pershotravneve District Court	Pershotravneve village						Working
Selydove City Court	Selydove						Working
Sloviansk City District Court	Sloviansk						Working
Snizhne City Court	Snizhne	02.09.2014	Kuibysheve District Court in Zaporizhzhia region				Not working
Starobesheve District Court	Starobesheve	02.09.2014	Tokmak District Court in Zaporizhzhia region				Not working
Torez City Court	Torez	02.09.2014	Berdiansk City District Court in Zaporizhzhia region				Not working
Telmanove District Court	Telmanove village	02.09.2014	Prymorsk District Court in Zaporizhzhia region				Not working
Khartsyzsk City Court	Khartsyzsk	02.09.2014	Dobropillia City District Court				Not working
Shakhtarsk City District Court	Shakhtarsk	02.09.2014	Berdiansk City District Court in Zaporizhzhia region				Not working
Yasynuvata City District Court	Yasynuvata	02.09.2014	Druzhkivka City Court				Not working
Kalininskyi District Court of Horlivka	Horlivka	02.09.2014	Sloviansk City District Court				Not working
Mykytivskyi District Court of Horlivka	Horlivka	02.09.2014	Sloviansk City District Court				Not working
Tsentralno-Miskyi District Court of Horlivka	Horlivka	02.09.2014	Sloviansk City District Court				Not working

Court	Location	Termination of activities	Authority that received jurisdiction	Resumption of activities	Repeat cessation of activities	Authority that received jurisdiction	Status (as of 1 January 2018)
Budionivskyi District Court in Donetsk	Donetsk	02.09.2014	Krasnoarmiiskyi City District Court				Not working
Voroshylovsky District Court in Donetsk	Donetsk	02.09.2014	Selydove City Court				Not working
Kalininskyi District Court in Donetsk	Donetsk	02.09.2014	Pavlohrad City District Court in Dnipropetrovsk region				Not working
Kyivskyi District Court in Donetsk	Donetsk	02.09.2014	Pavlohrad City District Court in Dnipropetrovsk region				Not working
Kirovskyi District Court in Donetsk	Donetsk	02.09.2014	Krasnoarmiisk City District Court				Not working
Kuibyshevskyi District Court Donetsk	Donetsk	02.09.2014	Pavlohrad City District Court In Dnipropetrovsk region				Not working
Leninskyi District Court in Donetsk	Donetsk	02.09.2014	Dzerzhynskyi City Court				Not working
Petrovskyi District Court in Donetsk	Donetsk	02.09.2014	Krasnyi Lyman City Court				Not working
Proletarskyi District Court in Donetsk	Donetsk	02.09.2014	Dzerzhynskyi City Court				Not working
Zhovtnevyi District Court in Mariupol	Mariupol						Working
Illichivskyi District Court in Mariupol	Mariupol						Working
Ordzhonikidzevskyi District Court in Mariupol	Mariupol						Working
Prymorskyi District Court in Mariupol	Mariupol						Working
Hirnytskyi District Court in Makiivka	Makiivka	02.09.2014	Kramatorsk City Court				Not working
Kirovskyi District Court in Makiivka	Makiivka	02.09.2014	Kramatorsk City Court				Not working
Sovietskyi District Court in Makiivka	Makiivka	02.09.2014	Kramatorsk City Court				Not working
Tsentralnomiskyi Court District Court in Makiivka	Makiivka	02.09.2014	Kostiantynivka City District Court				Not working
Chervonohvardiiskyi District Court in Makiivka	Makiivka	02.09.2014	Kostiantynivka City District Court				Not working
Court of Appeal of Donetsk Region	Donetsk, Mariupol and Artemivsk	02.09.2014 (except cases in Mariupol)	Court of Appeal of Zaporizhzhia region				Working
Donetsk Circuit Administrative Court	Donetsk	02.09.2014	Zaporizhzhia Circuit Administrative Court				Working

Court	Location	Termination of activities	Authority that received jurisdiction	Resumption of activities	Repeat cessation of activities	Authority that received jurisdiction	Status (as of 1 January 2018)
Donetsk Administrative Court of Appeal	Donetsk	02.09.2014	Kharkiv Administrative Court of Appeal				Working
Economic Court of Donetsk Region	Donetsk	02.09.2014	Economic Court of Zaporizhzhia region				Working
Donetsk Economic Court of Appeal	Donetsk	02.09.2014	Kharkiv Economic Court of Appeal				Working

Luhansk region

Court	Location	Termination of activities	Authority that received jurisdiction	Resumption of activities	Repeat cessation of activities	Authority that received jurisdiction	Status (1 January 2018)
Alchevsk City Court	Alchevsk	02.09.2014	Lysychansk City Court				Not working
Antratsyt City District Court	Antratsyt	02.09.2014	Starobilsk District Court				Not working
Bilovodsk District Court	Bilovodsk village						Working
Bilokurakyne District Court	Bilokurakyne village						Working
Brianka City Court	Brianka	02.09.2014	Lysychansk City Court				Not working
Kirovsk City Court	Kirovsk	02.09.2014	Kreminna District Court				Not working
Krasnodon City District Court	Krasnodon	02.09.2014	Svatove District Court				Not working
Krasnyi Luch City Court	Krasnyi Luch	02.09.2014	Novopskov District Court				Not working
Kreminna District Court	Kreminna						Working
Lysychansk City Court	Lysychansk						Working
Lutuhyne District Court	Lutuhyne	02.09.2014	Bilokurakyne District Court				Not working
Markivka District Court	Markivka village						Working
Milove District Court	Milove village						Working
Novoaidar District Court	Novoaidar village	12.09.2014	Rubizhne City Court				Working
Novopskov District Court	Novopskov village						Working
Pervomaisk City Court	Pervomaisk	02.09.2014	Rubizhne City Court				Not working
Perevalsk District Court	Perevalsk	08.12.2014	Lysychansk City Court				Not working
Popasna District Court	Popasna						Working
Rovenky City Court	Rovenky	02.09.2014	Bilovodsk District Court				Not working
Rubizhne City Court	Rubizhne						Working
Svatove District Court	Svatove						Working

Court	Location	Termination of activities	Authority that received jurisdiction	Resumption of activities	Repeat cessation of activities	Authority that received jurisdiction	Status (1 January 2018)
Sverdlovsk City Court	Sverdlovsk	02.09.2014	Bilovodsk District Court				Not working
Sievierodonetsk City Court	Sievierodonetsk						Not working
Slovianoserbsk District Court	Slovianoserbsk village	12.09.2014	Markivka District Court				Working
Stanytsia Luhanska District Court	Stanytsia Luhanska village	02.09.2014	Novopskov District Court				Not working
Starobilsk District Court	Starobilsk						Working
Stakhanov City Court	Stakhanov	02.09.2014	Sievierodonetsk City Court				Not working
Troitske District Court	Troitske village						Working
Artemivskyi District Court in Luhansk	Luhansk	02.09.2014	Bilokurakyne District Court				Not working
Zhovtnevyi District Court in Luhansk	Luhansk	02.09.2014	Troitske District Court				Not working
Kamianobridskyi District Court in Luhansk	Luhansk	02.09.2014	Markivka District Court				Not working
Leninskyi District Court in Luhansk	Luhansk	02.09.2014	Svatove District Court				Not working
Court of Appeal of Luhansk region	Luhansk	02.09.2014	Court of Appeal of Kharkiv region				Working
Luhansk Circuit Administrative Court	Luhansk	02.09.2014	Kharkiv Circuit Administrative Court				Working
Economic Court of Luhansk Region	Luhansk	02.09.2014	Economic Court of Kharkiv Region				Working

Annex 2

PROSECUTION AUTHORITIES IN DONETSK AND LUHANSK REGIONS BEFORE AND AFTER THE BEGINNING OF THE ARMED CONFLICT

Donetsk region

Name	Location	Relocated to (renamed to)	Reorganized on 15 December 2015	Status (as of 1 January 2018)
Prosecutor's Office of Donetsk region	Donetsk	Mariupol	Prosecutor's Office of Donetsk region	Working
Artemivsk Interdistrict Prosecutor's Office	Artemivsk	Bakhmut	Artemivsk Local Prosecutor's Office	Working (Debaltseve office not working)
Debaltseve Prosecutor's Office	Debaltseve			
Volnovakha District Prosecutor's Office	Volnovakha		Volnovakha Local Prosecutor's Office	Working (Dokuchaievsk, Starobesheve, and Boikivske offices are not working)
Volodarske District Prosecutor's Office	Volodarske	Nikolske village		
Dokuchaievsk Prosecutor's Office	Dokuchaievsk			
Marinka Interdistrict Prosecutor's Office	Marinka, Vuhledar			
Starobesheve District Prosecutor's Office	Starobesheve village			
Telmanove district office	Telmanove village	Boikivske village		
Horlivka Prosecutor's Office	Horlivka		Horlivka Local Prosecutor's Office	Not working
Prosecutor's Office of Kalininskyi district Prosecutor's Office of Mykytivskyi district Prosecutor's Office of Tsentralnomiskyi district	Horlivka			
Prosecutor's Office of Donetsk	Donetsk		Donetsk Local Prosecutor's Office # 1	Not working
Prosecutor's Office of Budionivskyi district Prosecutor's Office Kalininskyi district Prosecutor's Office of Proletarskyi district	Donetsk			
Prosecutor's Office of Voroshylovskyi district Prosecutor's Office of Kyivskyi district	Donetsk		Donetsk Local Prosecutor's Office # 2	Not working
Prosecutor's Office of Kirovskyi district Prosecutor's Office of Kuibyshevskyi district	Donetsk		Donetsk Local Prosecutor's Office # 3	Not working
Prosecutor's Office of Leninskyi district Prosecutor's Office of Petrovskyi district	Donetsk		Donetsk Local Prosecutor's Office # 4	Not working
Prosecutor's Office of Yenakiieve	Yenakiieve		Yenakiieve Local Prosecutor's Office	Not working
Prosecutor's Office of Khartsyzsk	Khartsyzsk			
Prosecutor's Office of Kramatorsk	Kramatorsk		Kramatorsk Local Prosecutor's Office	Working
Prosecutor's Office of Druzhkivka	Druzhkivka			

Name	Location	Relocated to (renamed to)	Reorganized on 15 December 2015	Status (as of 1 January 2018)
Kostiantynivka Interdistrict Prosecutor's Office	Kostiantynivka		Kostiantynivka Local Prosecutor's Office	Working
Prosecutor's Office of Dzerzhynsk	Dzerzhynsk	Toretsk		
Dobropillia Interdistrict Prosecutor's Office	Dobropillia			
Oleksandrivka District Prosecutor's Office	Oleksandrivka village			
Krasnoarmiisk Interdistrict Prosecutor's Office	Krasnoarmiisk	Pokrovsk	Krasnoarmiisk Local Prosecutor's Office	Working
Avdiivka Prosecutor's Office	Avdiivka			
Velyka Novosilka District Prosecutor's Office	Velyka Novosilka village			
Dymytriv Prosecutor's Office	Dymytriv	Myrnohrad		
Selydove Interdistrict Prosecutor's Office	Selydove			
Makiivka Prosecutor's Office	Makiivka		Makiivka Local Prosecutor's Office # 1	Not working
Prosecutor's Office of Hirnytskyi district Prosecutor's Office of Sovietskyi district Prosecutor's Office of Tsentralnomiskyi district	Makiivka			
Prosecutor's Office of Kirovskyi district Prosecutor's Office of Chervonohvardiiskyi district	Makiivka		Makiivka Local Prosecutor's Office # 2	Not working
Yasynuvata Interdistrict Prosecutor's Office	Yasynuvata			
Mariupol Prosecutor's Office	Mariupol		Mariupol Local Prosecutor's Office # 1	Working
Prosecutor's Office of Zhovtnevyi district Prosecutor's Office of Prymorskyi district	Mariupol	Tsentralnyi district		
Pershotravnevyi district office				
Prosecutor's Office of Illichivsk district Prosecutor's Office of Ordzhonikidze district	Mariupol	Kalmiuskyi district Livoberezhnyi district	Mariupol Local Prosecutor's Office # 2	Working (Novoazovsk office not working)
Novoazovsk District Prosecutor's Office	Novoazovsk			
Sloviansk Interdistrict Prosecutor's Office	Sloviansk		Sloviansk Local Prosecutor's Office	Working
Krasnyi Lyman Interdistrict Prosecutor's Office	Krasnyi Lyman	Lyman		
Shakhtarsk Interdistrict Prosecutor's Office	Shakhtarsk		Shakhtarsk Local Prosecutor's Office	Not working
Amvrosiivka District Prosecutor's Office	Amvrosiivka			
Kirovske Interdistrict Prosecutor's Office	Kirovske	Khrestivka		
Snizhne Prosecutor's Office	Snizhne			
Torez Prosecutor's Office	Torez	Chystiakove		

Luhansk region

Name	Location	Relocated to (renamed to)	Reorganized on 15 December 2015	Status (as of 1 January 2018)
Prosecutor's Office Of Luhansk region	Luhansk	Sievierodonetsk	Prosecutor's Office Of Luhansk region	Working
Alchevsk Prosecutor's Office	Alchevsk		Alchevsk Local Prosecutor's Office	Not working
Brianka Prosecutor's Office	Brianka			
Perevalsk District Prosecutor's Office	Perevalsk			
Krasnyi Luch Prosecutor's Office	Krasnyi Luch	Khrustalnyi	Krasnyi Luch Local Prosecutor's Office	Not working
Antratsyt Prosecutor's Office	Antratsyt			
Antratsyt District Prosecutor's Office	Antratsyt			
Krasnodon Prosecutor's Office	Krasnodon	Sorokyne	Krasnodon Local Prosecutor's Office	Not working
Krasnodon District Prosecutor's Office	Krasnodon	Sorokyne		
Lutuhyne District Prosecutor's Office	Lutuhyne			
Lysychansk Prosecutor's Office	Lysychansk		Lysychansk Local Prosecutor's Office	Working (Pervomaisk office Not working)
Pervomaisk Prosecutor's Office	Pervomaisk			
Popasna District Prosecutor's Office	Popasna			
Luhansk Prosecutor's Office	Luhansk		Luhansk Local Prosecutor's Office # 1	Not working
Prosecutor's Office of Artemivskyi district Prosecutor's Office of Kamianobridskyi district Prosecutor's Office Leninskyi district	Luhansk			
Prosecutor's Office Of Zhovtnevyi district	Luhansk		Luhansk Local Prosecutor's Office # 2	Working
Stanytsia-Luhanska District Prosecutor's Office	Stanytsia-Luhanska village			
Sverdlovsk Prosecutor's Office	Sverdlovsk	Dovzhansk	Sverdlovsk Local Prosecutor's Office	Not working
Rovenky Prosecutor's Office	Rovenky			
Sievierodonetsk Prosecutor's Office	Sievierodonetsk		Sievierodonetsk Local Prosecutor's Office	Working
Kreminna District Prosecutor's Office	Kreminna			
Novoaidar District Prosecutor's Office	Novoaidar			
Rubizhne Prosecutor's Office	Rubizhne			
Starobilsk District Prosecutor's Office	Starobilsk		Starobilsk Local Prosecutor's Office	Working
Bilovodsk District Prosecutor's Office	Bilovodsk			
Bilokurakyne District Prosecutor's Office	Bilokurakyne village			
Markivka District Prosecutor's Office	Markivka village			
Milove District Prosecutor's Office	Milove village			
Novopskov District Prosecutor's Office	Novopskov village			
Svatove District Prosecutor's Office	Svatove			
Troitske District Prosecutor's Office	Troitske village			

Name	Location	Relocated to (renamed to)	Reorganized on 15 December 2015	Status (as of 1 January 2018)
Stakhanov Prosecutor's Office	Stakhanov	Kadiivka	Stakhanov Local Prosecutor's Office	Not working
Kirovsk Prosecutor's Office	Kirovsk	Holubivka		
Slovianoserbsk District Prosecutor's Office	Slovianoserbsk village			

Annex 3

LAW ENFORCEMENT (POLICE) AUTHORITIES IN DONETSK AND LUHANSK REGIONS BEFORE AND AFTER THE BEGINNING OF THE ARMED CONFLICT

Donetsk region

Name	Location	Relocated to (renamed to)	Reorganized on 7 November 2015	Status (as of 1 January 2018)
Main MIA Directorate in Donetsk region	Donetsk	Mariupol	Main Directorate of the National Police in Donetsk region	Working
Amvrosiivka district office	Amvrosiivka	-		Not working
Artemivsk City Office	Artemivsk	Bakhmut	Bakhmut office	Working
Kostiantynivka City Office	Kostiantynivka		Kostiantynivka unit of Bakhmut office	Working
Dzerzhynsk City Office	Dzerzhynsk	Toretsk	Toretsk unit of Bakhmut office	Working
Volnovakha district office	Volnovakha		Volnovakha office	Working
Velyka Novosilka district office	Velyka Novosilka village		Velyka Novosilka unit of Volnovakha office	Working
Vuhledar City Office	Vuhledar		Vuhledar unit of Volnovakha office	Working
Marinka district office	Marinka		Marinka unit of Volnovakha office	Working
Volodarske district office	Volodarske	Nikolske village	Nikolske unit of Volnovakha office	Working
Horlivka city directorate: - Kalininskyi district office; - Mykytivskyi district office; - Tsentralnomiskyi district office	Horlivka			Not working
Debaltseve City Office	Debaltseve			Not working
Dokuchaievsk City Office	Dokuchaievsk			Not working
Donetsk city directorate: - Budionivskyi district office; - Voroshylovskyi district office; - Kalininskyi district office; - Kyivskyi district office; - Kirovskyi district office; - Kuibyshevskyi district office; - Leninskyi district office; - Petrovskyi district office; - Proletarskyi district office	Donetsk			Not working
Yenakiieve City Office	Yenakiieve			Not working

Name	Location	Relocated to (renamed to)	Reorganized on 7 November 2015	Status (as of 1 January 2018)
Kirovske City Office (servicing Kirovske and Zhdanivka)	Kirovske	Khrestivka		Not working
Kramatorsk City Office	Kramatorsk		Kramatorsk office	Working
Druzhkivka City Office	Druzhkivka		Druzhkivka unit of Kramatorsk office	Working
Oleksandrivka district office	Oleksandrivka village		Oleksandrivka unit of Kramatorsk office	Working
Krasnoarmiisk City Office	Krasnoarmiisk	Pokrovsk	Pokrovsk office	Working
Avdiivka City Office	Avdiivka		Avdiivka unit of Pokrovsk office	Working
Dobropillia City Office	Dobropillia		Dobropillia unit of Pokrovsk office	Working
Dymytriv City Office	Dymytriv	Myrnohrad	Myrnohrad unit of Pokrovsk office	Working
Selydove City Office (servicing Selydove and Novohrodivka)	Selydove		Selydove unit of Pokrovsk office	Working
Donetsk Airport Office	Donetsk			Not working
Makiivka city directorate: - Hirnytskyi district office; - Kirovsk district office; - Sovietskyi district office; - Tsentralnomiskyi district office; - Chervonohvardiiskyi district office	Makiivka			Not working
Mariupol city directorate: - Zhovtnevyi district office; - Illichivskyi district office; - Ordzhonikidzevskyi district office; - Prymorskyi district office	Mariupol	Mariupol: - Tsentralnyi office; - Kalmiuskyi office; - Livoberezhnyi office; - Prymorskyi office	- Tsentralnyi office - Kalmiuskyi unit of Tsentralnyi office - Livoberezhnyi unit of Tsentralnyi office - Prymorskyi unit of Tsentralnyi office	Working
Mariupol port office of Mariupol City Directorate	Mariupol		Prymorskyi unit of Tsentralnyi office	Working
Pershotravnevyi district office	Manhush village		Manhush unit of Tsentralnyi office	Working
Novoazovsk district office	Novoazovsk			Not working
Sloviansk City Office	Sloviansk		Sloviansk office	Working
Krasnyi Lyman City Office	Krasnyi Lyman	Lyman	Lyman unit of Sloviansk office	Working
Snizhne City Office	Snizhne			Not working
Starobesheve district office	Starobesheve village			Not working
Telmanove district office	Telmanove village	Boikivske village		Not working
Torez City Office	Torez	Chystiakove		Not working
Khartsyzsk City Office	Khartsyzsk			Not working
Shakhtarsk City Office	Shakhtarsk			Not working
Yasynuvata City Office	Yasynuvata			Not working

Luhansk region

Name	Location	Relocated to (renamed to)	Reorganized on 7 November 2015	Status (as of 1 January 2018)
Main MIA Directorate in Luhansk region	Luhansk	Sievierodonetsk	Main Directorate of the National Police in Luhansk region	Working
Alchevsk City Office	Alchevsk			Not working
Antratsyt City Office	Antratsyt			Not working
Antratsyt district office	Antratsyt			Not working
Bilovodsk district office	Bilovodsk		Bilovodsk office	Working
Bilokurakyne district office	Bilokurakyne village		Bilokurakyne office	Working
Brianka City Office	Brianka			Not working
Kirovsk City Office	Kirovsk	Holubivka		Not working
Krasnodon City Office	Krasnodon	Sorokyne		Not working
Krasnodon district office	Krasnodon	Sorokyne		Not working
Krasnyi Luch City Office	Krasnyi Luch	Khrustalnyi		Not working
Kreminna district office	Kreminna		Kreminna office	Working
Lysychansk City Office	Lysychansk		Lysychansk office: - Novodruzhesk unit (Novodruzhesk) - unit # 1 - unit # 2	Working
Luhansk city directorate: - Artemivskyi district office; - Zhovtnevyi district office; - Kamianobridskyi district office; - Leninskyi district office	Luhansk			Not working
Lutuhyne district office	Lutuhyne			Not working
Markivka district office	Markivka village		Markivka office	Working
Milove district office	Milove village		Milove office	Working
Novoaidar district office	Novoaidar		Novoaidar office: - unit # 1 (Shchastia)	Working
Novopskov district office	Novopskov village		Novopskov office	Working
Pervomaisk City Office	Pervomaisk			Not working
Perevalsk district office	Perevalsk			Not working

Name	Location	Relocated to (renamed to)	Reorganized on 7 November 2015	Status (as of 1 January 2018)
Popasna district office	Popasna		Popasna office: -unit # 1 (Hirske)	Working
Rovenky City Office	Rovenky			Not working
Rubizhne City Office	Rubizhne		Rubizhne office	Working
Svatove district office	Svatove		Svatove office	Working
Sverdlovsk City Office	Sverdlovsk	Dovzhansk		Not working
Sievierodonetsk City Office	Sievierodonetsk		Sievierodonetsk office	Working
Slovianoserbsk district office	Slovianoserbsk village			Not working
Stanytsia Luhanska district office	Stanytsia Luhanska village		Stanytsia Luhanska office: - Petrivske unit (Petropavlivka village)	Working
Starobilsk district office	Starobilsk		Starobilsk office	Working
Stakhanov City Office	Stakhanov	Kadiivka		Not working
Troitske district office	Troitske village		Troitske office	Working

Annex 4

PENITENTIARY FACILITIES IN DONETSK AND LUHANSK REGIONS BEFORE AND AFTER THE BEGINNING OF THE ARMED CONFLICT

Donetsk region

The following penitentiaries are located in the government-controlled areas:

1) Bakhmut penitentiary with remand prison functions no. 6;
2) Mariupol correction center # 138;
3) Mariupol remand prison;
4) Pryazov correctional colony # 107 (Mariupol);
5) Selydove correctional colony # 82 (Hostre village, Selydove district);
6) Toretsk correctional colony # 2.

The following penitentiaries remain in the non-government controlled areas:

1) Volnovakha correctional colony # 120 (Molodizhne village, Volnovakha office);
2) Donetsk penitentiary with remand prison functions # 5;
3) Donetsk correctional colony # 124;
4) Yenakiieve correctional colony # 52 (Olenivka village, Yenakiieve);
5) Zhdanivka correctional colony # 3 (Vilkhivka village, Zhdanivka city);
6) Zakhidna correctional colony # 97 (Makiivka);
7) Kalininska correctional colony # 27 (Horlivka);
8) Kirovske correctional colony # 33 (Khrestivka);
9) Kyselivskyi correction center # 125 (Chystiakove);
10) Makiivka correctional colony # 32;
11) Michurinska correctional colony # 57 (Horlivka);
12) Mykytynska correctional colony # 87 (Horlivka);
13) Snizhne correctional colony # 127 (Hirnytske village, Snizhne);
14) Torez correctional colony # 28.

Luhansk region

Only Starobilsk remand prison is located in the government-controlled areas.

The following penitentiaries remain in the non-government controlled areas:

1) Alchevsk correctional colony # 13;
2) Brianka correctional colony # 11 (Brianka);
3) Krasnyi Luch correctional colony # 19 (Vakhrusheve);
4) Komisarivka correctional colony # 22 (Komisarivka village);
5) Luhansk penitentiary with remand prison functions #17;
6) Luhansk correction center # 134 (Brianka);
7) Perevalsk correctional colony # 15 (Perevalsk);
8) Petrovska correctional colony # 24 (Petropavlivka village);
9) Sverdlovsk correctional colony # 38 (Dovzhansk);
10) Slovianoserbsk correctional colony # 60 (Lozovske village);
11) Sukhodilsk correctional colony # 36 (Sukhodilsk);
12) Seleznivka correctional colony # 143 (Seleznivka village);
13) Shterivskyi correction center # 137 (Petropavlivka village);
14) Chervonopartyzanska correctional colony # 68 (Voznesenivka);
15) Chornukhyne correctional colony # 23 (Chornukhyne village).

QUESTIONNAIRE RESULTS

Section 1

RELEVANCE (EXISTENCE) OF ISSUES AFFECTING ADMINISTRATION OF JUSTICE IN EASTERN UKRAINE IN ARMED CONFLICT

1

Please choose up to five issues you consider most relevant in administration of justice in armed conflict.
The maximum possible amount of issues is 500, there were 469 marks.

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
Maximum percentage for one option – 20 percent. The graph illustrates response ratio for each option.		judges	prosecutors	investigators	lawyers	human rights defenders
Shortage of human resources, high turnover of staff, excess workload	**11,77%**	57,50% 55,17% 38,71% **10,81%**	88,37% 58,82% 56,52% **15,01%**	75,68% 68,75% 68,75% **15,47%**	35,14% 52,94% 51,61% **9,30%**	22,22% 16,67% 44,00% **6,19%**
Pressure and other influence on the court (corruption, dependence, vulnerability of judges in the ATO area, connection with the occupied areas, protests in front of courts etc.)	**8,69%**	35,00% 34,48% 35,48% **7,57%**	44,19% 41,18% 39,13% **8,85%**	27,03% 22,58% 25,00% **5,25%**	54,05% 70,59% 45,16% **11,06%**	51,85% 72,22% 52,00% **12,11%**
Lack of knowledge and training on conflict-related issues	**3,57%**	2,50% 3,45% 3,23% **0,54%**	20,93% 21,74% 21,74% **4,56%**	29,73% 29,03% 28,13% **6,08%**	21,62% 17,65% 16,13% **3,77%**	14,81% 11,11% 12,00% **2,58%**
Insufficient material and technical resources	**5,74%**	22,50% 10,34% 9,68% **3,24%**	16,28% 20,59% 21,74% **4,02%**	64,86% 58,06% 59,38% **12,71%**	10,81% 11,76% 9,68% **2,26%**	37,04% 16,67% 28,00% **5,93%**

Response options	Overall ratio	including responses by category				
Maximum percentage for one option – 20 percent. The graph illustrates response ratio for each option.		judges	prosecutors	investigators	lawyers	human rights defenders
Lack of specific legal mechanisms safeguarding your proper work in armed conflict	8,03%	62,50% 72,41% 14,05% 64,52%	41,86% 38,24% 8,31% 34,78%	37,84% 32,26% 7,18% 34,38%	29,73% 29,41% 6,03% 29,03%	11,11% 16,67% 2,84% 12,00%
Shortcomings of legislation on the legal status of the missing persons and recognition of death	2,82%	10,00% 6,90% 1,62% 6,45%	13,95% 8,82% 2,41% 8,70%	8,11% 6,45% 1,38% 6,25%	16,22% 11,76 3,02% 12,90%	37,04% 27,78% 6,96% 32,00%
Lack of legal mechanisms regarding enforcement proceedings to ensure execution of court decisions in armed conflict	7,35%	50,00% 72,41% 12,97% 64,52%	27,91% 26,47% 3,22% 26,09%	6,25% 12,90% 2,49% 12,50%	54,05% 41,18% 11,06% 61,29%	40,74% 27,78% 7,73% 40,00%
Lack of legal mechanisms for prisoner exchange	4,77%	17,50% 20,69% 4,32% 22,58%	27,91% 26,47% 5,63% 26,09%	16,22% 9,68% 2,76% 12,50%	13,51% 11,76% 3,02% 16,13%	44,44% 38,89% 9,28% 48,00%
Lack of access to case files (court cases and executive proceedings) remaining in the temporarily occupied areas	12,16%	87,50% 93,10% 19,46% 93,55%	65,12% 52,94% 12,33% 52,17%	37,84% 32,26% 7,46% 37,50%	67,57% 70,59% 13,32% 58,06%	33,33% 33,33% 6,96% 32,0%
Restricted or non-existent access to courts to defend their rights for the residents of occupied areas	8,37%	55,00% 58,62% 12,43% 61,29%	32,56% 26,47% 6,17% 26,09%	32,43% 29,03% 6,63% 34,38%	32,43% 35,29% 6,78% 32,26%	48,15% 38,89% 10,31% 56,00%
Difficulties in ensuring prompt transportation of accused persons to court	2,11%	0,00% 0,00% 0,00% 0,00%	11,63% 11,76% 2,41% 8,70%	13,51% 9,68% 2,49% 12,50%	13,51% 11,76% 2,51% 9,68%	18,52% 11,11% 3,61% 20,00%

Response options	Overall ratio	including responses by category				
Maximum percentage for one option – 20 percent. The graph illustrates response ratio for each option.		judges	prosecutors	investigators	lawyers	human rights defenders
Detention of persons apprehended in Donetsk and Luhansk regions in the absence of sufficient legal grounds	**4,93%**	12,50% 17,24% 16,13% **3,24%**	6,98% 8,82% 8,70% **1,61%**	18,92% 19,35% 18,75% **3,87%**	35,14% 52,94% 32,26% **7,79%**	48,15% 44,44% 48,00% **10,05%**
Widespread impunity for crimes committed in Donetsk and Luhansk regions	**4,33%**	25,00% 6,90% 9,68% **3,24%**	27,91% 23,53% 30,43% **5,63%**	27,03% 12,90% 15,63% **3,87%**	32,43% 23,53% 29,03% **6,03%**	14,81% 11,11% 12,00% **2,58%**
The possibility for the perpetrators to evade justice by staying in the temporarily occupied areas	**11,36%**	32,50% 24,14% 25,81% **5,95%**	67,44% 94,12% 82,61% **16,89%**	67,57% 93,55% 100,00% **17,96%**	29,73% 17,65% 29,03% **5,53%**	44,44% 38,89% 40,00% **8,76%**
Widespread cases when perpetrators of crimes against national security are exempt from liability	**1,36%**	7,50% 0,00% 0,00% **0,54%**	4,65% 5,88% 4,35% **1,07%**	16,22% 9,68% 9,38% **2,49%**	10,81% 5,88% 6,45% **1,76%**	7,41% 0,00% 4,00% **0,77%**
Widespread criminal prosecution of ATO members for actions that have elements of crimes but committed in real combat to preserve military and civilian life	**2,64%**	0,00% 0,00% 0,00% **0,00%**	9,30% 11,76% 4,35% **1,88%**	13,51% 6,45% 6,25% **1,93%**	29,73% 35,29% 35,48% **6,78%**	18,52% 11,11% 16,00% **3,35%**

Section 2

INSTITUTIONAL CAPACITY OF COURTS AND JUSTICE AUTHORITIES IN EASTERN UKRAINE IN THE ARMED CONFLICT

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

2

In your view, how has the number of staff of your institution changed after the beginning of the armed conflict?

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Number of staff has increased due to transfer of staff from the temporarily occupied areas	**17,36%**	0,00% 0,00% **0,00%** 0,00%	11,63% 5,88% **11,00%** 17,39%	18,92% 16,13% **17,00%** 15,63%	48,65% 64,71% **56,47%** 61,29%	0,00% 5,56% **4,29%** 8,00%
б) Number of staff remained approximately the same	**27,47%**	7,50% 0,00% **8,00%** 16,13%	18,60% 20,59% **30,00%** 65,22%	21,62% 19,35% **22,00%** 25,00%	40,54% 23,53% **31,76%** 25,81%	66,67% 11,11% **54,29%** 72,00%
в) Number of staff has decreased by 25% or less	**22,42%**	17,50% 3,45% **24,00%** 51,61%	32,56% 29,41% **24,00%** 17,39%	16,22% 25,81% **22,00%** 25,00%	10,81% 11,76% **11,76%** 12,90%	25,93% 55,56% **31,43%** 20,00%
г) Number of staff has decreased by 25 to 50%	**22,86%**	42,50% 44,83% **38,00%** 58,06%	25,58% 44,12% **26,00%** 0,00%	35,14% 29,03% **33,00%** 34,38%	0,00% 0,00% **0,00%** 0,00%	7,41% 27,78% **10,00%** 0,00%
д) Number of staff has decreased by more than 50%	**9,89%**	32,50% 51,72% **30,00%** 6,45%	11,63% 11,76% **9,00%** 0,00%	8,11% 9,68% **6,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%
е) No response	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**

3

How has your workload changed with the armed conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Has not changed	**17,14%**	30,00% 20,69% 32,26% **28,00%**	16,28% 17,65% 17,39% **17,00%**	13,51% 12,90% 0,00% **9,00%**	35,14% 23,53% 22,58% **28,24%**	0,00% 0,00% 0,00% **0,00%**
б) Increased slightly	**40,88%**	37,50% 37,93% 38,71% **38,00%**	27,91% 29,41% 30,43% **29,00%**	21,62% 45,16% 25,00% **30,00%**	43,24% 47,06% 54,84% **48,24%**	74,07% 55,56% 72,00% **68,57%**
в) Significantly increased	**33,41%**	10,00% 34,48% 0,00% **14,00%**	53,49% 47,06% 52,17% **51,00%**	64,86% 35,48% 68,75% **57,00%**	8,11% 11,76% 9,68% **9,41%**	25,93% 44,44% 28,00% **31,43%**
г) Decreased	**8,57%**	22,50% 6,90% 29,03% **20,00%**	2,33% 5,88% 0,00% **3,00%**	0,00% 6,45% 6,25% **4,00%**	13,51% 17,65% 12,90% **14,12%**	0,00% 0,00% 0,00% **0,00%**
д) No response	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**

4

What are the possible reasons for the changes in caseload for you personally? Rate on the scale of 1 to 4, where «1» is most relevant, and «4» - least relevant (the table reflects the most relevant option marked as «1» by the respondents). (The table shows the mean average of responses from all respondents).

Category	
Average number of points in Donetsk region Average number of points in Luhansk region Average number of points in Kyiv city	**Average result per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Increased number of cases in certain categories	**1,94**	2 2,05 1,8 1,95	2,5 2,15 1,95 2,2	2,05 2,15 1,8 2	2,25 1,35 1,5 1,7	1,75 1,7 2,1 1,85
б) Shortage of human resources	**2,5**	2,05 1,75 2,8 2,2	2 1,8 3,1 2,3	1,7 1,45 2,4 1,85	3,7 3,05 3,6 3,45	3,15 2,25 2,7 2,7
в) Inability to comply with procedural deadlines	**2,43**	3,2 2,9 2,3 2,8	2,8 2,75 2,15 2,55	3,2 3,6 2,5 3,1	1,2 1,4 2,2 1,6	1,75 1,95 2,6 2,1
г) Lack of expertise	**3,08**	2,85 3,2 2,95 3	2,95 3,3 2,75 3	3,05 2,65 3,3 3	3,6 3,45 2,3 3,15	3,6 3,1 2,6 3,25
д) No response	**0,00%**	0,00%	0,00%	0,00%	0,00%	0,00%

5

Are specific features of your work taken into account in workload calculations?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, to full extent	**25,05%**	15,00% 6,90% **18,00%** 32,26%	44,19% 35,29% **39,00%** 39,13%	29,73% 16,13% **20,00%** 12,50%	40,54% 41,18% **35,29%** 25,81%	11,11% 11,11% **10,00%** 8,00%
б) Not entirely	**31,87%**	17,50% 20,69% **26,00%** 41,94%	30,23% 29,41% **30,00%** 30,43%	35,14% 32,26% **34,00%** 34,38%	18,92% 17,65% **17,65%** 16,13%	48,15% 66,67% **57,14%** 60,00%
в) Not taken into account but it should be	**22,86%**	42,50% 55,17% **36,00%** 9,68%	13,95% 11,76% **14,00%** 17,39%	35,14% 29,03% **34,00%** 37,50%	13,51% 5,88% **11,76%** 12,90%	14,81% 16,67% **14,29%** 12,00%
г) There are no calculations for my workload	**20,22%**	25,00% 17,24% **20,00%** 16,13%	13,95% 23,53% **17,00%** 13,04%	0,00% 22,58% **12,00%** 15,63%	27,03% 35,29% **35,29%** 45,16%	25,93% 5,56% **18,57%** 20,00%
д) No response	**0,00%**	0,00%	0,00%	0,00%	0,00%	0,00%

6

Do you consider it necessary to transfer staff from other regions to your institution?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, it will facilitate administration of justice anyway	**38,46%**	12,50% 13,79% 32,26% **19,00%**	32,56% 32,35% 34,78% **33,00%**	45,95% 48,39% 31,25% **42,00%**	37,84% 35,29% 38,71% **37,65%**	55,56% 72,22% 84,00% **70,00%**
б) Yes, but only if they are transferred for at least one year	**16,26%**	10,00% 17,24% 9,68% **12,00%**	13,95% 29,41% 21,74% **21,00%**	29,73% 19,35% 34,38% **28,00%**	0,00% 0,00% 6,45% **2,35%**	22,22% 16,67% 8,00% **15,71%**
в) No, staff from other regions are not familiar with the specifics of work in the armed conflict, and their training would take too much time	**15,16%**	17,50% 24,14% 9,68% **17,00%**	11,63% 5,88% 8,70% **9,00%**	10,81% 6,45% 6,25% **8,00%**	35,14% 41,18% 32,26% **35,29%**	7,41% 5,56% 8,00% **7,14%**
г) No, staff from other regions of Ukraine will not be willing to work and will be simply waiting to return home	**26,37%**	55,00% 41,38% 38,71% **46,00%**	39,53% 32,35% 34,78% **36,00%**	13,51% 22,58% 21,88% **19,00%**	24,32% 17,65% 16,13% **20,00%**	7,41% 0,00% 0,00% **2,86%**
д) No, for other reasons, in particular	**3,74%**	5,00% 3,45% 9,68% **6,00%**	2,33% 0,00% 0,00% **1,00%**	0,00% 3,23% 6,25% **3,00%**	2,70% 5,88% 6,45% **4,71%**	7,41% 5,56% 0,00% **4,29%**
е) No response	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**

7

Do you consider housing arrangements and material provision for experts in the ATO area sufficient?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, housing is affordable	**8,35%**	2,50% 0,00% 6,45% **3,00%**	6,98% 8,82% 26,09% **12,00%**	0,00% 0,00% 0,00% **0,00%**	10,81% 5,88% 9,68% **9,41%**	22,22% 27,78% 16,00% **21,43%**
б) Yes, housing is provided by the state	**0,00%**	0,00% **0,00%**	0,00% **0,00%**	0,00% **0,00%**	0,00% **0,00%**	0,00% **0,00%**
в) No, housing costs constitute a large part of expenses	**36,04%**	27,50% 13,79% 48,39% **30,00%**	9,30% 35,29% 47,83% **27,00%**	37,84% 35,48% 28,13% **34,00%**	35,14% 41,18% 41,94% **38,82%**	44,44% 55,56% 72,00% **57,14%**
г) No, it is difficult to find housing, rent agreements are not provided, rent is too high	**51,87%**	70,00% 86,21% 41,94% **66,00%**	76,74% 50,00% 26,09% **56,00%**	62,16% 64,52% 68,75% **65,00%**	45,95% 52,94% 41,94% **45,88%**	22,22% 11,11% 8,00% **14,29%**
д) Other option, namely	**3,52%**	0,00% 0,00% 0,00% **0,00%**	6,98% 5,88% 0,00% **5,00%**	0,00% 0,00% 3,13% **1,00%**	8,11% 0,00% 6,45% **5,88%**	11,11% 5,56% 4,00% **7,14%**
е) No response	**0,22%**	0,00% 0,00% 3,23% **1,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

8

Are there material and technical provisions for your activities?

Category
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city

Response ratio per category

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, there are sufficient material and technical resources	**16,92%**	30,00% 17,24% 61,29% **36,00%**	23,26% 20,59% 30,43% **24,00%**	0,00% 0,00% 9,38% **3,00%**	16,22% 11,76% 9,68% **12,94%**	3,70% 0,00% 8,00% **4,29%**
6)There are current issues, but overall there are sufficient resources	**32,75%**	35,00% 31,03% 16,13% **28,00%**	46,51% 23,53% 47,83% **39,00%**	16,22% 16,13% 15,63% **16,00%**	35,14% 41,18% 41,94% **38,82%**	25,93% 33,33% 80,00% **47,14%**
в) No, material and technical situation has deteriorated since the beginning of the conflict	**19,12%**	25,00% 34,48% 6,45% **22,00%**	13,95% 5,88% 8,70% **10,00%**	29,73% 29,03% 25,00% **28,00%**	27,03% 29,41% 25,81% **27,06%**	11,11% 5,56% 0,00% **5,71%**
г) No, material and technical resources are insufficient, but the situation has improved over the previous year	**17,14%**	7,50% 10,34% 9,68% **9,00%**	16,28% 41,18% 4,35% **22,00%**	16,22% 29,03% 40,63% **28,00%**	10,81% 11,76% 9,68% **10,59%**	22,22% 22,22% 0,00% **14,29%**
д) No, material and technical resources are insufficient, but the situation was the same before the beginning of the armed conflict	**14,07%**	2,50% 6,90% 6,45% **5,00%**	0,00% 8,82% 8,70% **5,00%**	37,84% 25,81% 9,38% **25,00%**	10,81% 5,88% 12,90% **10,59%**	37,04% 38,89% 12,00% **28,57%**
e) No response	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**

9

Do you find trainings, workshops on your activities in the armed conflict in eastern Ukraine useful? Have you taken part in such events?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, such trainings are useful and I have participated in such events	**48,13%**	45,00% 27,59% **45,00%** 61,29%	25,58% 32,35% **31,00%** 39,13%	10,81% 19,35% **18,00%** 25,00%	78,38% 88,24% **80,00%** 77,42%	81,48% 72,22% **81,43%** 88,00%
б) Yes, such trainings would be useful, but I have no participated	**15,38%**	10,00% 6,90% **7,00%** 3,23%	9,30% 5,88% **11,00%** 21,74%	29,73% 41,94% **31,00%** 21,88%	16,22% 5,88% **12,94%** 12,90%	11,11% 22,22% **14,29%** 12,00%
в) Yes, such trainings would be useful but I have not taken part since they were not available	**22,20%**	40,00% 62,07% **45,00%** 35,48%	41,86% 29,41% **34,00%** 26,09%	16,22% 19,35% **16,00%** 12,50%	5,41% 5,88% **7,06%** 9,68%	0,00% 0,00% **0,00%** 0,00%
г) No, I have not received any new knowledge from the trainings	**6,15%**	0,00% 0,00% **0,00%** 0,00%	11,63% 8,82% **9,00%** 4,35%	18,92% 12,90% **16,00%** 15,63%	0,00% 0,00% **0,00%** 0,00%	7,41% 5,56% **4,29%** 0,00%
д) No, I have not participated in such trainings because I do not see the need	**4,84%**	5,00% 3,45% **3,00%** 0,00%	4,65% 14,71% **8,00%** 4,35%	13,51% 0,00% **11,00%** 18,75%	0,00% 0,00% **0,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%
е) No, I have not participated in such trainings because of my workload	**3,30%**	0,00% 0,00% **0,00%** 0,00%	6,98% 8,82% **7,00%** 4,35%	10,81% 6,45% **8,00%** 6,25%	0,00% 0,00% **0,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%
є) No response	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**	**0,00%**

10

Please rate on the scale of 1 to 5 the most common forms of influence on the staff of justice authorities. «1» is the most common form, «5» - the least common (the table reflects the most relevant option for the respondents).

(The table shows the mean average of responses from all respondents).

Category	
Average number of points in Donetsk region Average number of points in Luhansk region Average number of points in Kyiv city	**Average result per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Physical pressure	**3,78**	3,8 3,9 3,7 **3,8**	4,15 4,3 4,75 **4,4**	3,85 3,6 3,05 **3,5**	3,95 3,8 3,65 **3,8**	3,5 3,6 3,1 **3,4**
б) Corruption	**2,86**	3,85 3,85 4 **3,9**	4,2 4,05 3,75 **4**	3,05 2,6 2,75 **2,8**	2,1 1,7 1,9 **1,9**	1,25 2 1,85 **1,7**
в) Influence through relatives in the temporarily occupied areas	**3,18**	2,2 2,6 3,8 **2,8**	4,3 3,9 4,1 **4,1**	3,95 3,2 3,05 **3,4**	3,35 3,2 3,35 **3,3**	2,3 2,2 2,4 **2,3**
г) Influence by the administration	**3,42**	3,6 3,1 2,6 **3,1**	3,95 3,95 3,8 **3,9**	3,05 3,35 3,8 **3,4**	3,4 3,8 3,3 **3,5**	3,3 3,1 3,2 **3,2**
д) Dependence on political structures and pressure from of the local government	**3,28**	3,15 2,75 3,1 **3**	3,6 2,6 3,7 **3,3**	3,8 3,65 3,05 **3,5**	3,65 3,6 3,1 **3,45**	3,05 3,2 3,2 **3,15**
е) No response	**0**	**0**	**0**	**0**	**0**	**0**

Section 3

LEGAL FRAMEWORK FOR ADMINISTRATION OF JUSTICE IN THE ARMED CONFLICT IN EASTERN UKRAINE

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

11

In your opinion, does the lack of clear qualification of the armed conflict in the East of Ukraine have impact on the effectiveness of justice process in crimes committed in the ATO area?

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, there is significant impact	**67,25%**	47,50% 55,17% 41,94% **48,00%**	65,12% 79,41% 78,26% **73,00%**	54,05% 45,16% 50,00% **50,00%**	86,49% 82,35% 87,10% **85,88%**	88,89% 94,44% 84,00% **88,57%**
б) There is impact, but insignificant	**27,03%**	40,00% 27,59% 41,94% **37,00%**	27,91% 17,65% 21,74% **23,00%**	37,84% 48,39% 43,75% **43,00%**	13,51% 17,65% 12,90% **14,12%**	11,11% 5,56% 16,00% **11,43%**
в) There is no impact	**3,74%**	2,50% 6,90% 9,68% **6,00%**	6,98% 2,94% 0,00% **4,00%**	8,11% 6,45% 6,25% **7,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
г) No response	**1,98%**	10,00% 10,34% 6,45% **9,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

12

In your work, have you faced challenges due to the lack of legal definition of the status of the «DPR» and «LPR» in Ukrainian legislation?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, regularly	**41,10%**	37,50% 55,17% 40,00% 29,03%	44,19% 38,24% 49,00% 73,91%	24,32% 25,81% 20,00% 9,38%	40,54% 35,29% 40,00% 41,94%	59,26% 66,67% 62,86% 64,00%
б) Sometimes	**38,90%**	27,50% 34,48% 24,00% 9,68%	41,86% 44,12% 36,00% 13,04%	51,35% 45,16% 48,00% 46,88%	48,65% 58,82% 50,59% 48,39%	40,74% 33,33% 37,14% 36,00%
в) No, it has no impact on my work	**19,34%**	35,00% 6,90% 33,00% 54,84%	13,95% 17,65% 15,00% 13,04%	24,32% 29,03% 32,00% 43,75%	10,81% 5,88% 9,41% 9,68%	0,00% 0,00% 0,00% 0,00%
г) No response	**0,66%**	0,00% 3,45% 3,00% 6,45%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%

13

Do you support the adoption of special legislation on relations in your field of work in the context of armed conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) I support fully, since current framework does not take into account the armed conflict	**54,51%**	55,00% 58,62% 41,94% **52,00%**	62,79% 47,06% 65,22% **58,00%**	40,54% 35,48% 12,50% **30,00%**	54,05% 64,71% 70,97% **62,35%**	74,07% 83,33% 80,00% **78,57%**
б) I support partially because I am not sure it will improve the situation	**31,65%**	32,50% 34,48% 35,48% **34,00%**	20,93% 32,35% 13,04% **23,00%**	43,24% 51,61% 53,13% **49,00%**	35,14% 29,41% 25,81% **30,59%**	18,52% 16,67% 16,00% **17,14%**
в) I tend to not support because I do not see the need for special legislation	**8,57%**	5,00% 6,90% 9,68% **7,00%**	11,63% 17,65% 13,04% **14,00%**	10,81% 3,23% 18,75% **11,00%**	5,41% 5,88% 3,23% **4,71%**	7,41% 0,00% 4,00% **4,29%**
г) I do not support because it is impossible to solve all issues, and new legislation will lead to new collisions	**5,27%**	7,50% 0,00% 12,90% **7,00%**	4,65% 2,94% 8,70% **5,00%**	5,41% 9,68% 15,63% **10,00%**	5,41% 0,00% 0,00% **2,35%**	0,00% 0,00% 0,00% **0,00%**
д) No response	**0,00%**	0	0	0	0	0

14

Are there sufficient legal safeguards for the safety of your work in the armed conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, the legislation regarding my work takes into account the conditions of armed conflict	**7,69%**	0,00% 0,00% 6,45% **2,00%**	11,63% 11,76% 21,74% **14,00%**	16,22% 16,13% 12,50% **15,00%**	5,41% 5,88% 3,23% **4,71%**	0,00% 0,00% 0,00% **0,00%**
б) Sometimes, there are contradictions in application of current provisions in armed conflict	**46,81%**	35,00% 34,48% 29,03% **33,00%**	37,21% 32,35% 26,09% **33,00%**	48,65% 61,29% 56,25% **55,00%**	48,65% 47,06% 51,61% **49,41%**	51,85% 83,33% 84,00% **71,43%**
в) No, the law does not take into account conditions of the armed conflict	**45,49%**	65,00% 65,52% 64,52% **65,00%**	51,16% 55,88% 52,17% **53,00%**	35,14% 22,58% 31,25% **30,00%**	45,95% 47,06% 45,16% **45,88%**	48,15% 16,67% 16,00% **28,57%**
г) No response	**0,00%**	0	0	0	0	0

15

Are there new conflict-related issues in your work?

Category
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city — **Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, there are issues I had not dealt with before	**74,07%**	85,00% 86,21% 83,87% **85,00%**	65,12% 58,82% 78,26% **66,00%**	51,35% 51,61% 56,25% **53,00%**	94,59% 94,12% 93,55% **94,12%**	77,78% 83,33% 68,00% **75,71%**
б) There are certain specific issues, but they are not new	**20,44%**	10,00% 10,34% 6,45% **9,00%**	27,91% 32,35% 21,74% **28,00%**	35,14% 35,48% 31,25% **34,00%**	5,41% 5,88% 6,45% **5,88%**	22,22% 16,67% 32,00% **24,29%**
в) No, there are no such issues	**5,49%**	5,00% 3,45% 9,68% **6,00%**	6,98% 8,82% 0,00% **6,00%**	13,51% 12,90% 12,50% **13,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
г) No response	**0,00%**	0	0	0	0	0

16

Please rate state authorities by their impact on the justice process, where «1» is the most influential institution, «6» - the least influential (the table reflects the most relevant option marked as «1» by the respondents). (The table shows the mean average of responses from all respondents).

Category	
Average number of points in Donetsk region Average number of points in Luhansk region Average number of points in Kyiv city	**Average result per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Verkhovna Rada (Parliament) of Ukraine	**2,15**	2,05 1,9 1,75 **1,9**	1,9 2,3 1,8 **2**	2,8 2,3 2,7 **2,6**	2,2 2,2 1,9 **2,1**	1,95 2,3 2,2 **2,15**
б) The President of Ukraine	**2,44**	2,2 2,05 2,2 **2,15**	2,85 2,6 2,2 **2,55**	2,5 3 2,6 **2,7**	2,9 2,8 2,7 **2,8**	2,1 2,1 1,8 **2**
в) The Cabinet of Ministers of Ukraine	**3,27**	3,3 3,4 3,5 **3,4**	4 3,8 3,6 **3,8**	2,9 2,6 2,9 **2,8**	3,05 3,2 2,9 **3,05**	3,3 3,5 3,1 **3,3**
г) The Ministry, the central executive body, other state authority in your field of work	**4**	4,05 3,65 4 **3,9**	3,85 4,7 4,65 **4,4**	3,25 3,5 3,6 **3,45**	3,8 4,1 3,95 **3,95**	4,2 4,6 4,01 **4,3**
д) Civil-military administration	**3,88**	3,9 4,2 3,9 **4**	4,75 4,35 4,7 **4,6**	3,9 3,2 4 **3,7**	3,9 4,2 4,2 **4,1**	3,3 2,8 2,9 **3**
е) Local authorities	**3,79**	3,6 3,65 3,7 **3,65**	5,7 4,2 5,25 **5,05**	3,9 4,1 3,85 **3,95**	4,35 4,2 3,9 **4,15**	2,1 1,85 2,5 **2,15**
є) No response	**0**	**0**	**0**	**0**	**0**	**0**

17

Have you come across or faced challenges in obtaining and validating documents from the temporarily occupied areas?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, I deal with this regularly, there are challenges	**36,92%**	45,00% 68,97% 25,81% 46,00%	23,26% 26,47% 60,87% 33,00%	24,32% 25,81% 18,75% 23,00%	56,76% 58,82% 70,97% 62,35%	25,93% 16,67% 12,00% 18,57%
б) Yes, I deal with this regularly, there are no challenges	**0,88%**	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	5,41% 6,45% 0,00% 4,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%
в) I sometimes deal with this, there are challenges	**41,54%**	32,50% 20,69% 48,39% 34,00%	34,88% 35,29% 26,09% 33,00%	43,24% 35,48% 62,50% 47,00%	37,84% 41,18% 29,03% 35,29%	62,96% 72,22% 60,00% 64,29%
г) I sometimes deal with this, there are no challenges	**9,67%**	12,50% 10,34% 9,68% 11,00%	30,23% 29,41% 13,04% 26,00%	8,11% 6,45% 6,25% 7,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%
д) No, I have not dealt with this	**10,99%**	10,00% 0,00% 16,13% 9,00%	11,63% 8,82% 0,00% 8,00%	18,92% 25,81% 12,50% 19,00%	5,41% 0,00% 0,00% 2,35%	11,11% 11,11% 28,00% 17,14%
е) No response	**0,00%**	0	0	0	0	0

18

In your view, is the absence of a database of missing persons a problem?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, I think it is a very serious problem	**78,43%**	85,00% 75,86% 64,52% **74,42%**	69,77% 73,53% 73,91% **75,00%**	72,97% 70,97% 68,75% **74,16%**	78,38% 70,59% 77,42% **77,33%**	96,30% 100,00% 88,00% **94,29%**
б) The problem exists but it is not serious	**19,12%**	12,50% 20,69% 29,03% **20,93%**	23,26% 23,53% 26,09% **21,59%**	24,32% 25,81% 25,00% **22,47%**	21,62% 29,41% 22,58% **22,67%**	3,70% 0,00% 12,00% **5,71%**
в) No, the problem is insignificant or it does not exist	**2,45%**	2,50% 3,45% 6,45% **4,65%**	6,98% 2,94% 0,00% **3,41%**	2,70% 3,23% 6,25% **3,37%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
г) No response	**0,00%**	0	0	0	0	0

19

Do you find it feasible to establish courts or special court chambers with involvement of international judges, prosecutors, investigators and experts with relevant experience? What should be the jurisdiction of these judiciary bodies?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, establishment of such judiciary bodies will facilitate justice in eastern Ukraine, their jurisdiction should extend to all crimes committed by direct participants of the armed conflict	**17,36%**	0,00% 0,00% 0,00% **0,00%**	9,30% 5,88% 13,04% **9,00%**	13,51% 22,58% 18,75% **18,00%**	18,92% 11,76% 16,13% **16,47%**	37,04% 61,11% 68,00% **54,29%**
б) Yes, establishment of such judiciary bodies will facilitate justice in eastern Ukraine, their jurisdiction should be limited to war crimes and crimes against humanity under international law, crimes against national security of Ukraine and crimes against peace, humankind and international legal order under the Criminal Code of Ukraine	**19,78%**	7,50% 3,45% 6,45% **6,00%**	16,28% 11,76% 13,04% **14,00%**	35,14% 25,81% 37,50% **33,00%**	29,73% 29,41% 22,58% **27,06%**	29,63% 16,67% 12,00% **20,00%**
в) Yes, establishment of such judiciary bodies will facilitate justice in eastern Ukraine, their jurisdiction should be limited to war crimes and crimes against humanity under international law	**5,27%**	5,00% 3,45% 3,23% **4,00%**	2,33% 2,94% 8,70% **4,00%**	10,81% 9,68% 9,38% **10,00%**	2,70% 5,88% 3,23% **3,53%**	7,41% 0,00% 4,00% **4,29%**
г) No, it is better to conduct reform and ensure proper work of existing judiciary bodies	**43,30%**	47,50% 51,72% 67,74% **55,00%**	53,49% 61,76% 56,52% **57,00%**	35,14% 35,48% 25,00% **32,00%**	43,24% 52,94% 58,06% **50,59%**	18,52% 16,67% 8,00% **14,29%**
д) No, existing judiciary bodies are administering justice properly	**10,11%**	32,50% 41,38% 12,90% **29,00%**	11,63% 11,76% 8,70% **11,00%**	5,41% 3,23% 6,25% **5,00%**	2,70% 0,00% 0,00% **1,18%**	0,00% 0,00% 0,00% **0,00%**
е) Other option, namely	**3,74%**	7,50% 0,00% 9,68% **6,00%**	4,65% 2,94% 0,00% **3,00%**	0,00% 3,23% 3,13% **2,00%**	2,70% 0,00% 0,00% **1,18%**	7,41% 5,56% 8,00% **7,14%**
є) No response	**0,44%**	**0**	**2,0%**	**0**	**0**	**0**

20

Has the reform of judiciary improved your work?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, the judiciary reform had a positive effect	**14,95%**	25,00% 24,14% 25,81% **25,00%**	9,30% 11,76% 8,70% **10,00%**	18,92% 16,13% 15,63% **17,00%**	16,22% 11,76% 9,68% **12,94%**	11,11% 5,56% 4,00% **7,14%**
б) No, the judiciary reform did not affect my work	**52,53%**	42,50% 34,48% 38,71% **39,00%**	55,81% 52,94% 65,22% **57,00%**	62,16% 70,97% 71,88% **68,00%**	35,14% 35,29% 35,48% **35,29%**	40,74% 77,78% 80,00% **64,29%**
в) No, the judiciary reform has made my work more complicated	**32,53%**	32,50% 41,38% 35,48% **36,00%**	34,88% 35,29% 26,09% **33,00%**	18,92% 12,90% 12,50% **15,00%**	48,65% 52,94% 54,84% **51,76%**	48,15% 16,67% 16,00% **28,57%**
г) No response	**0,00%**	0	0	0	0	0

21

Has decentralization reform improved your work?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, the decentralization reform had a positive effect	**12,97%**	7,50% 10,34% 6,45% **8,00%**	6,98% 2,94% 8,70% **6,00%**	16,22% 16,13% 12,50% **15,00%**	13,51% 11,76% 9,68% **11,76%**	29,63% 22,22% 32,00% **28,57%**
б) No, the decentralization reform did not affect my work	**74,73%**	80,00% 79,31% 83,87% **81,00%**	79,07% 88,24% 82,61% **83,00%**	72,97% 83,87% 75,00% **77,00%**	54,05% 58,82% 61,29% **57,65%**	70,37% 77,78% 68,00% **71,43%**
в) No, the decentralization reform has made my work more complicated	**12,31%**	12,50% 10,34% 9,68% **11,00%**	13,95% 8,82% 8,70% **11,00%**	10,81% 0,00% 12,50% **8,00%**	32,43% 29,41% 29,03% **30,59%**	0,00% 0,00% 0,00% **0,00%**
г) No response	**0,00%**	0	0	0	0	0

22

Do you think that civil society is effective in facilitating administration of justice in eastern Ukraine?

Category
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city
Response ratio per category

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Yes, I feel the support of civil society representatives	**15,38%**	0,00% 0,00% 0,00% **0,00%**	9,30% 5,88% 8,70% **8,00%**	5,41% 6,45% 6,25% **6,00%**	21,62% 11,76% 22,58% **20,00%**	33,33% 66,67% 72,00% **55,71%**
б) Yes, I have not dealt with civil society representatives, but I have information about their assistance to others	**43,96%**	52,50% 48,28% 67,74% **56,00%**	41,86% 55,88% 30,43% **44,00%**	70,27% 58,06% 75,00% **68,00%**	35,14% 35,29% 41,94% **37,65%**	0,00% 0,00% 0,00% **0,00%**
в) No, I do not see any activities of civil society organizations	**25,93%**	30,00% 34,48% 12,90% **26,00%**	37,21% 32,35% 52,17% **39,00%**	21,62% 29,03% 15,63% **22,00%**	35,14% 41,18% 35,48% **36,47%**	0,00% 0,00% 0,00% **0,00%**
г) No, representatives of civil society organizations create more obstacles for my activities	**11,21%**	17,50% 17,24% 19,35% **18,00%**	11,63% 5,88% 8,70% **9,00%**	2,70% 6,45% 3,13% **4,00%**	2,70% 11,76% 0,00% **3,53%**	33,33% 22,22% 16,00% **24,29%**
д) No, civil society representatives could be more effective	**3,52%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	5,41% 0,00% 0,00% **2,35%**	33,33% 11,11% 12,00% **20,00%**
e) No response	**0,00%**	0	0	0	0	0

Section 4

ENSURING ACCESS TO JUSTICE AND SPECIFICS OF ADMINISTERING JUSTICE IN ARMED CONFLICT

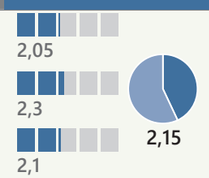
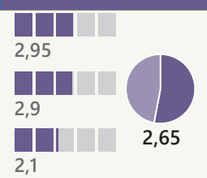
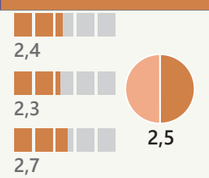
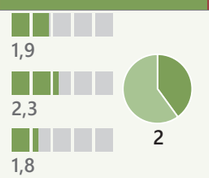
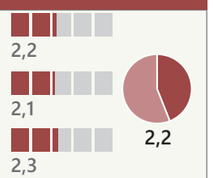
23

Please rate, in your view, possible obstacles in access to justice in Ukrainian territory for Ukrainian citizens living in the temporarily occupied areas, where «1» is the most common obstacle, and «5» is the least common. If you think that there are no obstacles, you can leave the field blank. If you think there are no issues or all issues are equally important, choose answers (e) or (є) accordingly (the table reflects the most relevant option marked as «1» by the respondents).

(The table shows the mean average of responses from all respondents. If a responded chose «є», each answer «а» through «д» was marked by 1 point. There were not «е» responses).

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Crossing the contact line	**1,56**	1,35 1,3 1,1 **1,25**	1,6 1,9 1,6 **1,7**	1,95 1,85 1,6 **1,8**	1,35 1,7 1,3 **1,45**	1,75 1,3 1,75 **1,6**
б) Cost of travel	**1,88**	1,2 1,65 1,8 **1,55**	1,96 1,8 1,7 **1,85**	1,95 1,8 1,95 **1,9**	1,9 2,05 2,35 **2,1**	2,6 1,8 1,6 **2**
в) Inability to notify the person about planned activities	**2,39**	1,6 1,4 1,2 **1,4**	2,75 2,95 3,3 **3**	1,55 2,3 2,3 **2,05**	2,9 2,6 2,9 **2,8**	2,75 2,65 2,7 **2,7**
г) Court fees	**2,79**	3 2,2 2,3 **2,5**	3,45 3,1 3,8 **3,45**	3,1 3 2,3 **2,8**	3,2 2,9 3,05 **3,05**	2,3 2,2 2,05 **2,15**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
д) Difficulty in (inability to) execute the decision	 **2,3**	 2,05 2,3 2,1 **2,15**	 2,95 2,9 2,1 **2,65**	 2,4 2,3 2,7 **2,5**	 1,9 2,3 1,8 **2**	 2,2 2,1 2,3 **2,2**
е) These persons have no obstacles in accessing justice	**0**	0	0	0	0	0
є) All the above issues are equally important	**0**	0	0	0	0	0
ж) No response	**0**	0	0	0	0	0

24

Have you come across situations when the court fees impeded administration of justice?

Category	
Percentage of respondents in Donetsk region	Response ratio per category
Percentage of respondents in Luhansk region	
Percentage of respondents in Kyiv city	

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, in some situations, court fees impeded administration of justice in relation to IDPs or residents of the temporarily occupied areas	**26,37%**	10,00% 10,34% 3,23% **8,00%**	16,28% 11,76% 17,39% **15,00%**	10,81% 6,45% 12,50% **10,00%**	51,35% 58,82% 58,06% **55,29%**	55,56% 66,67% 52,00% **57,14%**
б) Yes, in some situations, court fees impeded administration of justice in relation to IDPs	**3,96%**	2,50% 3,45% 0,00% **2,00%**	2,33% 0,00% 0,00% **1,00%**	16,22% 6,45% 9,38% **11,00%**	5,41% 0,00% 0,00% **2,35%**	3,70% 0,00% 4,00% **2,86%**
в) Yes, in some situations, court fees impeded administration of justice in relation to residents of the temporarily occupied areas	**4,62%**	5,00% 6,90% 0,00% **4,00%**	4,65% 0,00% 8,70% **4,00%**	5,41% 3,23% 3,13% **4,00%**	5,41% 5,88% 3,23% **4,71%**	11,11% 11,11% 0,00% **7,14%**
г) Yes, there were such situations, but a solution was found	**20,66%**	47,50% 68,97% 32,26% **49,00%**	6,98% 2,94% 17,39% **8,00%**	16,22% 16,13% 12,50% **15,00%**	13,51% 11,76% 9,68% **11,76%**	11,11% 11,11% 28,00% **17,14%**
д) No, there were no such situations	**44,18%**	35,00% 10,34% 64,52% **37,00%**	69,77% 85,29% 56,52% **72,00%**	51,35% 67,74% 62,50% **60,00%**	24,32% 23,53% 29,03% **11,76%**	14,81% 11,11% 16,00% **14,29%**
е) No response	**0,22%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	3,70% 0,00% 0,00% **1,43%**

25

Have you come across problems with execution of judgments in eastern Ukraine after the beginning of the conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, there are many issues	**54,51%**	70,00% 48,28% 83,87% 68,00%	37,21% 35,29% 43,48% 38,00%	24,32% 16,13% 28,13% 23,00%	78,38% 88,24% 90,32% 84,71%	62,96% 66,67% 72,00% 67,14%
б) Yes, but there are only individual problems	**29,67%**	20,00% 34,48% 9,68% 21,00%	34,88% 35,29% 43,48% 37,00%	45,95% 35,48% 46,88% 43,00%	16,22% 11,76% 9,68% 12,94%	37,04% 33,33% 28,00% 32,86%
в) No, there are no problems	**15,82%**	10,00% 17,24% 6,45% 11,00%	27,91% 29,41% 13,04% 25,00%	29,73% 48,39% 25,00% 34,00%	5,41% 0,00% 0,00% 2,35%	0,00% 0,00% 0,00% 0,00%
г) No response	**0,00%**	0	0	0	0	0

26

How has the number of cases on validation of births and deaths, or the number of administrative reports on illegal border crossing, changed in relation to the armed conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) The number of cases in this category has increased, but courts are dealing with them properly	**29,01%**	40,00% 48,28% 29,03% **39,00%**	9,30% 5,88% 13,04% **9,00%**	2,70% 6,45% 9,38% **6,00%**	54,05% 47,06% 22,58% **41,18%**	62,96% 72,22% 52,00% **61,43%**
б) The number of cases in this category has increased, which led to excessive caseload in courts and procedural delays	**27,47%**	5,00% 10,34% 3,23% **6,00%**	25,58% 26,47% 21,74% **25,00%**	29,73% 29,03% 28,13% **29,00%**	40,54% 52,94% 77,42% **56,47%**	25,93% 16,67% 28,00% **24,29%**
в) The number of such cases has decreased	**1,98%**	0,00% 0,00% 0,00% **0,00%**	2,33% 0,00% 0,00% **1,00%**	10,81% 0,00% 12,50% **8,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
г) The number of such cases has not changed	**1,76%**	0,00% 0,00% 0,00% **0,00%**	6,98% 2,94% 0,00% **4,00%**	2,70% 3,23% 6,25% **4,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
д) The question is beyond my competency	**38,90%**	50,00% 34,48% 67,74% **51,00%**	55,81% 64,71% 65,22% **61,00%**	54,05% 61,29% 43,75% **53,00%**	5,41% 0,00% 0,00% **2,35%**	11,11% 11,11% 20,00% **1,98%**
е) No response	**0,88%**	5,00% 6,90% 0,00% **4,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

27

How do you see the possibility for evidence collection in armed conflict?

Category
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city — **Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) There are possibilities, no issues	**17,36%**	5,00% 6,90% 29,03% **13,00%**	16,28% 11,76% 17,39% **15,00%**	18,92% 16,13% 12,50% **16,00%**	10,81% 11,76% 6,45% **9,41%**	22,22% 61,11% 40,00% **38,57%**
б) There are possibilities but material and technical conditions are poor	**17,80%**	5,00% 6,90% 6,45% **6,00%**	9,30% 11,76% 13,04% **11,00%**	59,46% 58,06% 56,25% **58,00%**	8,11% 5,88% 6,45% **7,06%**	0,00% 0,00% 0,00% **0,00%**
в) There are possibilities, but actions of persons responsible for evidence collection are in the way	**32,09%**	37,50% 24,14% 41,94% **35,00%**	23,26% 35,29% 17,39% **26,00%**	13,51% 16,13% 18,75% **16,00%**	37,84% 47,06% 45,16% **42,35%**	62,96% 27,78% 44,00% **47,14%**
г) There are no possibilities to ensure evidence collection	**32,75%**	52,50% 62,07% 22,58% **46,00%**	51,16% 41,18% 52,17% **48,00%**	8,11% 9,68% 12,50% **10,00%**	43,24% 35,29% 41,94% **41,18%**	14,81% 11,11% 16,00% **14,29%**
д) No response	**0,00%**	0	0	0	0	0

28

Do you consider to introduce the possibility to use testimony obtained in pre-trial investigation without the witnesses being present in court?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, it would facilitate justice in any case	**29,01%**	7,50% 17,24% 3,23% **9,00%**	53,49% 64,71% 69,57% **61,00%**	32,43% 35,48% 34,38% **34,00%**	18,92% 11,76% 9,68% **11,76%**	18,52% 22,22% 36,00% **25,71%**
б) Yes, provided that there is online connection with the person during the trial with proper verification, i.e. showing an identification document	**39,56%**	45,00% 37,93% 45,16% **43,00%**	41,86% 29,41% 17,39% **32,00%**	48,65% 48,39% 50,00% **49,00%**	27,03% 35,29% 35,48% **31,76%**	44,44% 55,56% 28,00% **41,43%**
в) Yes, provided that they are recorded on video in a relevant authority in the presence of a defender	**27,03%**	40,00% 37,93% 38,71% **39,00%**	2,33% 5,88% 13,04% **6,00%**	18,92% 16,13% 15,63% **17,00%**	32,43% 52,94% 48,39% **44,71%**	37,04% 22,22% 36,00% **32,86%**
г) No, it can result in human rights violations	**3,30%**	5,00% 0,00% 6,45% **4,00%**	2,33% 0,00% 0,00% **1,00%**	0,00% 0,00% 0,00% **0,00%**	21,62% 0,00% 6,45% **11,76%**	0,00% 0,00% 0,00% **0,00%**
д) No response	**1,10%**	2,50% 6,90% 6,45% **5,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

29

In your view, how does the armed conflict affect compliance with deadlines in trials in different categories of cases?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) There are significant delays in cases, which creates a «snowball» effect	**49,23%**	22,50% 34,48% 24,00% 16,13%	69,77% 73,53% 72,00% 73,91%	32,43% 41,94% 28,00% 9,38%	78,38% 76,47% 77,65% 77,42%	59,26% 50,00% 48,57% 36,00%
б) The armed conflict has no significant impact on deadlines, but sometimes there are delays	**34,73%**	65,00% 55,17% 59,00% 54,84%	23,26% 17,65% 22,00% 26,09%	45,95% 35,48% 47,00% 59,38%	5,41% 5,88% 8,24% 12,90%	22,22% 33,33% 32,86% 44,00%
в) It has not impact	**15,82%**	12,50% 10,34% 17,00% 29,03%	6,98% 8,82% 6,00% 0,00%	21,62% 22,58% 25,00% 31,25%	16,22% 17,65% 14,12% 9,68%	14,81% 16,67% 17,14% 20,00%
г) No response	**0,22%**	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	3,70% 0,00% 1,43% 0,00%

30

Have you come across cases when a participant to criminal proceedings was involved in exchange of persons between Ukraine, Russia, occupied territories (person was transferred to the other party to the conflict)? How did it affect the case?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

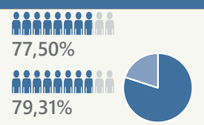
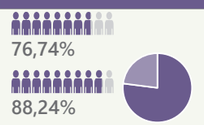
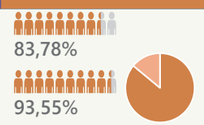
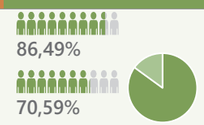
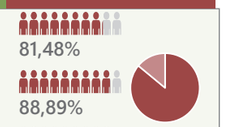
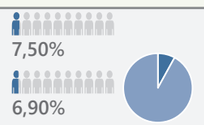
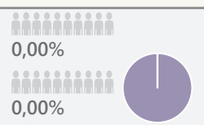
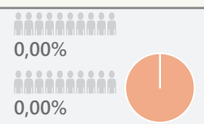
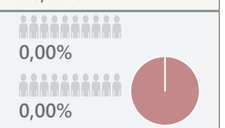
Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) I had several such cases, the trial took place, the court issued a verdict (ruling), the person was transferred for exchange for persons held in the non-government controlled areas	**9,23%**	2,50% 6,90% 3,23% **4,00%**	18,60% 14,71% 8,70% **15,00%**	13,51% 16,13% 9,38% **13,00%**	0,00% 0,00% 0,00% **0,00%**	25,93% 11,11% 4,00% **14,29%**
б) I had several such cases, there was no trial, the person was transferred for exchange for persons held in the non-government controlled areas	**10,33%**	0,00% 0,00% 0,00% **0,00%**	23,26% 17,65% 13,04% **19,00%**	5,41% 3,23% 9,38% **6,00%**	10,81% 11,76% 6,45% **9,41%**	33,33% 16,67% 8,00% **20,00%**
в) I had several such cases, the trial was disrupted, the person was transferred for exchange for persons held in the non-government controlled areas	**5,71%**	5,00% 3,45% 3,23% **4,00%**	11,63% 14,71% 8,70% **12,00%**	8,11% 0,00% 0,00% **3,00%**	2,70% 0,00% 0,00% **1,18%**	11,11% 5,56% 8,00% **8,57%**
г) No, there were no such cases	**72,31%**	82,50% 82,76% 77,42% **81,00%**	46,51% 52,94% 69,57% **54,00%**	72,97% 80,65% 81,25% **78,00%**	86,49% 88,24% 93,55% **89,41%**	29,63% 66,67% 80,00% **57,14%**
д) No response	**2,42%**	10,00% 6,90% 16,13% **11,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

31

Have you worked with cases against Russian military service members? If so, what were the charges?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, many cases, charges included preparation, planning and conduct of aggressive war	**0,66%**	0,00% 0,00% 0,00% **0,00%**	2,33% 0,00% 0,00% **1,00%**	2,70% 0,00% 3,13% **2,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
б) Yes, many cases, charges included terrorism-related crimes	**3,96%**	5,00% 3,45% 0,00% **3,00%**	6,98% 2,94% 0,00% **4,00%**	8,11% 6,45% 6,25% **7,00%**	2,70% 5,88% 3,23% **3,53%**	3,70% 0,00% 0,00% **1,43%**
в) Yes, several cases, charges included preparation, planning and conduct of aggressive war	**0,66%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 13,04% **3,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
г) Yes, several cases, charges included terrorism-related crimes	**5,27%**	7,50% 3,45% 6,45% **6,00%**	6,98% 5,88% 17,39% **9,00%**	2,70% 0,00% 6,25% **3,00%**	0,00% 5,88% 0,00% **1,18%**	7,41% 5,56% 8,00% **7,14%**
д) Yes, many cases, charges included ordinary crimes	**1,32%**	0,00% 0,00% 0,00% **0,00%**	6,98% 2,94% 0,00% **2,00%**	2,70% 0,00% 3,13% **2,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
е) Yes, several cases, charges included ordinary crimes	**3,96%**	2,50% 6,90% 0,00% **3,00%**	0,00% 0,00% 8,70% **2,00%**	0,00% 0,00% 0,00% **0,00%**	10,81% 17,65% 6,45% **10,59%**	7,41% 5,56% 4,00% **5,71%**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
є) No, there were no cases against Russian military service members	 82,42%	 77,50% 79,31% 80,00% 83,87%	 76,74% 88,24% 77,00% 60,87%	 83,78% 93,55% 86,00% 81,25%	 86,49% 70,59% 84,71% 90,32%	 81,48% 88,89% 85,71% 88,00%
ж) No response	1,76%	 7,50% 6,90% 8,00% 9,68%	 0,00% 0,00% 0,00% 0,00%	 0,00% 0,00% 0,00% 0,00%	 0,00% 0,00% 0,00% 0,00%	 0,00% 0,00% 0,00% 0,00%

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Have you encountered prisoner exchange situations in your work? If so, who was exchanged?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, members of Ukrainian armed forces were exchanged for representatives of the organized armed groups of the temporarily occupied areas	**16,04%**	25,00% 24,14% 0,00% **17,00%**	30,23% 26,47% 21,74% **27,00%**	8,11% 6,45% 6,25% **7,00%**	8,11% 11,76% 6,45% **8,24%**	33,33% 22,22% 8,00% **21,43%**
б) Yes, members of Ukrainian armed forces were exchanged for members of the armed forces of the temporarily occupied areas	**3,96%**	0,00% 0,00% 0,00% **0,00%**	13,95% 8,82% 8,70% **11,00%**	8,11% 0,00% 0,00% **3,00%**	0,00% 11,76% 0,00% **2,35%**	7,41% 0,00% 0,00% **2,86%**
в) No, I have not encountered prisoner exchange situations in my work	**77,58%**	65,00% 68,97% 83,87% **72,00%**	55,81% 64,71% 69,57% **62,00%**	83,78% 93,55% 93,75% **90,00%**	91,89% 76,47% 93,55% **89,41%**	59,26% 77,78% 92,00% **75,71%**
г) No response	**2,42%**	10,00% 6,90% 16,13% **11,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

33

Do you see an interest in proper administration of justice among citizens?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, citizens know their rights, take steps to defend them, consent to being witnesses	**36,70%**	75,00% 65,52% 90,32% **77,00%**	46,51% 26,47% 34,78% **37,00%**	24,32% 41,94% 31,25% **32,00%**	13,51% 23,53% 12,90% **15,29%**	7,41% 5,56% 20,00% **11,43%**
б) No, citizens know their rights, but refuse to defend them or consent to being witnesses for certain reasons	**48,57%**	20,00% 27,59% 6,45% **18,00%**	44,19% 55,88% 47,83% **49,00%**	56,76% 41,94% 50,00% **50,00%**	56,76% 47,06% 64,52% **57,65%**	77,78% 83,33% 76,00% **78,57%**
в) No, citizens do not want to go to courts and try to solve their issues independently	**14,07%**	2,50% 3,45% 0,00% **2,00%**	9,30% 17,65% 17,39% **14,00%**	18,92% 16,13% 18,75% **18,00%**	29,73% 29,41% 22,58% **27,06%**	14,81% 11,11% 4,00% **10,00%**
г) No response	**0,66%**	2,50% 3,45% 3,23% **3,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

34

Please indicate the main cause for the lack of timely delivery of the detained accused (defendant) to court

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Lack of transport	**6,59%**	5,00% 6,90% 0,00% **4,00%**	9,30% 8,82% 4,35% **8,00%**	10,81% 9,68% 6,25% **9,00%**	10,81% 5,88% 9,68% **8,24%**	7,41% 0,00% 0,00% **2,86%**
б) Lack of seats on the transport	**3,96%**	0,00% 6,90% 6,45% **4,00%**	9,30% 8,82% 8,70% **9,00%**	5,41% 0,00% 3,13% **3,00%**	5,41% 0,00% 0,00% **2,35%**	0,00% 0,00% 0,00% **0,00%**
в) Lack of staff to accompany the accused (defendant)	**3,52%**	0,00% 0,00% 0,00% **0,00%**	4,65% 0,00% 4,35% **3,00%**	10,81% 0,00% 9,38% **7,00%**	8,11% 0,00% 0,00% **3,53%**	11,11% 0,00% 0,00% **4,29%**
г) Lack of fuel and proper technical maintenance of transport	**10,33%**	0,00% 20,69% 9,68% **9,00%**	11,63% 5,88% 0,00% **7,00%**	29,73% 19,35% 12,50% **21,00%**	2,70% 5,88% 3,23% **3,53%**	7,41% 11,11% 12,00% **10,00%**
д) All the above	**49,67%**	75,00% 58,62% 3,23% **9,00%**	32,56% 41,18% 52,17% **40,00%**	29,73% 32,26% 40,63% **34,00%**	51,35% 64,71% 64,52% **60,00%**	66,67% 83,33% 76,00% **74,29%**
е) There are no problems in transportation of detained accused (defendants)	**25,49%**	20,00% 6,90% 77,42% **34,00%**	27,91% 35,29% 30,43% **31,00%**	13,51% 38,71% 28,13% **26,00%**	21,62% 23,53% 22,58% **22,35%**	7,41% 5,56% 12,00% **8,57%**
є) No response	**0,44%**	**0**	**2,0%**	**0**	**0**	**0**

35

Do persons in custody receive enough drinking water, food, and medicines?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) They receive enough	**27,47%**	15,00% 13,79% 45,16% **24,00%**	39,53% 52,94% 56,52% **48,00%**	40,54% 48,39% 71,88% **53,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
б) In general, they receive enough but there are problems	**35,38%**	35,00% 24,14% 19,35% **27,00%**	27,91% 26,47% 30,43% **28,00%**	40,54% 41,94% 21,88% **35,00%**	37,84% 29,41% 38,71% **36,47%**	25,93% 61,11% 88,00% **57,14%**
в) No, it is not enough	**34,95%**	50,00% 55,17% 35,48% **47,00%**	18,60% 14,71% 13,04% **16,00%**	18,92% 9,68% 6,25% **12,00%**	62,16% 70,59% 61,29% **63,53%**	74,07% 38,89% 12,00% **42,86%**
г) No response	**2,20%**	0,00% 6,90% 0,00% **2,00%**	13,95% 5,88% 0,00% **8,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

Section 5

ACCOUNTABILITY FOR CRIMES AGAINST NATIONAL SECURITY AND OTHER CRIMES

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

36

Are you aware of cases when persons who contributed to the occupation of parts of Ukraine have remained in positions related to ensuring access to justice?

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, these cases are common, and it impedes administration of justice	**14,73%**	0,00% 0,00% 0,00% **0,00%**	4,65% 0,00% 13,04% **5,00%**	5,41% 0,00% 3,13% **3,00%**	21,62% 35,29% 16,13% **22,35%**	62,96% 72,22% 40,00% **57,14%**
б) Yes, these cases are common, but these persons administer justice properly	**1,32%**	0,00% 0,00% 0,00% **0,00%**	4,65% 0,00% 0,00% **2,00%**	2,70% 0,00% 3,13% **2,00%**	5,41% 0,00% 0,00% **2,35%**	0,00% 0,00% 0,00% **0,00%**
в) Yes, these are individual cases, but it impedes administration of justice	**9,67%**	2,50% 10,34% 6,45% **6,00%**	4,65% 5,88% 26,09% **10,00%**	13,51% 12,90% 9,38% **12,00%**	5,41% 0,00% 0,00% **2,35%**	18,52% 11,11% 28,00% **20,00%**
г) Yes, these are individual cases, but these persons administer justice properly	**4,62%**	0,00% 0,00% 0,00% **0,00%**	6,98% 0,00% 0,00% **3,00%**	0,00% 6,45% 6,25% **4,00%**	13,51% 5,88% 6,45% **9,41%**	11,11% 11,11% 4,00% **8,57%**
д) No, I have not heard of such cases	**68,57%**	95,00% 86,21% 93,55% **92,00%**	76,74% 94,12% 60,87% **79,00%**	78,38% 74,19% 78,13% **77,00%**	54,05% 58,82% 77,42% **63,53%**	7,41% 5,56% 28,00% **14,29%**
е) No response	**1,10%**	**2,0%**	**1,0%**	**2,0%**	**0**	**0**

37

In your work, have you encountered cases when a person who had to face liability, in your view, avoided it after the beginning of the armed conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, such situations are still common	**26,15%**	7,50% 17,24% 6,45% **10,00%**	18,60% 17,65% 21,74% **19,00%**	8,11% 12,90% 12,50% **11,00%**	24,32% 52,94% 41,94% **36,47%**	74,07% 83,33% 52,00% **68,57%**
б) Yes, such situations are common, most of them are connected with events of 2014-2015; there is a recent downward trend now	**11,87%**	2,50% 13,79% 3,23% **6,00%**	13,95% 11,76% 13,04% **13,00%**	10,81% 19,35% 9,38% **13,00%**	21,62% 5,88% 19,35% **17,65%**	11,11% 5,56% 12,00% **10,00%**
в) Such situations are common, but there is a recent downward trend now	**6,37%**	2,50% 3,45% 0,00% **2,00%**	4,65% 5,88% 4,35% **5,00%**	8,11% 0,00% 6,25% **5,00%**	5,41% 0,00% 0,00% **2,35%**	14,81% 11,11% 36,00% **21,43%**
г) Yes, but such situations are rare	**12,75%**	2,50% 10,34% 6,45% **6,00%**	18,60% 17,65% 21,74% **19,00%**	13,51% 9,68% 18,75% **14,00%**	21,62% 35,29% 16,13% **22,35%**	0,00% 0,00% 0,00% **0,00%**
д) There were no such situations	**42,42%**	85,00% 55,17% 83,87% **76,00%**	44,19% 47,06% 39,13% **44,00%**	59,46% 51,61% 53,13% **55,00%**	27,03% 5,88% 22,58% **21,18%**	0,00% 0,00% 0,00% **0,00%**
е) No response	**0,44%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 6,45% 0,00% **2,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

38

In your opinion, are the military conflict circumstances taken into account in determination of penalties? What do you think about that?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, they are considered as mitigating circumstances; and it is correct	**11,87%**	12,50% 10,34% 12,90% **12,00%**	11,63% 5,88% 4,35% **8,00%**	2,70% 0,00% 6,25% **3,00%**	5,41% 0,00% 0,00% **2,35%**	14,81% 50,00% 64,00% **41,43%**
б) Yes, they are considered as mitigating circumstances; and it is wrong	**14,07%**	0,00% 0,00% 0,00% **0,00%**	9,30% 11,76% 17,39% **12,00%**	16,22% 16,13% 15,63% **16,00%**	18,92% 17,65% 19,35% **18,82%**	44,44% 22,22% 16,00% **28,57%**
в) Yes, they are considered as aggravating circumstances; and it is correct	**3,96%**	7,50% 6,90% 9,68% **8,00%**	6,98% 2,94% 0,00% **4,00%**	2,70% 3,23% 6,25% **4,00%**	5,41% 0,00% 0,00% **2,35%**	0,00% 0,00% 0,00% **0,00%**
г) Yes, they are considered as aggravating circumstances; and it is wrong	**8,35%**	15,00% 6,90% 12,90% **12,00%**	4,65% 0,00% 0,00% **2,00%**	0,00% 3,23% 6,25% **3,00%**	18,92% 23,53% 19,35% **20,00%**	11,11% 5,56% 0,00% **5,71%**
д) No, they are not taken into account; and it is correct	**35,60%**	50,00% 44,83% 35,48% **44,00%**	41,86% 26,47% 43,48% **37,00%**	29,73% 51,61% 28,13% **36,00%**	35,14% 41,18% 45,16% **40,00%**	18,52% 16,67% 12,00% **15,71%**
е) No, they are not taken into account; and it is wrong	**8,35%**	0,00% 0,00% 0,00% **0,00%**	6,98% 5,88% 8,70% **7,00%**	5,41% 22,58% 15,63% **14,00%**	10,81% 17,65% 12,90% **12,94%**	11,11% 5,56% 8,00% **8,57%**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
є) No, they are not taken into account, should be considered as aggravating circumstances	17,80%	15,00% 31,03% 24,00% 29,03%	18,60% 47,06% 30,00 26,09%	43,24% 3,23% 24,00% 21,88%	5,41% 0,00% 3,53% 3,23%	0,00% 0,00% 0,00% 0,00%
ж) No response	0,00%	0	0	0	0	0

39

How do you evaluate the possibility to escape justice by absconding in the temporarily occupied areas?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) If the person is not apprehended promptly, s/he can definitely avoid justice by absconding in the occupied areas	**74,95%**	75,00% 58,62% 93,55% **76,00%**	76,74% 82,35% 78,26% **79,00%**	64,86% 70,97% 68,75% **68,00%**	75,68% 76,47% 77,42% **76,47%**	66,67% 77,78% 84,00% **75,71%**
б) Even if the person is not apprehended promptly, there is little possibility to avoid justice by absconding in the occupied areas	**14,73%**	7,50% 13,79% 3,23% **8,00%**	13,95% 11,76% 13,04% **13,00%**	18,92% 12,90% 18,75% **17,00%**	18,92% 17,65% 19,35% **18,82%**	22,22% 16,67% 16,00% **18,57%**
в) Even if the person is trying to avoid justice by absconding in the occupied areas, it is still possible to return him/her to the government-controlled area and hold accountable	**10,33%**	17,50% 27,59% 3,23% **16,00%**	9,30% 5,88% 8,70% **8,00%**	16,22% 16,13% 12,50% **15,00%**	5,41% 5,88% 3,23% **4,71%**	11,11% 5,56% 0,00% **5,71%**
г) No response	**0,00%**	**0**	**0**	**0**	**0**	**0**

40

Are there widespread cases of criminal prosecution of ATO participants for actions that include elements of crime committed in combat to preserve military lives and protect civilians?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, ATO participants face the same liability as under regular conditions	**22,86%**	5,00% 6,90% 6,45% **6,00%**	23,26% 11,76% 17,39% **18,00%**	21,62% 22,58% 28,13% **24,00%**	29,73% 58,82% 41,94% **40,00%**	25,93% 33,33% 36,00% **31,43%**
б) Penalties for ATO participants are less strict than possible pentalties under regular conditions	**18,24%**	2,50% 6,90% 0,00% **3,00%**	11,63% 8,82% 17,39% **12,00%**	40,54% 12,90% 9,38% **22,00%**	37,84% 23,53% 35,48% **34,12%**	40,74% 27,78% 4,00% **24,29%**
в) Yes, penalties for ATO participants are stricter than possible penalties under regular conditions	**6,15%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	5,41% 0,00% 3,23% **3,53%**	25,93% 38,89% 44,00% **35,71%**
г) No, these situations are rare	**11,43%**	17,50% 48,28% 22,58% **28,00%**	11,63% 5,88% 8,70% **9,00%**	5,41% 9,68% 15,63% **10,00%**	5,41% 0,00% 0,00% **2,35%**	3,70% 0,00% 8,00% **4,29%**
д) I have not come across such situations	**40,00%**	75,00% 27,59% 67,74% **59,00%**	53,49% 73,53% 56,52% **61,00%**	32,43% 48,39% 46,88% **42,00%**	21,62% 17,65% 19,35% **20,00%**	3,70% 0,00% 8,00% **4,29%**
е) No response	**1,32%**	0,00% 10,34% 3,23% **4,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 6,45% 0,00% **2,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

41

Have you encountered cases when a party to criminal case was involved in exchange of persons between Ukraine, Russia, the occupied areas (the person was transferred to the other party), and it had an effect on the trial?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, there were many cases like these, there were no issues	**1,54%**	0,00% 0,00% 0,00% **0,00%**	2,33% 0,00% 0,00% **1,00%**	5,41% 6,45% 6,25% **6,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
б) Yes, there were many cases like these, the problems concerned legal qualification of exchange and its confirmation	**2,20%**	0,00% 0,00% 0,00% **0,00%**	9,30% 5,88% 8,70% **8,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	7,41% 0,00% 0,00% **2,86%**
в) Yes, there were several cases, there were no issues	**13,19%**	2,50% 3,45% 3,23% **3,00%**	16,28% 11,76% 8,70% **13,00%**	16,22% 87,10% 31,25% **43,00%**	0,00% 5,88% 0,00% **1,18%**	0,00% 0,00% 0,00% **0,00%**
г) Yes, there were several cases, the problems concerned legal qualification of exchange and its confirmation	**9,67%**	2,50% 6,90% 0,00% **3,00%**	13,95% 14,71% 13,04% **14,00%**	0,00% 6,45% 0,00% **2,00%**	8,11% 29,41% 6,45% **11,76%**	29,63% 22,22% 12,00% **21,43%**
д) No, there were no such cases	**70,77%**	90,00% 72,41% 87,10% **84,00%**	53,49% 67,65% 69,57% **62,00%**	78,38% 0,00% 62,50% **49,00%**	91,89% 64,71% 93,55% **87,06%**	62,96% 77,78% 88,00% **75,71%**
е) No response	**2,64%**	5,00% 17,24% 9,68% **10,00%**	4,65% 0,00% 0,00% **2,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

42

Have you come across cases in the SSU program «Come back home»? How many? What were the issues in these proceedings?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, many cases, there were no problems	**2,86%**	0,00% 0,00% 0,00% **0,00%**	11,63% 5,88% 8,70% **9,00%**	5,41% 3,23% 3,13% **4,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
б) Yes, several cases, there were no problems	**12,31%**	7,50% 13,79% 3,23% **8,00%**	30,23% 20,59% 17,39% **24,00%**	10,81% 12,90% 9,38% **11,00%**	2,70% 11,76% 0,00% **3,53%**	22,22% 11,11% 8,00% **14,29%**
в) Yes, many cases, there were problems	**1,76%**	2,50% 6,90% 0,00% **3,00%**	2,33% 0,00% 0,00% **1,00%**	2,70% 6,45% 3,13% **4,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**
г) Yes, several cases, there were problems	**6,37%**	2,50% 6,90% 9,68% **6,00%**	4,65% 0,00% 8,70% **4,00%**	8,11% 6,45% 3,13% **6,00%**	5,41% 17,65% 0,00% **5,88%**	11,11% 11,11% 12,00% **11,43%**
д) No, there were no such cases	**75,82%**	85,00% 62,07% 87,10% **79,00%**	51,16% 73,53% 65,22% **62,00%**	72,97% 70,97% 81,25% **75,00%**	91,89% 70,59% 100,00% **90,59%**	66,67% 77,78% 80,00% **74,29%**
е) No response	**0,88%**	2,50% 10,34% 0,00% **4,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

43

Should people serve additional punishment in the territory of Ukraine if they had served punishment imposed by Ukrainian courts in the temporarily occupied areas?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes, because serving punishment in the temporarily occupied areas does not have legal consequences	**10,11%**	10,00% 3,45% **8,00%** 9,68%	9,30% 11,76% **12,00%** 17,39%	13,51% 22,58% **16,00%** 12,50%	8,11% 11,76% **7,06%** 3,23%	7,41% 5,56% **5,71%** 4,00%
б) Yes, if the person was subject to amnesty in the temporarily occupied areas	**5,71%**	2,50% 3,45% **3,00%** 3,23%	6,98% 5,88% **7,00%** 8,70%	8,11% 9,68% **8,00%** 6,25%	5,41% 23,53% **7,06%** 0,00%	7,41% 0,00% **2,86%** 0,00%
в) No, if this person can prove serving punishment in full in court proceedings, and the court confirms this fact	**55,82%**	47,50% 44,83% **51,00%** 61,29%	55,81% 55,88% **55,00%** 52,17%	45,95% 48,39% **51,00%** 59,38%	45,95% 47,06% **50,59%** 58,06%	74,07% 83,33% **77,14%** 76,00%
г) No, the person should automatically be recognized as having served punishment	**26,59%**	40,00% 34,48% **30,00%** 12,90%	27,91% 26,47% **26,00%** 21,74%	32,43% 19,35% **25,00%** 21,88%	40,54% 17,65% **35,29%** 38,71%	11,11% 11,11% **14,29%** 20,00%
д) No response	**1,76%**	0,00% 13,79% **8,00%** 12,90%	0,00% 0,00% **0,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%	0,00% 0,00% **0,00%** 0,00%

44

How much do you agree with the prospect of establishing extrajudicial proceedings in relation to release of persons from liability with the purpose of exchange?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Fully agree because there are many problems stemming from the lack of legal regulation of the exchange process	**35,60%**	32,50% 41,38% 22,58% **32,00%**	25,58% 55,88% 34,78% **38,00%**	29,73% 41,94% 34,38% **35,00%**	35,14% 58,82% 54,84% **47,06%**	22,22% 11,11% 36,00% **24,29%**
б) Partially agree because this process has to be open for the public, and actions of the person should be investigated properly	**21,10%**	30,00% 20,69% 16,13% **23,00%**	13,95% 8,82% 21,74% **14,00%**	18,92% 35,48% 37,50% **30,00%**	21,62% 17,65% 19,35% **20,00%**	18,52% 16,67% 16,00% **17,14%**
в) Disagree because I know it should be within court proceedings defined by law	**31,21%**	27,50% 20,69% 38,71% **29,00%**	37,21% 29,41% 34,78% **34,00%**	35,14% 16,13% 15,63% **23,00%**	27,03% 11,76% 19,35% **21,18%**	51,85% 72,22% 44,00% **54,29%**
г) Disagree because there are no problems with exchange of prisoners, but the procedure can create them	**8,13%**	5,00% 3,45% 6,45% **5,00%**	13,95% 5,88% 8,70% **10,00%**	13,51% 0,00% 12,50% **9,00%**	16,22% 11,76% 6,45% **11,76%**	7,41% 0,00% 4,00% **4,29%**
д) I support this option for other reasons, namely	**0,00%**	0	0	0	0	0
е) I disagree for other reasons, mainly	**0,00%**	0	0	0	0	0
є) No response	**3,96%**	5,00% 13,79% 16,13% **11,00%**	9,30% 0,00% 0,00% **4,00%**	2,70% 6,45% 0,00% **3,00%**	0,00% 0,00% 0,00% **0,00%**	0,00% 0,00% 0,00% **0,00%**

45

How much do you agree with the prospect of establishing extrajudicial proceedings in relation to release of persons from liability for cooperation with the «authorities» of the temporarily occupied areas?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	Response ratio per category

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Fully agree because it will facilitate the return of the temporarily occupied areas	27,03%	22,50% 24,14% 32,26% 26,00%	27,91% 17,65% 26,09% 24,00%	24,32% 25,81% 25,00% 25,00%	29,73% 35,29% 22,58% 28,24%	25,93% 44,44% 36,00% 34,29%
б) Partially agree because this process has to be open for the public, and actions of the person should be investigated properly	18,90%	25,00% 24,14% 6,45% 19,00%	13,95% 14,71% 13,04% 14,00%	24,32% 19,35% 12,50% 19,00%	27,03% 29,41% 22,58% 25,88%	14,81% 11,11% 24,00% 17,14%
в) Disagree because I know it should be within court proceedings defined by law	31,65%	30,00% 20,69% 35,48% 29,00%	25,58% 44,12% 34,78% 34,00%	29,73% 29,03% 31,25% 30,00%	32,43% 23,53% 48,39% 36,47%	29,63% 22,22% 32,00% 28,57%
г) Disagree because I think it is unacceptable to release them from liability	18,24%	17,50% 20,69% 16,13% 18,00%	20,93% 17,65% 17,39% 19,00%	21,62% 19,35% 31,25% 24,00%	10,81% 11,76% 6,45% 9,41%	29,63% 22,22% 8,00% 20,00%
д) Agree for other reasons, namely	0,44%	0,00% 0,00% 0,00% 0,00%	4,65% 0,00% 0,00% 2,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%
е) Disagree for different reasons, namely	0,00%	0	0	0	0	0
є) No response	3,74%	0,00% 0,00% 0,00% 0,00%	6,98% 5,88% 8,70% 7,00%	0,00% 6,45% 0,00% 2,00%	0,00% 0,00% 0,00% 0,00%	0,00% 0,00% 0,00% 0,00%

Section 5

BACKGROUND OF THE RESPONDENT

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

46

What is your sex?

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Female	**39,78%**	62,50% 34,48% 61,29% **54,00%**	20,93% 20,59% 26,09% **22,00%**	43,24% 38,71% 34,38% **39,00%**	35,14% 58,82% 45,16% **43,53%**	29,63% 38,89% 56,00% **41,43%**
б) Male	**60,22%**	37,50% 65,52% 38,71% **46,00%**	79,07% 79,41% 73,91% **78,00%**	56,76% 61,29% 65,63% **61,00%**	48,65% 41,18% 74,19% **56,47%**	70,37% 61,11% 44,00% **58,57%**

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What is the main region of your activities?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) Donetsk region	**40,44%**	40,00%	43,00%	37,00%	43,53%	38,57%
б) Luhansk region	**28,35%**	29,00%	34,00%	31,00%	20,00%	25,71%
в) City of Kyiv	**31,21%**	31,00%	23,00%	32,00%	36,47%	35,71%

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Which entity in the field of administration of justice do you represent (the indicated ratio refers to the overall number of respondents)

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
a) The bar	18,68%				37% 17% 31% 18,68%	
б) Police	21,98%			37% 31% 32% 21,98%		
в) Prosecutor's office	21,98%		43% 34% 23% 21,98%			
г) Court	21,98%	40% 29% 31% 21,98%				
д) Civil society	15,38%					27% 18% 25% 15,38%

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How long have your worked for your current organization?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Less than one year	**7,91%**	0,00% 0,00% **0,00%** 0,00%	4,65% 2,94% **4,00%** 4,35%	21,62% 19,35% **18,00%** 12,50%	18,92% 11,76% **16,47%** 16,13%	0,00% 0,00% **0,00%** 0,00%
б) From one to three years	**11,43%**	0,00% 3,45% **2,00%** 3,23%	16,28% 11,76% **14,00%** 13,04%	18,92% 16,13% **16,00%** 12,50%	10,81% 17,65% **10,59%** 6,45%	14,81% 16,67% **15,71%** 16,00%
в) From three to five years	**14,95%**	5,00% 3,45% **5,00%** 6,45%	13,95% 11,76% **14,00%** 17,39%	13,51% 29,03% **24,00%** 31,25%	8,11% 11,76% **8,24%** 6,45%	22,22% 11,11% **25,71%** 40,00%
г) From five to ten years	**28,13%**	32,50% 6,90% **30,00%** 48,39%	25,58% 26,47% **26,00%** 26,09%	21,62% 9,68% **19,00%** 25,00%	40,54% 47,06% **47,06%** 54,84%	11,11% 11,11% **18,57%** 32,00%
д) Over ten years	**37,58%**	62,50% 86,21% **63,00%** 41,94%	39,53% 47,06% **42,00%** 39,13%	24,32% 25,81% **23,00%** 18,75%	21,62% 11,76% **17,65%** 16,13%	51,85% 61,11% **40,00%** 12,00%

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Has your place of residence changed because of the armed conflict?

Category	
Percentage of respondents in Donetsk region Percentage of respondents in Luhansk region Percentage of respondents in Kyiv city	**Response ratio per category**

Response options	Overall ratio	including responses by category				
		judges	prosecutors	investigators	lawyers	human rights defenders
а) Yes	 **55,38%**	85,00% 72,41% 35,48% **66,00%**	86,05% 94,12% 26,09% **75,00%**	56,76% 64,52% 37,50% **53,00%**	45,95% 64,71% 9,52% **35,29%**	44,44% 55,56% 24,00% **40,00%**
б) No	 **44,62%**	15,00% 27,59% 64,52% **34,00%**	13,95% 5,88% 73,91% **25,00%**	43,24% 35,48% 62,50% **47,00%**	54,05% 35,29% 38,10% **64,71%**	55,56% 44,44% 76,00% **60,00%**

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