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THE ROLE OF NATIONAL COURTS IN THE MECHANISM FOR PROSECUTION OF WAR CRIMES

РОЛЬ НАЦІОНАЛЬНИХ СУДІВ У МЕХАНІЗМІ ПРИТЯГНЕННЯ ДО ВІДПОВІДАЛЬНОСТІ ЗА ВОЄННІ ЗЛОЧИННИ

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War crimes rank among the most serious international offenses, representing a breach of the core principles of international law. National courts are crucial in holding perpetrators accountable, as they enforce criminal justice and serve as the primary forum through which the state responds to severe violations of international humanitarian law.

In the context of the armed conflict against Ukraine and Russian aggression, national courts have effectively taken on the primary role of prosecuting those responsible for war crimes, aligning with the principle of complementarity in international criminal law, which states that the main obligation to bring perpetrators to justice lies with national judicial authorities [1, p. 44].

National courts ensure the direct application of both domestic and international law, which is a key feature of their work in cases involving war crimes. They apply provisions of the Criminal Code of Ukraine that implement the norms of international humanitarian law, specifically the Geneva Conventions and their Additional Protocols. At the same time, judicial practice shows that national courts are increasingly relying on international sources of law to interpret the elements of a crime and to establish its parts, indicating a gradual harmonization of national law enforcement with international standards [2, p. 281].

The role of national courts in establishing consistent judicial precedent regarding the classification of war crimes is particularly important. Given that such precedent in Ukraine was limited prior to the onset of full-scale aggression, it is precisely these recent court decisions that lay the foundation for the further development of legal practice. As noted in relevant analytical materials, Ukrainian courts are already developing approaches to defining the elements of war crimes, applying the norms of international

humanitarian law, and imposing penalties, which is crucial for ensuring the consistency of judicial practice [3].

In this context, the Supreme Court also plays an important role by consolidating judicial practice and establishing legal positions regarding the application of legislation in the field of war crimes. Relevant analytical materials emphasize that the consolidation of case law ensures the uniform application of legal norms by courts of different instances, which is a necessary condition for effective justice [4]. Thus, national courts not only administer justice but also effectively shape standards for the application of law in the field of international crimes.

At the same time, the work of national courts in this area faces significant challenges due to the unique nature of war crimes. One of the main challenges is the scale of these crimes and the large number of cases awaiting adjudication. According to data from the Office of the Prosecutor General, as of July 2025, 176,475 criminal proceedings had been registered under Article 438 of the Criminal Code of Ukraine, which defines criminal liability for war crimes. Specifically, 60,387 cases were registered in 2022, 60,944 in 2023, 28,788 in 2024, and 26,356 in the first half of 2025 [1, p. 45].

This imposes a heavy burden on the judicial system and calls for efficient organization of the legal process. Additionally, the difficulty of proving war crimes comes from the fact that they are often committed during active hostilities or in temporarily occupied territories, which makes accessing evidence and witnesses more challenging.

As a result, the Unified State Register of Court Decisions lists only 152 verdicts, but not all have become final because appeal or cassation proceedings are still ongoing. Additionally, one acquittal was issued in Mykolaiv. The individual was acquitted of war crimes but convicted of treason. Detailed information on the number of open criminal proceedings and court verdicts for this category of crimes is shown in Diagram 1.

Another essential aspect of how national courts investigate war crimes is balancing effective criminal prosecution with respect for human rights. Courts must ensure a fair trial, even when the accused are out of reach of justice. In this context, special proceedings (in absentia) are often used, allowing cases to be heard without the accused present. However, this raises important questions about the right to defense and adherence to international standards of a fair trial [1, p. 44].

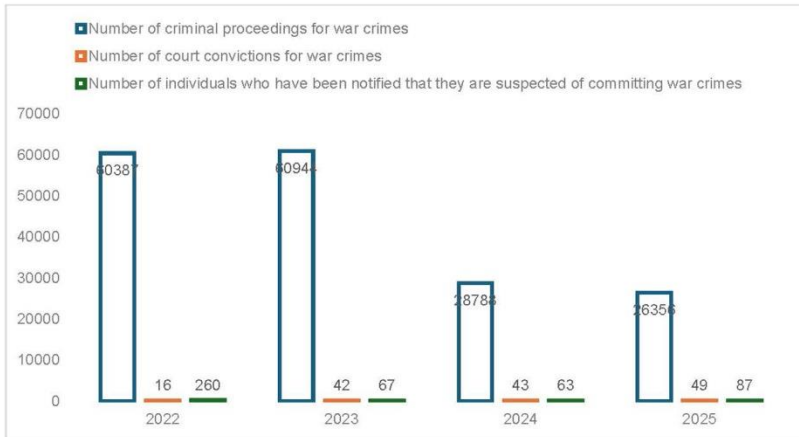


Diagram 1. The number of criminal cases opened regarding war crimes and their ratio to court convictions for this category of crimes, as well as the number of individuals served with notices of suspicion [1, p. 44–45]

Additionally, national courts face the challenge of accurately classifying acts as war crimes. This involves establishing a connection between the act and the armed conflict and determining the victims' status. Academic research emphasizes that misclassification can lead to avoiding responsibility or receiving less severe penalties, which conflicts with the principle that punishment is inevitable.

At the same time, an important role of national courts is to ensure that justice is served for victims. Court decisions not only establish a person's guilt but also recognize human rights violations, which is vital for restoring trust in the legal system. In this context, national courts serve both punitive and restorative functions, helping to compensate for harm and support victims' rehabilitation. We believe that the main tasks of national judicial institutions are to build and maintain a high-quality evidence base for use in international judicial bodies. The evidence gathered and assessed can form the foundation for cases before the International Criminal Court or special tribunals, making it easier to hold perpetrators accountable. This emphasizes the importance of national justice in the global effort to combat impunity for international crimes.

Table 1

Major Challenges National Courts Face When Prosecuting War Crime Perpetrators in Ukraine

The Problem	The Nature of the Problem	Reflection in the Activities of National Courts
The Scale of Open Criminal Proceedings	The large number of criminal proceedings is overburdening the courts	Delays in case proceedings, heavy procedural workload on judges
Complexity of proving guilt	Difficulties in gathering evidence due to the war and active hostilities	Use of circumstantial evidence, difficulty in proving guilt
Problems with classification of war crimes	Lack of clear criteria for the commission of war crimes and inconsistent practice	Different classification of similar unlawful acts by courts
Proceedings in absentia	Trial proceedings without the presence of the defendant and without obtaining his testimony or participation in court hearings	Active use of in absentia proceedings and debates regarding fair trial
Respect for human rights	Balance between the effectiveness of criminal investigations and the rights of the accused	Possibility of appealing court verdicts due to violations of the right to defense
Enforcement of court verdicts	Defendants are outside the jurisdiction of Ukraine	The formal nature of some verdicts, the impossibility of enforcing them

Equally important is the role of national courts in shaping legal culture and upholding the rule of law. The adjudication of war crimes cases has significant public resonance and influences perceptions of justice both domestically and internationally. The effectiveness and fairness of judicial decisions help build trust in the judicial system and strengthen the state's authority on the international stage [3].

Therefore, national courts play a multifaceted role in holding perpetrators of war crimes accountable. They ensure the implementation of criminal prosecution, shape judicial practice, incorporate international law into the national legal system, guarantee respect for human rights, and contribute to the restoration of justice. Despite significant challenges, national courts remain the primary tool for combating impunity and a key part of the international criminal justice system, especially in today's armed conflicts.

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CHARACTERISTICS OF LEGAL RELATIONSHIPS DURING THE RESTORATION OF A PERSON'S PROTECTED STATUS

ХАРАКТЕРИСТИКА ПРАВОВІДНОСИН ПІД ЧАС ВІДНОВЛЕННЯ СТАНУ ЗАХИЩЕНОСТІ ЛЮДИНИ

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Сьогодні, на п'ятий рік війни рф проти України досить актуальним є проблематика удосконаленні правового регулювання стану захищеності населення від усілякого роду загроз. Зокрема, мова йдеться про правові способи та засоби поновлення статусу захищеності. Перші дні спротиву російській агресії показали, що як населення в цілому, так і окремі люди можуть самостійно здійснювати доволі захист не тільки для себе, але й для інших і для держави, в тому числі.