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Грати

DENIAL OF THE RIGHT TO A FAIR TRIAL AS AN INTERNATIONAL CRIME DURING RUSSIA'S WAR AGAINST UKRAINE: CONTEXT, PRACTICE, LAW AND PROSPECTS

DENIAL OF THE RIGHT TO A FAIR TRIAL AS AN INTERNATIONAL CRIME DURING RUSSIA'S WAR AGAINST UKRAINE:

CONTEXT, PRACTICE, LAW AND PROSPECTS

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Cover photo: Ukrainian soldiers of the Azov battalion who were captured during the fighting for Mariupol in May 2022. The photo was taken on March 26, 2025 during the announcement of the court verdict in the Southern District Military Court in Rostov-on-Don, Russian Federation. Credit: Mediazona online media.

The research analyses aspects of Russia's intentions and implementation of its policy of judicial persecution of Ukrainian civilians and prisoners of war. The available and analysed materials prove that such a policy of judicial persecution has signs of war crimes (denial of the right to a fair trial) and persecution as a crime against humanity (in terms of the persecution of civilians). The results of the research can be useful for Ukrainian law enforcement agencies and international criminal justice bodies, human rights defenders, academics, the media community, as well as international partners who monitor the situation with Russia's crimes as a result of its aggression against Ukraine.

The research was initiated and prepared by the human rights organisations the Human Rights Centre ZMINA and the Media Initiative for Human Rights in cooperation with the online publication Graty and the NGO Crimean Process.

Ministry of Foreign Affairs

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LIST OF ABBREVIATIONS

AP	Additional Protocol
ARC	Autonomous Republic of Crimea
CAO	Code of Administrative Offences
CC	Criminal Code
CCt	Constitutional Court
CPC	Criminal Procedure Code
“DPR”	The so-called “Donetsk People's Republic”
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FSB	Federal Security Service
GC	Geneva Convention
HQCJ	High Qualification Commission of Judges
IAC	International armed conflict
IC	Investigative Committee
ICC	International Criminal Court
ICL	International criminal law
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
“LPR”	The so-called “Luhansk People's Republic”
MIHR	Media Initiative for Human Rights
NIAC	Non-international armed conflict
RF	Russian Federation
RS	Rome Statute of the International Criminal Court
“SVO”	Special Military Operation
TOT	Temporarily occupied territories
USA	United States of America

EXECUTIVE SUMMARY OF THE RESEARCH

Since the beginning of Russia's armed aggression and occupation of the Crimean peninsula and certain parts of the Donetsk and Luhansk regions, the occupation authorities have introduced systematic practices of persecuting Ukrainian citizens, including mostly civilians, who resist the occupation, disagree with the occupation or are perceived as such by the Russian Federation. One of the tools of such persecution was the hundreds of criminal cases initiated by the occupation authorities against Ukrainian civilians and prisoners of war on trumped-up charges.

The results of monitoring and reports by Ukrainian human rights organisations and data from international organisations indicate systemic problems with violations of the right to a fair trial in such criminal cases. At the same time, the full-scale Russian invasion of Ukraine in February 2022 resulted in a significant increase in such cases and the expansion of this practice not only to civilians but also to Ukrainian prisoners of war. It is likely that such measures to deploy Russia's policy of judicial persecution[1] against Ukrainian citizens were dictated by the need to suppress resistance to the occupation and justify the goals of the Russian Federation's aggression against Ukraine, as stated by the authorities. Currently, human rights organisations report at least 1,800 civilians[2] and more than 6,000 prisoners[3] of war held by Russia and subject to prosecution in courts under its control.

The teams of human rights organisations the Media Initiative for Human Rights (MIHR)[4] and the Human Rights Centre ZMINA[5], as well as the online publication Graty[6] and the NGO Crimean Process[7], have joined efforts to launch systematic monitoring, collection and publication of information on such illegal judicial persecution of Ukrainian civilians and prisoners of war in Russian-controlled courts, in particular after the start of the full-scale invasion in February 2022. These are cases against prisoners of war for actual participation in the armed conflict (participation in so-called terrorist organisations or illegal armed groups, etc.); civilians for their pro-Ukrainian position, resistance to the occupation and cooperation with Ukraine (accused of espionage, treason, sabotage, weapons possession, etc)[8].

The objective of this research was to gather evidence and examine various aspects of Russia's alleged intent and policy of judicial persecution, including the denial of the right to a fair trial to Ukrainian civilians and prisoners of war, which has signs of international crimes.

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1 The policy of judicial persecution is used here and throughout the research in a broad sense, which does not coincide with the legal concept of the crime of persecution.

2 As of the beginning of 2025, the MIHR has identified 1,861 civilian prisoners detained since the beginning of the full-scale Russian invasion, as well as about 300 people illegally detained in the TOT since the beginning of the aggression in 2014. The official page of the MIHR in the social network Facebook. URL: https://www.facebook.com/watch/?v=652516850792525&rdid=Wt7r5YeJoPqCKbQO

3 An event on torture and deaths of Ukrainians in Russian captivity was held at the autumn session of PACE. The Human Rights Centre ZMINA, 03.10.2024. URL: https://zmina.ua/event/na-osinnij-sesiyi-parye-vidbuvsya-zahid-pro-tortury-ta-smerti-ukrayinciv-u-rosijskomu-poloni/

4 Official website of the Media Initiative for Human Rights. URL: https://mipl.org.ua/

5 Official website of the Human Rights Centre ZMINA. URL: https://zmina.ua/

6 Official website of the online publication Graty. URL: https://graty.me/

7 Official website of the NGO Crimean Process. URL: https://crimean-process.org/

8 For more information on the criteria for selecting cases, data collection for analysis, limitations and methods of analysis, see the Research Methodology section.

Currently, there is no similar research on the development and implementation of the policy of judicial persecution, in particular, using interdisciplinary approaches to its implementation (quantitative and qualitative, legal, economic, discursive, etc.), including the use of artificial intelligence.

This research is a logical continuation of the work on monitoring and analysing the observance of fair justice standards and the use of the judicial system established under Russian occupation as a tool for politically motivated persecution, in particular on the example of court cases in the occupied Crimean peninsula in 2018, which resulted in the report of the international group of experts "*Crimean Process: Observance of Fair Trial Standards in Politically Motivated Cases*"[9].

Object of research. To conduct this research, an expert group was assembled, which, since the beginning of 2024, together with the initiators of the research, has worked to determine the research methodology and further systematise and analyse the collected data: the results of monitoring judicial process in the temporarily occupied territories of Ukraine (in total, about 600 cases were identified according to certain criteria and 37 representative cases were selected for more detailed analysis), certain materials of Ukrainian criminal proceedings, criminal case files, verdicts of Russian courts and courts in the temporarily occupied territories (a total of roughly 46 documents), victim testimonies, media reports (a total of roughly 150 publications on representative selected cases), open data from the websites of Russian law enforcement agencies, Russian-controlled courts, etc. International law and case law on the deprivation of the right to a fair trial as a human rights violation and international crime, Russian criminal and procedural law, national and international reports and studies, etc., were also analysed.

Limitations. The research did not aim to collect and analyse the existing facts of extrajudicial persecution (arrests, executions of Ukrainian civilians and prisoners of war in violation of international humanitarian law, depriving them of access to a fair and regular trial[10]), which requires additional study. Another significant limitation of the research was the need to comply with security measures for both victims of persecution and other violations and those who monitored court cases and assisted in obtaining information about such court cases. Therefore, a decision was made to anonymise all cases selected for the purposes of the research (including the presentation of the results of legal analysis, analysis of procedural documents or media), in particular in cases of public use of the research and its results. In this regard, great emphasis was placed on statistical and quantitative methods of analysing codified information. At the same time, full information about the data and cases that formed the basis of the research is kept by its initiators and can be provided upon request to interested parties, taking into account the safety of victims and the goals of justice.

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9 Report of the international group of experts "Crimean process: observance of fair trial standards in politically motivated cases", 2018. URL: https://zmina.ua/publication/krymskyj-proczes-problemy-dotrymannya-standartiv-spravedlyvogo-pravosuddya-u-politychno-vmotyvovanyh-spravah/

10 See the precedent of the Extraordinary Chambers in the Courts of Cambodia (ECCC), which identified hundreds of Vietnamese and Cambodians who were considered supporters of Vietnam by the Khmer Rouge regime. They were denied the right to a fair trial in the security prison S-21. The Trial Chamber found a number of serious procedural violations against prisoners of war and civilians, including the absence of any mechanisms to inform detainees of the grounds for their arrest, or to challenge its legality or appeal. The absence of a trial as such and the extrajudicial executions of detainees met the war crime of denial of a fair trial (ECCC, Prosecutor v. Kaing Guek Eav alias Duch, Trial Chamber, Judgment, Case No. 001/18-07 2007/ECCC/TC, 26.07.2010).

Structure. The research contains a detailed description of the methodology of the research, as well as six key sections that highlight ***the main directions and areas of emphasis of the research***, focused on the hypotheses set by the expert team, in particular:

- The establishment of the Russian legal framework in the occupied territories, the development of judicial and law enforcement agencies there and their further influence on the policy of judicial persecution;
- Analysis of the observance of fair trial guarantees in cases of Ukrainian civilians and prisoners of war in Russia and the occupied territories;
- Manifestations of bias and discrimination in the practice of Russian-controlled courts regarding Ukrainian civilians and prisoners of war;
- The role of Russian-controlled media in the implementation of the policy of judicial persecution;
- The policy of judicial persecution of Ukrainian civilians and military personnel: development, implementation and responsibility for the policy;
- Legal assessment of both the facts of violations of the right to a fair trial in individual cases and the general policy of Russia regarding the prosecution of Ukrainian civilians and prisoners of war.

The results of the research demonstrated systemic problems in ensuring fair justice during the consideration of cases against Ukrainian civilians and prisoners of war accused of criminal offences in the courts of the RF and in the territories occupied by it. The analysis confirms the development and implementation by Russia of a coordinated state *policy of judicial persecution of such* persons to suppress resistance to the occupation and justify the goals of the aggression against Ukraine as declared by the Russian political leadership. At the same time, the RF uses all available state instruments to implement and achieve the goals of the policy of judicial persecution, namely regulatory, institutional, financial and informational.

Thus, *firstly*, Russian-controlled courts systematically ignore the context of international armed conflict in cases involving criminal charges against Ukrainian civilians and prisoners of war and fully support the position of the Russian political leadership. At the same time, the Russian-controlled media became an element in the implementation of this policy of judicial persecution, reinforcing negative accusatory narratives against the prosecuted persons.

Secondly, trials of Ukrainian civilians and prisoners of war in Russia and the territories it occupies do not meet the standards of the right to a fair trial and have elements of international crimes, and Russian-controlled courts in such cases do not guarantee fair justice. Policies of prosecution of Ukrainian civilians and prisoners of war have been significantly scaled up since the beginning of the full-scale Russian invasion of Ukraine and generally show a consistent trend towards political or discriminatory motives, in particular in the context of the citizenship, nationality and civic position of the prosecuted persons. Hundreds of Ukrainian citizens in the Russian-controlled territories are currently becoming victims of this policy of judicial persecution, and thus, victims of international crimes.

Thirdly, the materials available and analysed in this research provide sufficient grounds to believe that such a policy of judicial persecution has signs of war crimes (denial of the right to a fair trial) and persecution as a crime against humanity (in terms of the persecution of civilians). At the same time, responsibility for their perpetration is borne by several groups of actors who perform different elements of the *actus reus* of the crime, ranging from *low-level offenders* (e.g., Russian FSB officers who carry out illegal arrests; Russian investigators who conduct interrogations, often accompanied by torture; Russian prosecutors who submit such cases to courts; judges who consider such cases with serious violations of procedural guarantees), to *high-ranking offenders* who deliberately control and implement the policy of judicial persecution of Ukrainian civilians and prisoners of war (e.g. the President of the Russian Federation, the Head of the FSB, the Head of the Investigative Committee, the Prosecutor General and the Chief Justice of the Supreme Court of the RF).

The full information collected in the course of the preparation of this research was shared with representatives of the Ukrainian prosecutor's office. However, the results of this research may be useful not only for Ukrainian law enforcement agencies and international criminal justice authorities, but also for human rights defenders, academics, the media community, and international partners who monitor the situation with Russia's crimes as a result of its aggression against Ukraine.

To ensure the documentation of the relevant facts, facilitate proper investigation and bring to justice all those responsible for the crimes, the team of human rights organisations the Media Initiative for Human Rights, the Human Rights Centre ZMINA, as well as the online media outlet Graty and the NGO Crimean Process intend to continue their work on the research of the scale and consequences of Russia's policy of judicial persecution of Ukrainian civilians and prisoners of war on its own and occupied territories.

METHODOLOGY OF THE RESEARCH

To prepare the research, initiated by the human rights organisations the Human Rights Centre ZMINA and the Media Initiative for Human Rights, an expert group was established[11]. During 2024, the experts processed the results of the monitoring of judicial process provided by human rights organisations and independent monitors (a total of about 600 cases following the defined criteria and 37 representative cases for a more detailed analysis), certain materials of Ukrainian criminal proceedings, materials of criminal cases and verdicts of courts of the Russian Federation and courts controlled by it in the temporarily occupied territories (a total of about 46 documents), testimonies of victims of persecution by the Russian authorities, and monitors of judicial process. The expert group also analysed international law and case law on the deprivation of the right to a fair trial as a human rights violation and international crime, Russian criminal and procedural legislation, and reports and studies by national and international human rights organisations. Among the sources of information used for monitoring and research were data from the websites of Russian and occupation-controlled courts, public statements by Russian officials and representatives of the occupation administrations in the media, official statistics and other sources on the activities of the prosecutor's office and courts in the territory of the RF and the temporarily occupied Ukrainian territories.

In the course of preparing the research, the expert group held at least 3 in-person and 5 online meetings, meetings with representatives of the Human Rights Centre ZMINA and the Media Initiative for Human Rights, the Prosecutor's Office of the ARC and the city of Sevastopol, the Prosecutor General's Office, and also worked in the form of desk research.

The objective of this research was to gather evidence and examine various aspects of Russia's alleged intent and policy of judicial persecution, including the denial of the right to a fair trial to Ukrainian civilians and prisoners of war, which has the signs of international crimes.

The research has the following ***goals***:

- To analyse and assess the observance of the guarantees of the right to a fair trial and the likely policy of judicial persecution of Ukrainian civilians and prisoners of war in the territories controlled by the RF;
- To draw attention to and facilitate the effective investigation of the international crime of depriving Ukrainian civilians and prisoners of war of their right to a fair trial in the territory of the Russian Federation and the TOT of Ukraine;
- To facilitate the identification of persons involved in the development of the policy of judicial persecution, in particular through the use of Russian-controlled courts to prosecute Ukrainian civilians and prisoners of war.

11 The expert group included Iryna Marchuk (Denmark), Associate Professor of International Criminal Law at the University of Copenhagen Faculty of Law, Serghei Ostaf (Moldova), Director of the Resource Centre for Democracy and Human Rights, Daria Svyrydova, Partner of AZONES Law Firm, and Maksym Tymochko (Ukraine), Partner of Umbrella Law Firm (at the time of writing, a member of the Armed Forces of Ukraine).

According to the goal and objectives, the research uses the term ***policy of judicial persecution*** in the sense of the Russian Federation's policies on its own and occupied territories in relation to detained Ukrainian civilians and prisoners of war, whose criminal cases were subsequently considered in the relevant courts. In the context of this research, such prosecution includes the period from the moment of detention and pre-trial investigation, followed by obtaining statements and testimony from the person, choosing a measure of restraint, etc[12].

Geography of the research — monitoring of the court cases selected for the purposes of the research took place in the territory of the RF and the territories of Ukraine occupied by it since 2014. At the same time, physical attendance at judicial processes was possible only in the territory of the RF and the TOT of the Crimean peninsula. The trials that took place in other TOTs of Ukraine were studied mainly based on information from open sources, documents and testimonies.

The research covers the ***period*** from December 2023 to December 2024. However, for the purposes of analysing some of its hypotheses, judicial processes from an earlier period since the beginning of Russia's full-scale invasion of Ukraine in 2022 were also examined.

For the goals of the research, its initiators and the expert group identified the following ***criteria for selecting court cases*** for further monitoring and analysis:

- Cases related to the consequences of the Russian aggression against Ukraine (including criminal proceedings that began after 2014, but are ongoing at the time of the research);
- Cases against citizens of Ukraine deprived of their liberty — civilians and prisoners of war detained in the territory of Ukraine (in determining the status of the person being persecuted, the position of such a person was taken into account, in particular, what they stated in judicial processes regarding their status), namely cases against prisoners of war — for actual participation in the armed conflict, for participation in so-called "terrorist organisations", for participation in so-called "illegal armed groups", etc.; cases against civilians — for pro-Ukrainian position and resistance to the occupation, cooperation with Ukraine (accused of espionage, sabotage, weapons possession), etc;
- Cases pending during the research period;
- Trials that take place in the territory of the RF and/or in the Ukrainian territories occupied by it;

Priority was given to cases in which it was possible to attend about 30% or more of the court hearings.

The expert group had several ***limitations*** when working on the document, which affected the content and presentation of the research, namely:

- The analysis did not include numerous cases of persecution of religious groups (especially on the Crimean peninsula), cases of evasion of illegal conscription of Ukrainian citizens into the army of the occupying country, and cases of persecution of Ukrainian citizens who resided in the RF and were detained there;

12 The policy of judicial persecution is used in the text of the research in a broad sense, which does not coincide with the legal concept of the crime of persecution.

- With some exceptions, numerous cases of prosecution of Ukrainian military for alleged war crimes were not selected for detailed analysis, although in general, it can be noted that Russia has increased the scale of such prosecution of Ukrainian prisoners of war, especially after the start of the full-scale invasion, which probably requires additional separate research;
- Cases involving foreign nationals who participated in the international armed conflict as part of the Armed Forces of Ukraine, were detained and prosecuted by courts under the control of the RF, have not been studied, although such persecution of foreigners also takes place.
- Cases of extrajudicial persecution (arrests, executions) have not been studied, i.e. cases when Ukrainian civilians and prisoners of war were deliberately deprived of the right to a fair and ordinary trial in violation of international humanitarian law (although such facts may have signs of a relevant crime, their study requires a separate research);
- Significant restrictions on access to criminal case files, in particular due to security concerns and direct restrictions on their access by the Russian authorities.

An important limitation of the research was the need to comply with security measures for both victims of persecution and violations analysed and persons who monitored court cases and assisted the expert group in obtaining information about judicial processes. Therefore, the initiators of the research and the expert group decided to *anonymise all the cases* selected for the purposes of the research, in particular in cases of public use of the research and its results[13]. Information about the cases mentioned in the research was anonymised, even in cases where the case was mentioned in the public space and media sources. At the same time, the members of the expert group had full access to all personalised and identifiable materials. Detailed and complete information about the cases and individuals coded for public use is kept by the initiators of the research and can be provided on request to interested parties, taking into account the safety of victims and the goals of justice.

The focus of ***monitoring judicial processes*** in the context of ensuring the right to a fair trial was on issues such as access to information about the court hearing and the court itself, the independence and impartiality of the court, the presumption of innocence, the openness and transparency of the court process, equality of parties, and the right to legal assistance.

In addition to the general assessment of fair trial standards, the research and legal analysis provided an overview of the correlation between international humanitarian law and human rights law in the cases selected for the purposes of the research.

In the course of the research, the expert group developed its ***key hypotheses*** in the context of the set objective, namely:

Hypothesis 1. Courts in the RF and the TOT of Ukraine ignore the context of international armed conflict in cases of prosecution of Ukrainian civilians and prisoners of war and support the position of the Russian political leadership.

13 Complete and coded information about the cases analysed in accordance with the research objective is stored by the research initiators (a file "Codification of cases").

Hypothesis 2. The judicial processes against Ukrainian civilians and prisoners of war in the RF and the TOT of Ukraine do not meet the standards of the right to a fair trial and have signs of international crimes.

Hypothesis 3. The media controlled by the Russian authorities is an element of the implementation of the policy of judicial persecution during the judicial processes against Ukrainian civilians and prisoners of war.

Hypothesis 4. Policies for prosecuting Ukrainian civilians and prisoners of war are based on political or discriminatory motives, and Russian-controlled courts in such cases do not guarantee fair justice.

To prove or disprove the hypotheses, the expert group used various ***methods of systematisation and analysis of the data*** obtained during the research. The initial database of publicly available information on the selected category of cases was systematised (about 600 cases in total). Subsequently, a representative sample of 37 cases was selected (taking into account such criteria as type of prosecution, territory, civilian/military, etc.) for a comprehensive analysis.

Data for 37 representative cases were collected through:

(i) Direct observation (~30% of court hearings, except for closed hearings), conducted using a comprehensive questionnaire on various aspects of the right to a fair trial;

(ii) Interviews with stakeholders based on a structured questionnaire on the guarantees of the right to a fair trial;

(iii) Analysis of publicly available information and secondary sources.

Qualitative research was also conducted on 12 leading cases from the selected ones, including verdicts, mapping of court procedures, and deconstruction of stages and procedures in these cases.

The expert group also used artificial intelligence capabilities, in particular ChatGPT-4, and scientific inferential statistics packages R and Python to process the collected materials (data collection, information systematisation, etc.).

Simultaneously, there were certain objective ***limitations to the systematisation and analysis of the data obtained***. For example, the sample of a total of 37 cases reflects the types of case categories, but not always in equal proportion, and the criteria for gender and territorial representation were not fully met. The work was significantly impacted by general restrictions on access to cases and their sensitivity, and thus any information related to them, including the danger of collecting data and information for victims, monitors and researchers.

In analysing *Hypothesis 3*, media information containing publicly available information about the cases (about 70 cases selected from the initial database of about 600 cases) was also systematised, including publications in Russian-controlled media resources. Then, a representative sample of 15 representative cases (type of prosecution, territory, civilian/military, etc.) was selected for a comprehensive analysis based on at least 7-10 publications on each of these 15 cases and further data collection on these representative cases from:

(i) Open-source materials published before and during the judicial processes;

(ii) Identification of official statements and positions in open sources;

(iii) Monitoring of social networks and messengers with information about relevant cases.

Relevant secondary research and data on Russian-controlled media outlets (owners, editors, pricing and cost structures, audience coverage, etc.) were also collected. The analysis of media materials (a total of about 150 publications on representative cases) was initially carried out for 2-3 cases with the help of experts, the rest of the cases in this category were analysed by artificial intelligence using detailed queries to ChatGPT-4, and the semantic analysis of the verdicts was checked using specialised Python libraries (followed by an additional random check).

When working with *Hypothesis 4*, the expert group additionally examined 17 judgments in some cases from the original database (out of about 600 cases). In addition, about 60 more judgments in criminal cases for 2013-2020 with similar qualifications in the CC of the RF to these 17 studied judgments were randomly collected from open official sources of the Russian authorities, but not related to the prosecution of Ukrainian civilians and prisoners of war for these crimes. By analysing and comparing these judgments, the author examined the differences in the approaches to prosecuting persons related and unrelated to Ukraine and the consequences of Russian aggression for similar crimes.

Full and detailed information, initial data, case coding materials, data and documents available to the expert group and other personalised materials of specific cases that formed the basis for the research were transferred to the initiators of the research for storage and protection of personal data. This decision was made to protect the sources of information from possible persecution by the RF and the occupation authorities.

GENERAL CONCLUSIONS

Conclusion 1.

Following its occupation and subsequent attempted annexation of Ukrainian territories, the Russian Federation has established its own law enforcement and judicial structures in these areas. It has deliberately created an alternative legal reality in contravention of international humanitarian law (IHL) standards to implement a policy of judicial persecution. Consequently, courts under Russian control systematically disregard the context of the international armed conflict in criminal proceedings against Ukrainian civilians and prisoners of war (POWs) and effectively endorse the position of the Russian political leadership in judicial persecution policies. Furthermore, courts across all Russian-occupied territories are incapable of ensuring effective judicial review in such cases due to their outright denial of the existence of an international armed conflict and Russia's aggression against Ukraine.

This conclusion confirms the first hypothesis of the research and is explained in more detail in the analysis presented in **Section I**.

Since the beginning of Russia's armed aggression against Ukraine in 2014, the Russian authorities have **avoided recognising the existence of an international armed conflict**. In addition, Russia consistently denies the fact of the occupation of Ukrainian territories and aggression against Ukraine as a whole. Therefore, the legal system and judicial structures of the RF established in the TOT were formed in violation of IHL, which obliges the occupying power to respect the legislation in force in these territories and the existing judicial institutions. The Russian authorities **have illegally applied their criminal legislation** to the occupied territories and established their own national courts, which have been fully integrated into the Russian judicial system. Similarly, the attempted annexation of Ukrainian territories resulted in the establishment of Russian law enforcement agencies, prosecutors and a de facto Russian-controlled bar in the occupied territories. The expansion of Russian criminal law to the occupied territories (including retrospectively) has significantly worsened the situation of the civilian population and caused systematic violations of one of the key principles of the right to a fair trial – *nullum crimen sine lege (no penalty without law).* In particular, Ukrainian citizens were accused and convicted under the Russian Criminal Code for acts that were never criminalised under Ukrainian law. This allowed the Russian authorities to use their criminal law as **an instrument of repression and pressure on disloyal** Ukrainian civilians from the TOT or those suspected of disloyalty to the occupation regime and resistance to Russian aggression who remained in these territories.

The research demonstrated, among other things, that **the highest judicial instances of the RF** not only directly participated in the sanctioning of the attempted annexation of the territories of Ukraine (the Constitutional Court of the RF) and the formation of the judicial system in the occupied territories (the Supreme Court of the RF), but also, along with other federal courts, **approved the state narrative of denying the armed conflict with Ukraine**. As a result, the federal courts of all instances have consistently ignored the application of the relevant provisions of IHL in cases related to armed conflict. This **disregard for IHL** undermined the legality and fairness of judicial processes in this category of cases.

Russian courts have consistently avoided examining the legal status of members of Ukraine's defence and security forces as combatants and prisoners of war in cases where this status is crucial to the outcome of the judicial processes (for example, in cases where Ukrainian military personnel were accused or convicted of so-called "participation in terrorist organisations", allegedly committing "terrorist acts" or "illegal crossing of the state border of the RF"). Similarly, the Russian courts did not consider citizens living in the occupied territories as persons protected by IHL, in particular the GC relative to the Protection of Civilian Persons in Time of War of 1949. Only in cases where the application of IHL was unavoidable (for example, in cases of accusations of Ukrainian prisoners of war for allegedly committing war crimes), Russian courts could recognise the existence of an armed conflict, but only between Ukraine and the Ukrainian territories previously occupied by the Russian Federation (the so-called "DPR" and "LPR").

Instead, since the beginning of Russia's full-scale aggression against Ukraine, the military and political leadership of the RF has declared the so-called **"Special Military Operation" (SVO)**, although the term "SVO" has no legal basis in Russian legislation. As a result of this artificially constructed framework, persecution, unlawful detention, and imprisonment of persons in the temporarily occupied territories (TOT) have been systematically carried out for any public criticism or discrediting of the **"Special Military Operation" (SVO)**, **the Armed Forces of the RF**, or for being identified as a **"person opposing the SVO"**. Any expressed disagreement with the occupation, condemnation of Russia's armed aggression, or use of the words *"occupation", "aggression", or "annexation"* in relation to the Ukrainian territories occupied by Russia was considered a crime by the Russian authorities. Thus, the introduction of administrative and criminal liability for "discrediting" the Russian army in practice led to a ban on public criticism of the armed aggression against Ukraine, which was approved by the Constitutional Court of the RF. Moreover, the recognition by a Russian judge of the Ukrainian territories controlled by the RF as occupied, the granting of prisoners of war status or the application of other relevant provisions of IHL to civilians could in this case mean a deviation from the state policy of non-recognition of the IAC and lead to criminal, administrative or disciplinary liability of such a court representative.

Conclusion 2.

The results of the research demonstrate systematic and widespread violations of fair trial guarantees in cases against Ukrainian civilians and prisoners of war in Russia and the territories occupied by it. These violations pertain specifically to the principles of equality of arms, evaluation of evidence, exclusion of compromised or coerced evidence obtained through torture, and the right to defense. The overall secrecy and lack of public access to such judicial proceedings, combined with the aforementioned violations of fair trial standards, result in courts largely replicating the prosecution's charges in their verdicts. The patterns identified, along with the level of procedural rights violations, are so systematic and recurrent that they indicate a degradation of the judicial system, which is being used as an instrument of persecution. Moreover, this suggests that the courts are incapable of assessing other fundamental human rights violations alleged in these criminal cases, including torture, unlawful deprivation of liberty, and violations of the right to privacy.

This conclusion confirms the second hypothesis of the research and is explained in more detail in the analysis presented in **Section II and Section VI**.

To analyse the violation of fair trial guarantees, 37 cases were selected following the purpose and methodology of the research and 145 courtroom observations were made during 2023-2024, as well as an analysis of procedural documents and testimonies in at least 10 of the selected cases. The key groups of guarantees under Article 6 of the ECHR and their interdependence were considered based on the results of the case analysis. Thus, the results of the analysis demonstrate systematic violations of fair trial guarantees in cases of Ukrainian civilians and prisoners of war in courts controlled by the RF, in particular:

- **Court impartiality:** In **70 % of court hearings,** there was an absence of judicial independence and biased consideration of cases. The courts demonstrated a bias in favour of the prosecution, and the decisions rendered were systematically consistent with the prosecution's position. In a significant number of recorded trials, judges demonstrated a dismissive attitude towards defendants;
- **Openness of court hearings:** In **80% of cases,** the public was completely denied access to court hearings (in some cases by 100%), which seriously undermined the principles of transparency and accountability;
- **Presumption of innocence:** In almost **60% of court hearings,** from the very beginning of the detention and subsequent trial, the accused was presumed guilty;
- **Ignorance of the principle of equality of the parties:** In **54 % of cases,** defence motions were ignored or rejected on critical aspects of the case, while prosecution motions were accepted without proper examination, and the defence was often denied the opportunity to call and question key prosecution witnesses;
- **Limitation of the rights of the defence:** In **41 % of cases,** the behaviour of judges created obstacles to the effective presentation of the defence's position, and there were numerous cases of hindering the access of an independent lawyer to the defence;
- **Inadmissible or coerced evidence:** In more than **50 % of cases,** evidence obtained under coercion was used, as well as unlawful influence of the prosecutor's office on judgments; the prosecution often relied on testimony of persons of dubious reputation or obtained under pressure, and courts often failed to evaluate evidence in specific cases.

The data obtained indicate that these violations may not be merely procedural shortcomings, but instead reflect recurring problems that can only arise if there are systemic shortcomings in compliance with fair trial standards, in particular in the category of cases under research. At the same time, these results of the analysis, following the research methodology, can be applied to the entire initial data set of 600 cases relevant to the objective of the research, identified in the course of its conduct.

Conclusion 3.

The media controlled by Russian authorities—whether state-owned, private, or individual bloggers—serve as a coordinated instrument in implementing policies of judicial persecution against Ukrainian civilians and POWs in Russia and the occupied territories. Media outlets extensively disseminate accusatory narratives regarding these individuals, portraying them as existential threats to Russia. This results in systematic violations of the presumption of innocence and legitimizes Russia's punitive actions against dissidents and other persecuted individuals. The selection of individuals for judicial prosecution and the subsequent media coverage of these cases are subordinated to propaganda objectives, justifying the political leadership's declared goals for its aggression against Ukraine. Significant financial resources are allocated by the Russian authorities for the implementation of information support for prosecution.

This conclusion confirms the third hypothesis of the research and is explained in more detail by the results of the analysis presented in **Section IV**.

The media analysis carried out in the course of the research was based on **15 cases** selected from an initial set of 600 publicly known cases (taking into account the qualifications of the cases, the territory of criminal prosecution, the level of coverage in the Russian-controlled media, etc.). In total, approximately **150 publications** were analysed, an average of 10 per case. Statistical analysis shows that roughly 30% of cases receive significant propaganda coverage. Each publication was analysed according to several criteria: type of material (investigative, accusatory), tone (neutral, balanced, sensational, speculative) and presence of discrimination or bias (reproduction of negative stereotypes, reinforcement of hostile narrative about Ukraine or Ukrainians).

For the purpose of analysis, all selected cases were divided into three main groups: **ordinary** (focused on local narratives, using low-budget local media to create and support the authorities' accusatory narratives), **resourceful** (involving individuals of higher symbolic or informational "significance" for the Russian Federation, with the involvement of national media to create a resonance and present the accused as a threat to Russian security) and **public** cases (cases were used in the domestic and international information space, with the involvement of the largest resources for long-term coverage aimed at discrediting the accused Ukrainians and strengthening the state narrative). Almost all cases were covered before, during and after the trial.

The Russian media played a key role in organising defamatory campaigns against Ukrainian civilians and prisoners of war who were on trial. The Russian media often portrayed the defendants as "terrorists", "extremists", "murderers of innocent civilians", etc. Examples of negative narratives about the persecuted persons include the following: "*...Another Ukrainian was found in Crimea, imitating the existence of an anti-Russian underground on the peninsula...*"; or "*...The animal was sent to a pre-trial detention centre for two months, a criminal case was opened, he will be imprisoned for three years...*", etc.

Out of more than **70 media outlets** identified and involved in the coverage of the selected cases, a limited number of key players play a dominant role, including **RIA**, **RBC**, **RT**, **TASS** and **Kommersant**, which confirms their active role in shaping the public negative narrative and

perception of the policy policy of judicial persecution of Ukrainian civilians and prisoners of war. In general, the analysis of the media network covering such trials shows that these media outlets are predominantly under the control of the Russian authorities. This network functions not only as a means of disseminating information, but also as an instrument of political control, in particular in shaping public perceptions of the war against Ukraine per the narratives of Russian state propaganda.

The total estimated financial cost of all 15 cases selected for media analysis could reach $3 million, including all related costs (content creation, production, distribution, etc.), which indirectly highlights the state's dependence on the media as a tool for managing public opinion and political control.

Conclusion 4.

As one of the measures to suppress resistance to the occupation and to justify the Russian authorities' stated goals of unleashing aggression against Ukraine, the Russian authorities have developed and implemented the policy of judicial persecution of Ukrainian civilians and prisoners of war. This policy is implemented through a set of regulatory, institutional, financial and information tools. Representatives of the FSB, Russian law enforcement agencies and courts are involved in the implementation of this policy. The policy of judicial persecution is based on political and discriminatory motives and accompanied by acts that have signs of international crimes (war crimes and crimes against humanity). Thousands of prisoners of war and civilian citizens of Ukraine, mostly from the occupied territories, are direct victims of this policy of judicial persecution by the Russian Federation.

This conclusion confirms the fourth hypothesis of the research and is explained in more detail by the results of the analysis presented in **Sections III, V-VI**.

The general analysis of all the data studied indicates that the Russian authorities are purposefully developing and implementing the policy of judicial persecution of detained Ukrainian civilians and prisoners of war within the framework of initiated criminal cases against them. **Policy direction and coordination** are determined by the political leadership (including the leadership of law enforcement agencies), and implementation is mainly ensured by representatives of law enforcement agencies (FSB, IC), prosecutors, and the judiciary in Russia and the territories occupied by it.

The goal of this policy is subordinated to the goals of Russia's military occupation of Ukrainian territories: delegitimisation of Ukrainian sovereignty, suppression of Ukrainian resistance to the occupation and use of fear of persecution as a tool to control and subjugate the population of the occupied territories. They have been officially declared by the Russian political leadership, including the President, the Security Council and other senior political figures of the RF.

The focus of the policy is on civilians (activists, local leaders and journalists accused of collaborating with the Ukrainian authorities or attempting to resist the occupation or promoting narratives of Ukrainian identity), whose persecution within the framework of a massive and systematic attack on civilians aimed at implementing state policy constitutes a crime against

humanity under Article 7 of the RS ICC. This policy also focuses on Ukrainian **military personnel** (persecuted for their actual participation in the armed conflict under the pretext of accusations of membership in banned organisations, terrorism, etc., their status under IHL is largely ignored by Russian courts), whose denial of the right to a fair trial constitutes **a war crime** under Article 8(a)(vi) of the RS ICC.

Implementation of the policy was organised during 2022 and is being ensured by:

- **Regulatory** instruments (through the adoption of comprehensive legal measures, including legislation aimed directly at opposition to war and dissent);
- **Institutional** instruments (establishment of judicial and law enforcement institutions in the TOT, strengthening of staffing with hundreds of investigators and prosecutors, which was also carried out by presidential decrees, etc;)
- **Informational** instruments (promotion of "denazification" as one of the goals of the attack on Ukraine, which in practice was directed against Ukrainians who resisted the occupation, ensuring the systematic demonisation of persecuted persons in the state media, labelling them "terrorists", "enemies", "Nazis", etc. at the pre-trial and all stages of the judicial processes);
- **Financial** instruments for the state to ensure the operation of the repressive apparatus, media support, etc.

According to open source data, since the end of 2022, a minimum of **200 civilians** and more than **400 military personnel** have been persecuted under this policy (the actual number of victims may be 5-6 thousand).

The implementation of the policy of judicial persecution took place in **stages**, reflecting its integration into a broader strategy of control over the occupied territories. Thus, in 2022, Russia focused its efforts on creating mechanisms for monitoring, arrests and subsequent convictions, and in 2023, on increasing the number of judicial processes and sentences.

The results of the research demonstrated **patterns of discrimination and bias against persecuted persons**: through the analysis of judgments in this category of cases; studying the differences in the degree of punishment in sentences for similar qualifications of crimes in comparison of cases from 2010-2020 and 2022-2024; studying the selective application of laws to the persecution of certain groups. Thus, in the period 2022-2024, there is a dramatic increase in the demands for punishment from prosecutors **by 300%** compared to cases with similar qualifications in 2010-2020. The analysed case law is characterised by increased discrimination, bias, political statements and the inclusion of irrelevant information about the persecuted persons in the judgments in the context of their nationality, civic position, war events, etc.

Conclusion 5.

The results of the research demonstrate systemic problems with the ability of Russian-controlled courts to ensure fair justice in cases against Ukrainian civilians and prisoners of war. The denial of a fair trial and the development of Russia's policy of judicial persecution together have the elements of international crimes: war crimes and crimes of persecution (part of a crime against humanity). Since the beginning of the Russian aggression, Ukrainian civilians and prisoners of war have been denied fair justice on a large-scale and systematic basis, in particular due to the degradation of the judicial system and legislation in all territories controlled by the RF. Judicial processes are used as a tool to persecute civilians who oppose the occupation or are perceived as opponents of the Russian regime. The range of actors performing various elements of the objective side of the crime includes both low-level perpetrators (Russian investigators, prosecutors and judges) and senior perpetrators (the President of the RF, heads of the FSB and the Investigative Committee, the Prosecutor General, the Chief Justice of the Supreme Court of the RF, etc.)

This conclusion confirms the second hypothesis of the research and is explained in more detail by the results of the legal analysis presented in **Section VI**.

The research identified several patterns and trends that confirm the existence of **a systematic and widespread practice of abuse of the judicial processes** as a tactic of persecution of Ukrainian civilians and prisoners of war by the RF. Numerous violations of fair trial guarantees in the cases studied can be divided into violations of institutional guarantees of justice (absence of independence and impartiality of the judiciary) and serious procedural violations during individual judicial processes.

The Russian courts legitimise the Russian Federation's policy aimed at **suppressing any form of dissent**, real or imagined resistance to the occupation. An analysis of individual judicial processes shows that the courts demonstrate bias in favour of the prosecution, fail to carry out proper legal analysis and evaluate evidence in specific cases, demonstrate a dismissive attitude towards defendants, systematically reject reasonable defence motions, and consistently rule in favour of the prosecution. In addition, **the courts in the occupied territories are established in violation of IHL**, as they function illegally. The Russian **judicial system** under the current political regime **has undergone significant degradation**, resembling key aspects of *the Justice Case* after World War II. This degradation is manifested in the use of the judicial system and law as a tool to persecute Ukrainian civilians and prisoners of war who resist or are perceived to be likely to resist the Russian regime. In fact, the RF has turned the so-called anti-terrorism, anti-extremism and "discrediting the SVO" legislation into a "weapon", and is massively incriminating crimes of "espionage", "high treason" and others within the framework of prosecution.

Ukrainian prisoners of war are subjected to particularly harsh trials, often presented to the public as "dangerous Nazis", and falsely accused of serious crimes, which is aimed at manipulating public opinion to support the so-called "SVO".

The research also provides evidence that the Russian Federation and the occupation authorities, in particular law enforcement agencies and courts, deliberately **target Ukrainian civilians** in the TOT who are considered "hostile", "dangerous" or "disloyal" to the Russian regime/occupation authorities, subjecting them to sham trials combined with illegal detention, torture

and other forms of inhuman treatment. In court, they are falsely accused of crimes they did not commit, denied the opportunity to present or examine evidence, prevented from choosing a lawyer, and court hearings are often held behind closed doors without public access, which further distorts any semblance of fairness or justice.

Therefore, the denial of the right to a fair trial constitutes both **a war crime under Article 8(a)(vi) of the RS** and persecution as a separate category of **crime against humanity** (against civilians) under Article 7(1)(h) of the RS. The evidence base is extremely extensive and includes judgments and procedural documents, eyewitness testimonies, results of monitoring of judicial processes (mostly cases in Crimea), Russian legislation and regulations, and open sources of information.

Among **the range of actors** involved in the various elements of the objective side of the crime includes **low-level perpetrators, mid-level perpetrators, as well as senior perpetrators** who deliberately control, implement and condone the policy of judicial persecution of Ukrainian civilians and prisoners of war.

In addition to the direct perpetrators of the crime, the results of the research demonstrate a multi-level structure of actors involved in the commission of these crimes, namely **accomplices** who facilitate the commission of these crimes (e.g., Russian deputies who pass laws used as a tool of persecution; Russian media representatives and "influencers" who conduct defamation campaigns against Ukrainian civilians and prisoners of war, portraying them as "traitors", "spies", "terrorists" or "extremists", etc.)

SECTION I.

ESTABLISHMENT OF THE RUSSIAN LEGAL FRAMEWORK, DEVELOPMENT OF THE JUDICIAL AND LAW ENFORCEMENT AGENCIES AND THEIR IMPACT ON THE POLICY OF JUDICIAL PERSECUTION

Some of the occupied Ukrainian territories were illegally annexed by Russia almost immediately after it established de facto control over them, such as the Autonomous Republic of Crimea and the city of Sevastopol in 2014[14], separate areas of Zaporizhzhia and Kherson regions in 2022.[15] The other part, as separate Russian-occupied areas of the Donetsk and Luhansk regions (the so-called "DPR" and "LPR"), was annexed in 2022, after having been under the effective control of the Russian Federation for a long time (at least since May 2014)[16].

Although eight years have passed between the events of the beginning of the occupation of the Crimean peninsula in 2014 and the full-scale invasion of Russia in February 2022, the annexation of the Russian-occupied territories of Ukraine followed similar scenarios, for which the following common stages can be identified:

1. Establishing actual control over the territory as a result of a military operation;
2. Organising fake "referendums" to declare the "independence" of certain territories from Ukraine;
3. The conclusion of the treaty between the RF and these "independent entities";
4. The destruction of Ukraine's legal system and the expansion of Russian national legislation to the occupied territories;

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14 Federal Constitutional Law of 21.03.2014 No. 6-FCL "On the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Entities within the Russian Federation - the Republic of Crimea and the City of Federal Significance Sevastopol".

15 Certain districts of the Zaporizhzhia and Kherson regions came under the de facto control of Russian troops during the full-scale Russian invasion in 2022. These territories were "annexed" to the RF on the basis of Federal Constitutional Laws No. 7 and 8-FCL of 04.10.2022, respectively.

16 Legal overview of the judgment of the Grand Chamber of the ECtHR in the case of Ukraine and the Netherlands v. Russia (applications No. 43800/14, 8019/16 and 28525/20) of 30 November. 2022: "The Court found, on the basis of a large body of evidence, that Russia had effective control over all the territories held by the separatists from 11 May 2014, given its military presence in the East of Ukraine and the decisive degree of influence it exercised over those territories through its military, political and economic support to the DPR and LPR". URL: https://hudoc.echr.coe.int/eng?i=002-13989
These territories were unlawfully annexed by Russia on the basis of Federal Constitutional Laws No. 5 and 6-FCL of 04.10.2022.

5. Establishing a transitional period[17], during which the so-called "integration" of the occupied territories into the Russian state system was to take place, in particular by establishing Russian state authorities (including courts, prosecutors, law enforcement and security agencies, etc.).

Infographics 1

Territories of Ukraine occupied by the Russian Federation

LEGEND

Territories that were occupied in 2014: Autonomous Republic of Crimea, the city of Sevastopol, certain areas of Donetsk and Luhansk regions (territories controlled by the so-called "DPR" and "LPR"

Occupied territories of Ukraine

- AR of Crimea
- Sevastopol city
- Certain districts of Donetsk region
- Certain districts of Zaporizhzhia region
- Certain districts of Luhansk region
- Certain districts of Kherson region

EXPANSION OF LEGISLATION ON CRIMINAL LIABILITY

The dismantling of Ukraine's legal system and the expansion of Russian legislation to the occupied territories took place based on the so-called "laws on the adoption and formation of new entities within the RF"[18]. These laws established a transitional period during which the Russian authorities attempted to harmonise their legislation with the "legal systems" of the self-proclaimed quasi-state entities in the Ukrainian territories occupied by Russia. Each of these laws stipulated that Russian legislation would come into force upon the "accession" of the respective territories to the federation. This moment was determined by the date of signing of "international treaties" between the Russian Federation and the self-proclaimed "republics, regions and the

17 For the occupied AR of Crimea and the city of Sevastopol, see Article 6 of the FCL of 21.03.2014 No. 6-FCL (transition period lasted until 01.01.2015); for other occupied territories, see Article 36 of the FCL of 04.10.2022 (transition period lasts until 01.01.2026). These laws state that during the "transitional period" "the issues of their integration into the economic, financial, credit and legal systems of the RF [and] into the system of state authorities of the RF are regulated".

18 A total of five such laws were adopted, see Paragraphs 14-16 above.

city of Sevastopol". For the Crimean peninsula, this date is 18 March 2014, and for the territories annexed as a result of Russia's full-scale invasion of Ukraine, it is 30 September 2022.

The expansion of legislation on criminal liability to the occupied territories had certain peculiarities. In 2014 and 2022, Russia adopted federal laws aimed at "regulating" the application of the provisions of the Criminal Code and the Criminal Procedure Code of the RF in the occupied territories.

TOT of the Autonomous Republic of Crimea and the city of Sevastopol[19]

Retroactive application of Russian criminal law

The criminality and punishability of acts committed in the territories of the "Republic of Crimea and the city of federal significance Sevastopol" before the so-called "accession" (i.e. before 18 March 2014) are determined based on the criminal legislation of the RF.

Expansion of the criminal procedure legislation of the RF

Criminal proceedings in the territories of the "Republic of Crimea and the city of federal significance Sevastopol" are conducted according to the rules established by the criminal procedure legislation of the RF. If the trial in a criminal case was initiated before 18 March 2014, it continues following the procedure established by the CPC of the RF.

Legitimisation of judgments made before the attempted annexation

The judgments that came into force in the territories of the "Republic of Crimea and the city of federal significance Sevastopol" before the specified date have the same legal force (including for the purposes of execution of criminal sentences) as judgments made in the territory of the Russian Federation.

Occupied areas of Donetsk, Luhansk, Zaporizhzhia and Kherson regions[20]

Retroactive application of Russian criminal law

The criminality and punishability of acts committed in the territories of the DPR, LPR, the Zaporizhzhia region and Kherson region before the so-called "accession" (i.e. before 30 September 2022) are determined based on the criminal legislation of the Russian Federation. Crimes committed before 30 September 2022 against the interests of the DPR and LPR are considered to be committed against the interests of the RF. Persons who committed these crimes while being "citizens" of the so-called DPR and LPR are treated as citizens of the RF for the purposes of criminal law.

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19 Federal Law "On the Application of the Provisions of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in the Territories of the Republic of Crimea and the City of Federal Significance Sevastopol" No. 91-FL of 05.05.2014.

20 Federal Law "On the Application of the Provisions of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in the Territories of the Donetsk People's Republic, Luhansk People's Republic, the Zaporizhzhia Region and Kherson Region", 31.07.2023, No. 395-FL.

Expansion of the criminal procedure legislation of the Russian Federation

Criminal proceedings in the territories of the DPR, LPR, the Zaporizhzhia region and Kherson region are conducted according to the rules established by the criminal procedure legislation of the RF. According to the practice of the Supreme Court of the Russian Federation, even if a criminal case was brought to court in accordance with the procedure provided for by the "criminal procedure legislation" of the self-proclaimed republics before their accession to the RF, the trial continues according to the procedure established by the CPC of the RF[21].

Legitimisation of judgments made before the attempted annexation

Judgments made in the territories of the "DPR", "LPR", "Zaporizhzhia" and "Kherson" regions before 30 September 2022, which have entered into force, have the same legal force (including for the purposes of enforcement of criminal sentences) as judgments made in the territory of the RF.

Legitimisation of quasi-entity investigative bodies

Until the formation of Russian investigative bodies in the occupied territories is completed, the relevant powers are authorised to be exercised by the investigative bodies that officially operated in the occupied "DPR", "LPR", "Zaporizhzhia region", and "Kherson region".

FORMATION OF THE JUDICIAL SYSTEM IN THE OCCUPIED TERRITORIES

General context

The formation and functioning of the Russian judicial system in part of the occupied territories of Ukraine became the subject of consideration by the ECtHR in the case of Ukraine v. Russia (re Crimea)[22]. In this case, the Court recognised that the expansion of Russian national legislation to the territory of the Crimean peninsula was a violation of IHL, in particular, the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons (1949). As a result, the ECtHR concluded that Russian legislation cannot be considered a "law" within the meaning of the European Convention on Human Rights, and any administrative or judicial practice based on it cannot be recognised as "lawful"[23]. Thus, the judicial system created by the RF in Crimea does not meet the criteria of legality, and therefore cannot be considered "established by law"[24].

Since the development of the Russian judicial system in all the occupied territories of Ukraine followed a similar scenario, the ECtHR's findings in this case can serve as a basis for a legal assessment of the activities of Russian "courts" in other occupied territories. Moreover,

21 See the ruling of the Supreme Court of the RF of 11.04.2024 in case No. 128-UDP24-1-K2.

22 ECtHR judgment in the inter-state case Ukraine v. Russia (re Crimea) (combined applications No. 20958/14 and 38334/18). URL: https://hudoc.echr.coe.int/eng?i=002-14347

23 See footnote No. 22, § 1019.

24 See footnote No. 22, §§ 944–946.

when expanding the occupation zone in 2022 and attempting to annex even more Ukrainian territories, Russia undoubtedly relied on its "practice and experience" gained during the occupation of the Crimean peninsula in 2014.

At the same time, it should not be forgotten that this process had certain contextual peculiarities of the occupation of Ukrainian territories. For example, in the case of the occupation of the Crimean peninsula, the Russian authorities sought to integrate it into their legal framework as quickly as possible. For that purpose, it adopted the necessary legislation in a short time, which made it possible to quickly form a "judicial system" that began to function under Russian law at the end of 2014, i.e. within a few months after the seizure of the territories.

In contrast, the territories of the occupied districts of the Donetsk and Luhansk regions experienced a "creeping" annexation, which took place in several stages, from the occupation of the territories through proxy forces (armed groups of the so-called "DPR" and "LPR") in April-May 2014, to Russia's recognition of the independence of these quasi-republics in February 2022, and to their official "accession" to the RF in September 2022. From May 2014 to September 2022, the so-called "republics" formally had their own legislation, authorities, including courts and the legal profession. Accordingly, the adaptation and integration of these territories into the Russian Federation had certain differences[25].

Certain areas of Kherson and Zaporizhia regions were occupied during the large-scale invasion of Ukraine by the Russian Federation in 2022. During March-April, so-called "military-civilian administrations" (in fact, occupation administrations of the Russian Federation) were established in these territories, which, together with the military command of the Russian Armed Forces, were the authorities in these territories. These "administrations" issued their "decrees" and "orders", by which, in particular, they extended the effect of Russian legislation to the territories they controlled, created temporary "authorities" and generally prepared for the "accession" of the regions to the Russian Federation. At the end of September 2022, after holding fictitious "referendums", the Russian Federation attempted to illegally annex these territories. With the beginning of the Russian occupation, the legal system of Ukraine and Ukrainian state institutions, in particular the judicial bodies that operated in these territories, were effectively destroyed by the occupying authorities. According to Ukrainian law enforcement agencies, based on decisions of the Russian military command in April 2022, an "emergency commission for resolving urgent issues" was established in the occupied territories of the Kherson region, which actually took over the powers of the judicial authorities. The aforementioned commission, among other things, resolved issues regarding the change or extension of the terms of detention of persons who were held during the occupation in the Kherson city pre-trial detention center, recognized sentences as

25 For more information on the formation of the "judicial system", "judicial staff", structure and peculiarities of "justice" in the occupied territories of the Donetsk and Luhansk regions in 2014-2022 (i.e. before the attempted annexation):
Office of the United Nations High Commissioner for Human Rights. Report "Human rights in the administration of justice in conflict-related criminal cases in Ukraine (April 2014 - April 2020)". URL: https://ukraine.ohchr.org/uk/human-rights-administration-justice-conflict-related-criminal-cases-UA
Research of the Centre of Policy and Legal Reform "Judiciary" in certain districts of the East of Ukraine (analytical review of the situation in the occupied Donbas in 2014-2018). URL: https://www.slideshare.net/CentrePravo/20142018-140144909
Quasi-legal system in the occupied territories: implementation and dissemination of practices. Kyiv, 2022. Media Initiative for Human Rights. pp. 15-17. URL: https://mipl.org.ua/wp-content/uploads/2022/12/kvazipravova-systema_ua_interactive-1-1.pdf

having entered into legal force, made decisions on sending persons to serve their sentences, etc[26].

This section of the research analyses and demonstrates the main stages and key patterns of the formation of the Russian justice system in the occupied territories, which Russia attempted to annex from 2014 to 2022.

Judicial proceedings in the occupied territories during the "transitional period"

The legal framework for the establishment of courts in the occupied territories and the specifics of their functioning during the "transitional period" were determined based on the provisions of the previously mentioned "laws on the adoption and formation of new subjects within the RF". Although a separate federal law was adopted for each occupied territory, the main provisions of the formation and functioning of the judicial system at this stage were generally the same for all occupied territories and were as follows:

- Courts in the TOT are established according to the legislation on the judicial system of the RF and based on the administrative-territorial division of the relevant territory that existed at the time of the attempted annexation;
- Prior to the establishment of these courts, justice was administered on behalf of the RF in the TOT by the courts that were operating in this territory on the day of the attempted annexation. During their functioning, these courts are temporarily integrated into the judicial system of the Russian Federation (for example, their higher judicial instances become the respective appellate and cassation courts, as well as the Supreme Court of the Russian Federation).
- Persons who held the positions of judges in these courts continue to administer justice until the establishment and operation of Russian courts in these territories, but only if they have Russian citizenship[27].

Establishment of courts in the occupied territories

The direct establishment of Russian courts in the occupied territories was based on separate federal laws adopted by the State Duma and signed by the President of the Russian

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26 See more details in the reports of suspicion against citizens of Ukraine who held positions in the occupation authorities and participated in the activities of the "military-civilian administration of the Kherson region", according to the law enforcement agencies of Ukraine, published on the official website of the Kherson regional prosecutor's office:
Regarding citizen Bulyuk V.V. URL: https://kherson.gp.gov.ua/ua/documents.html?_m=fslib&_t=fsfile&_c=download&file_id=247113
Regarding citizen Semenchev I.I. URL: https://kherson.gp.gov.ua/ua/documents.html?_m=fslib&_t=fsfile&_c=download&file_id=247105
Regarding citizen Mytrofanova T.K. URL: https://kherson.gp.gov.ua/ua/documents.html?_m=fslib&_t=fsfile&_c=download&file_id=247114
The reports of suspicion refer to the participation of the above-mentioned persons in the activities of the "Emergency Commission", which was created on the basis of the order of the "military commandant of the Kherson region" No. 26 dated April 13, 2022 "On the creation of an Emergency Commission to resolve urgent issues".

27 It is important to note that these persons did not automatically become judges under Russian law, but had the status of "persons holding the positions of judges".

Federation shortly after the attempted annexation[28]. As a result of the adoption of these laws, the following were created in the occupied territories: (1) Federal courts of general jurisdiction; (2) Federal arbitration courts; (3) Magistrate courts (courts of general jurisdiction of the subjects of the RF). In addition, by these laws, the RF adapted its judicial system to the newly created "courts". Thus, among other things, the jurisdiction of the relevant appellate and cassation courts, as well as military courts, was extended to the occupied territories. Further on, the authors will focus only on the federal courts of general jurisdiction, as these courts are responsible for hearing criminal cases that are the subject of this research.

The adoption of federal laws on the establishment of courts did not automatically mean that they would start functioning, as this had to be preceded by the selection and appointment of judges according to Russian law. The Plenum of the Supreme Court of the Russian Federation had to determine the date of the beginning of the operation of these courts, which was eventually done[29]. Prior to this decision, the courts that existed at the time of the attempted annexation continued to function in the occupied territory.

Taking into account the laws adopted after the attempted annexation, the system of federal courts of general jurisdiction of the RF that were created and extended their jurisdiction over the occupied Ukrainian territory can be described as follows.

City, district and city-regional courts

Courts of first instance for civil, criminal and administrative cases and for appellate review of judgments rendered by justices of the peace acting in the territory within their jurisdiction. These courts hear most criminal cases, except for those that fall within the jurisdiction of higher courts.

It is worth noting that in 2023, the Russian Federation created several city, district and city-district "courts", whose jurisdiction formally covers the territory of certain districts of the Donetsk and Kherson regions that are not under its actual control. Thus, following the law on the establishment of Russian courts in the territory of the so-called "DPR", among other things, "Kramatorsk, Kostiantynivka, Krasnoarmiisk, Dymytriv and Sloviansk city courts" were established[30], although the cities of Kramatorsk, Kostiantynivka, Pokrovsk (formerly Krasnoarmiisk), Myrnohrad (formerly Dymytriv) and Sloviansk are under Ukrainian control[31]. Similarly, per the law on the establishment of courts in the territory of the "Kherson region", the "Bilozerka and Beryslav district courts", the "Velykooleksandrivka interdistrict court", and the "Kherson city court" were established (however, the cities of Bilozerka, Beryslav, Velykooleksandrivka inter-

28 The "legal basis" for the establishment of courts in the occupied territory of the AR of Crimea and the city of Sevastopol was the Federal Law of 23.06.2014 No. 154-FL "On the Establishment of Courts of the Russian Federation in the Territories of the Republic of Crimea and the City of Federal Significance Sevastopol and Amendments to Certain Legislative Acts of the Russian Federation". In the other occupied territories (the so-called "DPR", "LPR", the "Zaporizhzhia" and "Kherson" regions of the RF), the judicial system was established on the basis of similar federal laws of 03.04.2023 No. 85-FL, No. 86-FL, No. 87-FL and No. 88-FL respectively.

29 See below in this section.

30 Federal Law "On the Establishment of Courts of the Russian Federation in the Territory of the Donetsk People's Republic and on Amendments to Certain Legislative Acts of the Russian Federation" of 03.04.2023 No. 85-FL.

31 For more details, see "Justice behind the Tanks: Who's Who in the Courts of First Instance in the Occupied Part of Donetsk Region". The Human Rights Centre ZMINA. URL: https://zmina.info/articles/pravosuddya-slidom-za-tankamy-hto-ye-hto-v-sudah-pershoyi-instanciyi-na-okupovanij-chastyni-doneczkoyi-oblasti/

district court and Kherson are under the control of Ukraine)[32]. Information on the location and actual functioning of these "courts" is not available in open sources. At the same time, there is publicly available information that the HQCJ of the RF held a competition to fill positions in these courts[33], and the President of the RF issued decrees on the appointment of judges to these courts[34].

Supreme courts of the republics, regional courts, courts of cities of federal significance

These courts are higher in relation to city, district and city-district courts operating in the territory of the respective constituent entity of the RF and act as courts of appeal against judgments issued by the aforementioned courts.

In cases provided for by Russian legislation, they can hear cases as courts of first instance, for example, in criminal cases related to the commission of such offences as banditry (Article 209 of the CC of the RF), public calls for extremist activities (Article 280 of the CC of the RF), public actions aimed at discrediting the RF Armed Forces (Article 280.3 of the CC of the RF), calls for the imposition of foreign sanctions against the RF (Article 284.2 of the CC of the RF), espionage (Article 276 of the CC of the RF), sabotage (Article 281 of the CC of the RF), treason (Article 275 of the CC of the RF), forcible seizure or retention of power (Article 278 of the CC of the RF), organisation of an illegal armed formation or participation in it (Article 208 of the CC of the RF), illegal trafficking in explosives or devices (Article 222.1 of the CC of the RF), use of prohibited means and methods of warfare (Article 356 of the CC of the RF), mercenarism (Article 359 of the CC of the RF), and others.

Since each occupied territory was granted a certain status of a "subject of the RF" (republic, region or city of federal significance), the relevant judicial authorities of this level were established there, namely:

Supreme Courts of the Republics

- "Supreme Court of the DPR" (Donetsk)
- "Supreme Court of the LPR" (Luhansk)
- "Supreme Court of the Republic of Crimea" (Simferopol).

Regional courts

- "Zaporizhzhia Regional Court" (Melitopol)
- "Kherson Regional Court" (Henichesk)

Courts of cities of federal significance

- "Sevastopol City Court" (Sevastopol)

32 Federal Law "On the Establishment of Courts of the Russian Federation in the Kherson Region and on Amendments to Certain Legislative Acts of the Russian Federation" No. 88-FL dated 03.04.2023.

33 HQCJ opens vacancies in DPR courts. 14.08.2024. Pravo.ru. URL: https://pravo.ru/news/254623/
HQCJ posts new vacancies for judges in the Donetsk People's Republic, Luhansk People's Republic, the Kherson and Zaporizhzhia regions. Pravo.ru. URL: https://pravo.ru/news/246714/

34 See, e.g., Decree of the President of the RF "On the Appointment of Judges of Federal Courts and Representatives of the President of the Russian Federation in the Qualification Colleges of Judges of the Subjects of the Russian Federation" of 22.07.2024 No. 614. URL: http://www.kremlin.ru/acts/bank/50876

Military courts

Military courts are courts of general jurisdiction that hear civil, administrative and criminal cases in cases established by Russian law. They function based on a separate federal law[35] and are intended primarily to conduct judicial processes in cases involving members of the armed forces and other military formations of the RF. The system of military courts consists of garrison and district (naval) military courts and includes its own (military) appellate and cassation courts[36].

One garrison military court was established in the occupied territory for each "subject of the RF". In addition, the jurisdiction of the Southern District Military Court of the Russian Federation, located in Rostov-on-Don, Russia, was extended to the occupied districts of Zaporizhzhia, Kherson, Donetsk, Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol[37].

The powers of military courts in criminal cases are detailed in the CPC of the RF. For example, district (naval) military courts, regardless of whether the subject of the crime is a civilian or a military officer, are jurisdictional in criminal cases related to the commission of such offences as a terrorist act (Article 205 of the CC of the RF) and assistance to terrorist activities (Article 205.1 of the CC of the RF), public calls to commit terrorist activities, public justification of terrorism or propaganda of terrorism (Article 205.2 of the CC of the RF), training for the purpose of carrying out terrorist activities (Article 205.3 of the CC of the RF), organisation of a terrorist community and participation in it (Article 205.4 of the CC of the RF), organisation of a terrorist organisation and participation in its activities (Article 205.5 of the CC of the RF), an act of international terrorism (Article 361 of the CC of the RF), forcible seizure and retention of power of the RF, if this offence is related to terrorist activities (Article 278 of the CC of the RF) and others[38].

Although any Russian citizen who meets the general requirements for a judicial candidate may become a military court judge, officers and citizens in the reserve or retired military who hold the rank of officer have a preferential right to be appointed.

These military courts should not be confused with the military courts established in the occupied territory in accordance with the Geneva Convention relative to the Protection of Civilian Persons[39].

Appellate courts of general jurisdiction

These courts are higher courts than the supreme courts of the republics, regional courts, courts of federal cities, courts of autonomous regions, and courts of autonomous districts operating in the territory of the respective judicial district of appeal.

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35 The Federal Constitutional Law "On Military Courts of the Russian Federation" of 23 June 1999, No. 1-FCL.

36 See more details in Table 1.1. below.

37 See Annex 1. Infographic "Jurisdiction of the Southern District Military Court" and Article 1 of the Federal Law "On the Territorial Jurisdiction of District (Naval) Military Courts" dated 27.12.2009 No. 345-FZ.

38 Article 31 of the CPC of the RF.

39 Article 66 IV of the GC provides that the Occupying Power may transfer the accused to its non-political military courts, which are properly organised, provided they are located in the occupied country. In the commentary to this Article, "military courts" are defined as courts whose members have military status and are subordinate to the military authorities. Jean Pictet (ed.), Commentary on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, ICRC, Geneva, 1958. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-66/commentary/1958?activeTab

The First Court of Appeal of General Jurisdiction, which operates in the occupied territories of certain districts of the Donetsk, Luhansk, Zaporizhzhia and Kherson regions, is the court of appeal for reviewing decisions of the courts of general jurisdiction. The Third Court of Appeal of General Jurisdiction reviews the decisions of the occupation courts operating in the ARC and the city of Sevastopol[40].

Cassation courts of general jurisdiction

These courts are higher courts than federal courts of general jurisdiction and justices of the peace operating in the territory of the respective judicial cassation district.

The court of cassation for review of decisions of courts located in the occupied territories of certain districts of the Donetsk, Luhansk, Zaporizhzhia and Kherson regions is the Second Court of Cassation of General Jurisdiction located in Moscow, the Russian Federation. As for the occupation courts located in the Autonomous Republic of Crimea and the city of Sevastopol, the Fourth Court of Cassation of General Jurisdiction located in Krasnodar, the Russian Federation, is designated as the court of cassation[41].

Supreme Court of the Russian Federation

The Supreme Court of the RF is the highest judicial body in criminal, civil, administrative and other cases within the jurisdiction of courts of general jurisdiction. In cases provided for by law, it exercises judicial supervision over the activities of these courts and provides clarification on issues of judicial practice[42].

Constitutional Court of the Russian Federation

The Constitutional Court is not a part of the system of Russian courts of general jurisdiction. However, it is the highest judicial body of constitutional control in the RF, exercising judicial power through constitutional proceedings. The decisions of the Constitutional Court of the Russian Federation are binding throughout the country for all representative, executive and judicial bodies of state power, local self-government bodies, enterprises, institutions, organisations, officials, citizens and their associations[43].

40 See Annex 1. Infographic "Jurisdiction of the appellate and cassation courts of general jurisdiction of the Russian Federation".

41 See footnote No. 40.

42 Article 126 of the Constitution of the RF. See more on the competence and procedure for the formation of the Supreme Court of the RF in the Federal Constitutional Law of 05.02.2014 No. 3-FCL "On the Supreme Court of the Russian Federation".

43 Article 118 of the Constitution of the RF, Article 6 of the Federal Constitutional Law of 21.07.1994 No. 1-FCL "On the Constitutional Court of the Russian Federation".

Table 1.1. Federal courts of the Russian Federation established in the TOT as of 2025

Autonomous Republic of Crimea[44] Total number of courts established – 27 Commencement of operations – 26 December 2014[45]			
Supreme Court of the Republic of Crimea	Arbitration Court of the Republic of Crimea	24 city, district and interdistrict courts	Crimean garrison military court
The city of Sevastopol[46] Total number of courts established – 7 Commencement of operations – 26 December 2014[47]			
Sevastopol City Court	Arbitration Court of Sevastopol	4 district courts	Sevastopol garrison military court
Occupied districts of Luhansk region Total number of courts established – 34 Commencement of operations – 21 September 2023[48]			
Supreme Court of the "LPR"	Arbitration Court of the "LPR"	31 city, district and interdistrict courts	Luhansk garrison military court
Occupied districts of the Donetsk region Total number of courts established – 43 Commencement of operations – 21 September 2023[49]			
Supreme Court of the "DPR	Arbitration Court of the "DPR"	39 city, district and interdistrict courts	Donetsk garrison military court
Occupied districts of the Zaporizhzhia region Total number of courts established – 8 Commencement of operations – 21 September 2023[50]			
Zaporizhzhia Regional Court	Arbitration Court of the Zaporizhzhia region	5 city, district and interdistrict courts	Zaporizhzhia garrison military court

44 For more information on the formation of the judicial system in the occupied territory of the Crimean peninsula, see "Crimea beyond rules. Thematic review of the human rights situation under occupation". – Issue No. 5 – Occupied Justice (Part 1) / Edited by S. Zaiets, R. Martynovskyi, D. Svyrydova – Kyiv, 2019. URL: https://www.helsinki.org.ua/wp-content/uploads/2020/01/TO5_fin_.pdf
Mission of the President of Ukraine in the Autonomous Republic of Crimea. Information note on the so-called "judicial system" in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. URL: https://ppu.gov.ua/documents/informatsiyna-dovidka-shchodo-t-zv-sudovoi-systemy-na-tymchasovo-okupovaniy-terytorii-avtonomnoi-respubliky-krym-ta-mista-sevastopolia/

45 Resolution of the Plenum of the Supreme Court of the RF of 23 December 2014 No. 21 "On the Day of Commencement of the Operation of Federal Courts in the Territories of the Republic of Crimea and the City of Federal Significance Sevastopol".

46 See footnote No. 45.

47 See footnote No. 45.

48 Resolution of the Plenum of the Supreme Court of the RF of 19 September 2023 No. 30 "On the day of the commencement of the activities of federal courts in the territory of the Luhansk People's Republic".

49 Resolution of the Plenum of the Supreme Court of the RF of 19 September 2023 No. 29 "On the day of the commencement of the activities of federal courts in the territory of the Donetsk People's Republic".

50 Resolution of the Plenum of the Supreme Court of the RF of 19 September 2023 No. 31 "On the Day of Commencement of the Operation of Federal Courts in the Territory of the Zaporizhzhia Region".

Occupied districts of the Kherson region Total number of courts established – 16 Commencement of operations – 21 September 2023[51]			
Kherson Regional Court	Arbitration Court of the Republic of Crimea	13 city, district and interdistrict courts	Kherson garrison military court

Selection and appointment of judges[52]

The procedure for selecting candidates for appointment as judges in the established federal courts of the Russian Federation in the occupied territories was determined based on special federal laws adopted after the attempted annexation[53]. These laws provided for a competitive selection procedure for candidates, which was entrusted to the HQCJ of the RF during the "transitional period". The need to adopt these laws was caused by the fact that, according to the Russian legislation on the status of judges, the issue of taking exams and issuing opinions on recommendations for filling vacant judicial positions was within the competence of regional bodies of the judicial community, which could be formed only from persons with the status of judge. However, those Ukrainian judges who sided with the Russian Federation during the occupation, as well as judges of the so-called DPR and LPR, did not have the status of a judge and were referred to as "citizens occupying judicial positions". Accordingly, they could not form regional bodies of the judicial community in the occupied territories until they acquired the status of a judge. For the same reason, it was the HQCJ of the RF that announced and conducted competitions to fill vacant positions of court chairpersons, their deputies and judges during the "transitional period"[54].

A key condition for candidates for judicial positions was the mandatory acquisition of Russian citizenship and renunciation of Ukrainian citizenship. In addition, these laws provided for a special provision according to which "citizens occupying judicial positions" in the

51 Resolution of the Plenum of the Supreme Court of the RF of 19 September 2023 No. 32 "On the Day of Commencement of the Operation of Federal Courts in the Kherson Region".

52 For more information on the peculiarities of the selection and appointment of judges in the occupied territories, as well as the characteristics of the selected "judges", see, in particular, the following sources:
Report of the International Group of Experts "Crimean Process: observance of fair trial standards in politically motivated cases", 2018, p. 44-45. URL: https://zmina.ua/publication/krymskyj-proczes-problemy-dotrymannya-standartiv-spravedlyvogo-pravosuddya-u-politychno-vmotyvovanyh-spravah/
Winds of change: who is now administering "supreme" justice in the occupied territory of the Donetsk region. The Human Rights Centre ZMINA. URL: https://zmina.info/articles/viter-zmin-hto-zaraz-zdijsnyuye-verhovne-pravosuddya-na-okupovanij-terytoriyi-doneczkoyi-oblasti/
"Justice behind the Tanks: Who's Who in the Courts of First Instance in the Occupied Part of the Donetsk Region". ZMINA Human Rights Centre. URL: https://zmina.info/articles/pravosuddya-slidom-za-tankamy-hto-ye-hto-v-sudah-pershoyi-instancziyi-na-okupovanij-chastyni-doneczkoyi-oblasti/
With such "judges", prosecutors are not needed: who went to work in the "courts" in the occupied Kherson region. The Human Rights Centre ZMINA. URL: https://zmina.info/articles/z-takymy-suddyamy-i-prokurory-ne-potribni-hto-pishov-praczyuvaty-do-sudiv-na-okupovanij-hersonshhyni/

53 Federal Law No. 156-FL of 23.06.2014 "On the Procedure for Selecting Candidates to the Initial Composition of Federal Courts Established in the Territories of the Republic of Crimea and the City of Federal Significance Sevastopol"; Federal Law No. 89-FL of 03.04. 2023 "On the procedure for selecting candidates for the initial composition of federal courts in the territory of the Donetsk People's Republic"; No. 90-FL of 03.04.2023 – in the territory of the "Luhansk People's Republic"; No. 91-FL of 03.04.2023 – in the territory of the "Zaporizhzhia region"; No. 92-FL of 03.04.2023 – in the territory of the "Kherson region".

54 "Crimea beyond rules. Thematic review of the human rights situation under occupation". – Issue 5 – Occupied Justice (Part 1) / Edited by S. Zaiets, R. Martynovskyi, D. Svyrydova – Kyiv, 2019, p. 77.

courts operating in the occupied territories on the day of the attempted annexation received a preemptive right to fill judicial positions in Russian courts. However, they could exercise this right only if they had Russian citizenship and met other requirements set by Russian law for judicial candidates.

In case of successful consideration of the applicants' applications, the HQCJ of the RF recommended them to the Chairperson of the Supreme Court of the RF, who, if the candidate was approved, submitted it to the President of the RF for consideration.

It is at this stage that the role of the President of the Russian Federation in shaping the judicial system in the occupied territories is clearly visible, since, according to Russian national legislation, it is the President who directly appoints judges of federal courts of general jurisdiction and generally participates in the formation of the highest judicial instances of the state[55].

For example, on 27 September 2023, the President of Russia signed Decree No. 723 "On the Appointment of Federal Court Judges and Representatives of the President of the Russian Federation in the Qualification Colleges of Judges of the Subjects of the Russian Federation"[56], which appointed federal court judges in the so-called DPR and LPR, as well as in the occupied territories of the Kherson and Zaporizhzhia regions. This decree also appointed judges to the courts in the occupied Crimean peninsula, but such appointments have been systematically made by the President of the Russian Federation since at least November 2014, after the attempted annexation[57].

Beginning of the functioning of the formed judicial system

As noted above, the commencement of the operation of federal courts in the occupied territories was linked to the decision of the Plenum of the Supreme Court of the Russian Federation, which determined the day on which the courts began to operate. This day was 26 December 2014 for the courts in the occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, and 21 September 2023 for the courts in the occupied territories of the Donetsk, Luhansk, Zaporizhzhia and Kherson regions of Ukraine.

It should be noted that, as of the date of commencement of operations of the courts, the process of appointing judges remained incomplete. Many occupation courts were left understaffed. For instance, at the time of the announcement of the commencement of operations of courts in the Ukrainian territories annexed by Russia in September 2022, a significant number of candidates (152 individuals) were still awaiting appointment to judicial positions[58].

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55 See Articles 83 and 128 of the Constitution of the RF.

56 See the Decree of the President of the Russian Federation dated September 27, 2023 No. 723 "On the appointment of judges of federal courts and representatives of the President of the Russian Federation in the qualification boards of judges of the subjects of the Russian Federation". URL: http://www.kremlin.ru/acts/bank/49834

57 See the Decree of the President of the Russian Federation of 19.12.2014 No. 786 "On the Appointment of Federal Court Judges". URL: http://www.kremlin.ru/acts/bank/39165

58 Courts in the new regions of Russia will start working on 21 September. TASS. URL: https://tass.ru/obschestvo/18783457

Table 1.2. The system of federal courts of general jurisdiction in the Russian Federation

Higher bodies of the justice system (judicial supervision)	**Supreme Court of the RF**				**Constitutional Court of the RF**
Cassation Courts	Cassation Court of general jurisdiction		Cassation Military Court		-
Appellate Courts	Appellate Courts of general jurisdiction	Judicial panels for criminal, civil, and administrative cases of the supreme courts of the republics, krai courts, regional courts, courts of cities of federal significance, the court of the autonomous region, and courts of autonomous districts	Appellate Military Court	District (naval) military courts	-
Courts of first instance	City, district and city-regional courts		Garrison military courts		-

DEVELOPMENT AND STATE OF THE BAR IN THE OCCUPIED TERRITORIES

One of the important components of ensuring fair justice is the right to defence and the opportunity to use legal aid. Therefore, in the context of the goal and objectives of the research, the issue of developing the bar in the occupied territories is also important.

The issue of regulating legal professional activity in the occupied territories was determined based on the repeatedly mentioned «laws on the admission and formation of new entities within the RF" referenced in this research[59]. It was based on these laws and the Russian Federation's legislation on the Bar[60] that the relevant bar chambers were established in the occupied territories during the "transitional period".

Prior to their establishment, the practice of law could be carried out by persons who, at the time of the attempted annexation, had the status of a lawyer and the right to practice law under the legislation of Ukraine, the "legislation" of the self-proclaimed republics of the "LPR" and

59 See Article 21 of the Federal Constitutional Law of 21.03.2014 No. 6-FCL and joint Article 33 of the Federal Constitutional Laws of 04.10.2022 No. 5, 6, 7, 8-FCL.

60 Federal Law "On Advocacy and the Bar in the Russian Federation" of 31.05.2002 No. 63-FL.

"DPR" or "acts of the military-civilian administration of the Kherson and Zaporizhzhia regions". However, this option was available only for a short period of time, as such chambers were established in Crimea in April-May 2014 and other occupied territories – until December 2022, i.e. a few months after the attempted annexation[61].

After the establishment of the above-mentioned bar chambers, lawyers were entitled to practice law only if they passed the exam for knowledge of Russian legislation and fulfilled the requirements set forth for lawyers by the Russian legislation on the Bar, in particular the requirement of "mandatory membership in the bar chamber"[62]. Moreover, in some of the occupied territories, the continuation of the practice of law was linked to the acquisition of "Russian citizenship". In particular, such a requirement was imposed on lawyers who wished to continue their activities in the occupied Crimean peninsula[63].

During 2014-2022, in the territories controlled by the so-called "DPR" and "LPR", the self-proclaimed republics established their own "bar self-government bodies" and adopted "regulations" governing the activities of the bar in these territories. In particular, they defined the requirements for "lawyers", created "qualification and disciplinary commissions of lawyers", determined the "procedure for passing the qualification exam for the right to practice law", etc. Persons who had the status of a lawyer under Ukrainian law could continue to practice in these territories, but subject to several requirements, such as: registration with the so-called "justice" authorities of the quasi-republics, re-registration with their "tax authorities", taking the oath of a lawyer of the "DPR" or "LPR", and passing a special inspection by the "state security bodies" ("LPR")[64]. After Russia's attempted annexation of certain districts of the Donetsk and Luhansk regions in September 2022, the bar system of the self-proclaimed republics was reformatted per Russian legislation (see above in this section).

It is worth noting that for several reasons, including disagreement with the occupation regime, fear for their lives and the threat of persecution, many lawyers were forced to leave the occupied territories and continue their activities in the government-controlled territories of Ukraine as internally displaced persons. At the same time, a significant part of the legal community remained in the occupied territories and continued their activities under Russian law.[65]. Often, former (active) Ukrainian lawyers who remained in the TOT and were ready to cooperate

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61 The Bar Association of the "Republic of Crimea" was established on 19.04.2014 and currently has 768 lawyers. Federal Chamber of Advocates of the Russian Federation. URL: https://aprk.fparf.ru/about/
"The Bar Association of Sevastopol" was registered on 21.04.2014 and currently has 287 lawyers. Federal Chamber of Advocates of the Russian Federation. URL: https://fparf.ru/chambers/advokatskaya-palata-g-sevastopolya/
The Bar Associations in the occupied territories of the Luhansk, Donetsk, Zaporizhzhia and Kherson regions were established in December 2022: "LPR Bar Association" (currently has 167 lawyers). URL: https://ap-lnr.ru/registry/lawyers/
"DPR Bar Association" (currently has 274 lawyers). URL: https://apdnr.fparf.ru/about/
"Zaporizhzhia region" Bar Association (currently has 67 lawyers). URL: https://fparf.ru/chambers/advokatskaya-palata-zaporozhskoy-oblasti/
"Kherson region" (has 46 lawyers). URL: https://fparf.ru/chambers/advokatskaya-palata-khersonskoy-oblasti/
Federal Chamber of Advocates of the Russian Federation. URL:
https://fparf.ru/news/fpa/chislo-regionalnykh-palat-vozroslo/

62 The report "Advocates under occupation: Situation with observing the advocates' rights in the context of the armed conflict in Ukraine". Ukrainian Helsinki Human Rights Union. Kyiv, 2019. p. 19. URL: https://www.helsinki.org.ua/publications/36766/

63 See footnote No. 62, pp. 18-20.

64 See footnote No. 62, pp. 30-31, 35-36.

65 For example, as of 01.04.2018, the "register of lawyers of the DPR" contained 252 lawyers, of whom 193 had active status as lawyers of the DPR. A comparison of the data in this "register" with the data in the Unified Register of Advocates of Ukraine (URAU) (as of 06.09.2018) revealed that 161 DPR lawyers were simultaneously listed in the URAU with an active status as a Ukrainian lawyer. See above 60, p.32.

and assist the occupation authorities in the persecution of civilians, for example, in the occupied territories of Crimea[66] or Zaporizhzhia[67], were appointed as heads of the bar associations established under Russian law.

An analysis of court cases related to the armed conflict, which were considered by courts controlled by the RF, indicates that the bar system established in the occupied territories is not an independent professional community designed to protect the rights of citizens. On the contrary, the reports of non-governmental human rights organisations and the OHCHR provide examples that demonstrate the cooperation of lawyers loyal to the occupation authorities with the investigation, security and prosecution authorities of the RF, including in the TOT, in the conviction of Ukrainian civilians and prisoners of war. The typical behaviour of such lawyers is to encourage the accused or defendant to plead guilty, passivity at the stage of investigation and judicial proceedings, avoiding meetings with the client to discuss the defence strategy, etc[68]. In some cases, lawyers concealed the facts of torture and ill-treatment of their clients by law enforcement officers during illegal detentions and interrogations[69].

At the same time, the policy of judicial persecution of Ukrainian citizens in the occupied territories is opposed by a small number of independent Ukrainian lawyers who did not cooperate with the occupation authorities but were forced to remain in these territories. This category of lawyers is subject to systematic repression. Among other things, they are subjected to pressure, persecution, fines and arrests, discreditation campaigns are conducted against them in the occupation media, and searches are conducted in their offices and homes, which indicates pressure and suppression of any attempts to provide proper legal protection to Ukrainian citizens in the occupied territories[70]. This policy of the occupation authorities undoubtedly had a chilling effect on other members of the legal community, forcing them to avoid cases related to the armed conflict. This, in turn, had a significant negative effect on the ability to provide adequate defence in court cases of Ukrainian civilians and prisoners of war.

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66 The first to go: Crimean lawyer-traitor Yuliia Marchuk is deprived of the status of a Ukrainian lawyer. ZMINA. 22.11.2023. URL: https://zmina.info/news/ukrayinsku-advokatku-yuliyu-marchuk-yaka-spryyala-okupantam-u-yih-polityczi-kolonizacziyi-krymu-pozbavyly-prava-na-advokatsku-diyalnist/

67 Proud of the "new country": who is helping the occupiers to form the bar in the Zaporizhzhia region. ZMINA. 16.05.2024. URL: https://zmina.info/articles/pyshayutsya-novoyu-krayinoyu-hto-dopomagaye-okupantam-formuvaty-advokaturu-v-zaporizkij-oblasti/

68 In this context, see: Persecution and humiliation: the reality of being a lawyer in the occupied Crimea. Kyiv, 2023. The report was prepared by a group of international law experts with the support of the CEELI Institute and the Ukraine 5AM Coalition. p. 6, § 27. URL: https://ulag.org.ua/uk/reports-and-materials/analytical-report-attorneys-under-occupation-in-crimea/

Quasi legal system in the occupied territories: implementation and adoption of practices. Kyiv, 2022. Media Initiative for Human Rights. pp. 15-17. URL: https://mipl.org.ua/wp-content/uploads/2022/12/kvazipravova-systema_ua_interactive-1-1.pdf

Material about lawyers who remained in Crimea and cooperate with the occupation authorities. The Human Rights Centre ZMINA. URL: https://zmina.info/articles/yak-advokaty-zradnyky-v-krymu-dosi-diyut-za-ukrayinskymy-svidocztvamy-a-naczionalna-asocziacziya-advokativ-na-cze-ne-reaguye/

Treatment of Prisoners of War and Persons Hors de Combat in the Context of the Armed Attack by the Russian Federation against Ukraine (24 February 2022 – 23 February 2023), § 82: "[ ] *In addition, four prisoners of war complained that their lawyers did not provide them with any legal assistance, but only advised them to plead guilty. One prisoner of war also reported that his lawyer contacted his relatives and demanded USD 5,000 for filing an appeal against his death sentence.* [ ]"

69 Defenders-Turncoats: how lawyers in Crimea help fabricate cases against political prisoners. ZMINA. 12.04.2023.URL: https://zmina.info/articles/zahysnyky-perevertni-yak-u-krymu-advokaty-dopomagayut-fabrykuvaty-spravy-proty-politvyazniv/

70 Persecution and humiliation: the reality of being a lawyer in the occupied Crimea. Kyiv, 2023. The report was prepared by a group of international law experts with the support of the CEELI Institute and the Ukraine 5AM Coalition'. p. 6, § 20. URL: https://ulag.org.ua/uk/reports-and-materials/analytical-report-attorneys-under-occupation-in-crimea/

The report "Advocates under occupation: Situation with observing the advocates" rights in the context of the armed conflict in Ukraine". Ukrainian Helsinki Human Rights Union. Kyiv, 2019. p. 21. URL: https://www.helsinki.org.ua/publications/36766/

DEVELOPMENT OF THE "LAW ENFORCEMENT AGENCIES" SYSTEM IN THE OCCUPIED TERRITORIES

In parallel with the formation of the judicial system, the Russian authorities deployed a system of national law enforcement agencies in the occupied territory, including, in particular, security agencies (FSB)[71], internal affairs agencies (MIA, police)[72], the Investigative Committee[73] and the Prosecutor's Office of the RF[74]). The legal basis for these processes was the relevant provisions of the "laws on the adoption and formation of new subjects within the RF"[75]. These laws, among other things, defined the procedure for the establishment of state authorities, including law enforcement agencies, as well as the conditions of their operation during the "transitional period". Prior to the attempted annexation of new territories in September 2022, the so-called "DPR" and "LPR" formally had their own "security" and "law enforcement" agencies (in particular, "ministries of security", "ministries of internal affairs", "people's militias" and "prosecutor's offices") in the Russian-occupied territories. After the attempted annexation of these parts of the Donetsk and Luhansk regions ("incorporation" of these so-called quasi-republics into the RF), these "bodies" were liquidated, and the relevant law enforcement agencies of the RF were formed instead[76].

In the occupied territories of certain districts of the Zaporizhzhia and Kherson regions, prior to the attempted annexation, local "law enforcement agencies" were likely to have functioned, subordinated to the so-called "military-civilian administrations", which operated jointly with the Russian occupation forces[77]. At the end of July 2022, the Russian Ministry of Internal Affairs announced the establishment of its temporary departments in the Zaporizhzhia and Kherson regions[78]. Open sources also often contain information about the functioning of the "state security services" of the "Kherson" and "Zaporizhzhia" regions[79], in these territories, which were later liquidated during the "transition period" and replaced by the FSB offices in these regions. It is noteworthy that at the end of June 2022, the "head of the Kherson region's military-civilian ad-

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71 Territorial bodies of the FSB of Russia. Official website of the FSB of the RF. URL: http://www.fsb.ru/fsb/regions.htm

72 Territorial bodies. Official website of the MIA of the RF. URL: https://мвд.рф/contacts/sites

73 Official website of the IC of the RF. The Chairman of the IC of Russia signed an order to establish investigative departments in the new regions. 10.10.2022. URL: https://sledcom.ru/news/item/1730100/?pdf=1

74 Russian Prosecutor General appoints prosecutors to Crimea and Sevastopol. 25.03.2014. Radio.Svoboda. URL: https://ru.krymr.com/a/25309114.html
Official website of the Prosecutor General's Office of the RF. 07.11.2022. Russian Prosecutor General Ihor Krasnov signs orders to establish prosecutor's offices in the Donetsk and Luhansk People's Republics, the Kherson and Zaporizhzhia regions. URL:
https://epp.genproc.gov.ru/web/gprf/mass-media/news?item=78040924

75 Regarding the occupied Crimea: Articles 7, 8 of the Federal Constitutional Law of 21.03.2014 No. 6-FCL; Regarding other occupied territories: joint Articles 8, 9 of the Federal Constitutional Laws of 04.10.2022 No. 5, 6, 7, 8-FCL.

76 See the Decree of the Head of the "DPR" of 19.04.2024 No. 154 "On the abolition (liquidation) of the Ministry of State Security of the Donetsk People's Republic". URL: http://publication.pravo.gov.ru/document/8000202404220003?index=1
The Decree of the Interim Head of the "LPR" of 29 March 2023, No. UG-263/23 "On the abolition of executive bodies of state power of the Luhansk People's Republic". URL: https://base.garant.ru/406622959/

77 For example, on 14 June 2022, the head of the so-called "Military-Civilian Administration of Kherson Region" stated that local police bodies, assisted by the Russian army and Rosgvardia units, were involved in ensuring law and order in the region. He also noted that police departments and offices are already being set up in many settlements, which are gradually taking over public order functions. Telegram channel "Military-Civilian Administration of Kherson Region". URL: https://t.me/VGA_Kherson/2345

78 Telegram channel of the MIA of the RF. 28.07.2022. URL: https://t.me/mediamvd/12837

79 FSB in the occupied territories of Ukraine. Agentura.ru 2023. URL: https://agentura.ru/investigations/fsb-na-okkupirovannyh-territorijah-ukrainy/

ministration" issued a decree[80], introducing the Russian federal laws "On Police", "On Operational and Investigative Activities", as well as the CC and CPC of the RF in the occupied territory. Open sources also mention statements by "officials" of the "Zaporizhzhia Regional Military Administration", which also refer to the application of Russian criminal law by police representatives[81].

The above-mentioned law enforcement agencies established in the occupied territories later became the basis of the Russian Federation's repressive apparatus in the occupied territories, as they are authorised by the criminal procedure legislation to open criminal cases, conduct preliminary (pre-trial) investigations, bring charges and support the state prosecution in court[82].

It is important to note that all of the above-mentioned law enforcement agencies of the RF, whose jurisdiction has been extended to the occupied territories, are under the general supervision of the President of the RF, who forms and determines the policy of their activities[83].

ROLE OF THE RUSSIAN JUDICIAL SYSTEM IN ESTABLISHING THE NARRATIVE AND PRACTICE OF DENYING THE INTERNATIONAL ARMED CONFLICT WITH UKRAINE

Since the beginning of the international armed conflict with Ukraine, the Russian government has not recognised the occupied Ukrainian territories as occupied. As a result, the legal regime of occupation, as defined by the norms and principles of IHL, has never been applied by Russia to these territories. The denial of its own armed aggression, the existence of the IAC and the applicability of IHL in the war with Ukraine are among the components of Russia's narrative

80 Decree of the Head of the Military-Civilian Administration of the Kherson Region No. 130/1-r dated 27.06.2022 "On Ensuring Law and Order in the Territory of Kherson Region". Official website of the MCA. URL: https://khogov.ru/wp-content/uploads/2024/02/ukaz-%E2%84%96130_1-r-ot-27.06.2022.pdf

81 The CC of the RF has been applied in Zaporizhzhia region. TASS. 02.08.2022. URL: https://tass.ru/obschestvo/15400333

82 The FSB, the MIA and the Investigative Committee have investigative units authorised to conduct preliminary investigations in criminal cases and bring charges in accordance with the established procedure. The powers of the investigative bodies to investigate crimes are set out in the CPC of the Russian Federation, in particular Article 151 ("Jurisdiction"). Thus, in accordance with the rules of jurisdiction, investigators of **the Investigative Committee** investigate serious and especially serious crimes, such as murder (Article 105 of the CC of the RF), kidnapping (Article 126 of the CC of the RF), banditry (Article 209 of the CC of the RF), organisation of a criminal organisation or participation in it (Article 210 of the CC of the RF), use of prohibited means and methods of warfare (Article 356 of the CC of the RF), etc. Their competence also includes the investigation of crimes committed by military personnel, law enforcement officers, the FSB, other law enforcement or paramilitary formations, in particular under Article 151 ("Jurisdiction"). **FSB investigators** conduct criminal investigations into the following offences: public calls for extremist activities (Article 280 of the CC of the RF), espionage (Article 276 of the CC of the RF), sabotage (Article 281 of the CC of the RF), high treason (Article 275 of the CC of the RF), forcible seizure or retention of power (Article 278 of the CC of the RF), organisation of an illegal armed formation or participation in it (Article 208 of the CC of the RF), mercenarism (Article 359 of the CC of the RF) and others. **Internal affairs investigators** focus on investigating crimes such as theft (Article 158 of the CC of the RF), robbery (Article 161 of the CC of the RF), assault (Article 162 of the CC of the RF), fraud (Article 159 of the CC of the RF), drug trafficking (Article 228 of the CC of the RF), and disorderly conduct (Article 213 of the CC of the RF), among others. **The prosecutor's office**, in turn, supervises the legality of the activities of these investigative bodies, approves indictments and supports the public prosecution in court.

83 The Director of the FSB, the Chairman of the Investigative Committee and the Minister of the Interior are appointed and dismissed by the Decrees of the President of the RF, who also directs the activities of these bodies. The heads of these bodies report annually to the President on the results of their activities. In this context, see: Article 83 of the Constitution of the RF, Federal Law "On the Federal Security Service" of 03.04.1995 No. 40-FL, Article 1 of the Federal Law "On the Investigative Committee" of 28.12.2010 No. 403-FL. Sections I – IV of the Regulation on the Ministry of Internal Affairs of the Russian Federation, approved by the Decree of the President of the RF of 21.12.2016 No. 699. Similarly, the Prosecutor General and prosecutors of the subjects of the RF are appointed and dismissed by the decision of the President of the RF (Article 129 of the Constitution of the RF, Article 15.1 of the Federal Law "On the Prosecutor's Office" of 17.01.1992 No. 2202-1).

on international law[84]. As we will see in the research, the policy of denial was ingrained in the practice of the entire state apparatus of the RF, and the judicial system played a significant role in this.

The automatic extension of its legislation to the occupied territories (and even more so its retrospective application to the detriment of the population of these territories) in itself indicates Russia's disregard for the fundamental principles of IHL.

As is known, the legal regime of occupation is based on the principle of *status quo ante bellum*[85], which can be described as "*the obligation of the Occupying Power to ensure the legal order in the occupied territory that existed before the occupation*". Although there are several exceptions[86], to this rule, they cannot be applied in the case of the occupation of Ukrainian territories, as this would require Russia to recognise the legal regime of occupation.

Role of the Constitutional Court of the Russian Federation

The first case when the judicial authorities were used as a mechanism to justify the political decisions of the Russian leadership and to establish the state narrative of denying Russian armed aggression was the Constitutional Court of the RF. Since the beginning of the armed conflict, it has reviewed six cases at the request of the President of the RF, directly related to the occupation of the territories of Ukraine, namely, "assessing the constitutionality of international treaties between the RF and the so-called "republics and regions". Based on these so-called "international agreements", these territories were to become part of Russia as new federal entities[87].

In all cases, the CCt of the RF recognised these "international treaties" as constitutional, thus *de jure* sanctioning the so-called "accession" of the occupied territories of Ukraine to the RF. None of the aforementioned judgments of the Russian Federation's CCt raised the issue of the applicability of the IHL, in particular the legal regime of occupation, despite the fact that the provisions of GC IV explicitly state that it is inadmissible to deprive protected persons of the benefits of this Convention, even in the event of full or partial annexation or change of status of the occupied territories[88]. These decisions of the CCt of the RF provided formal grounds for the State Duma of the RF to adopt federal laws "on the adoption of new subjects", which marked the beginning of the illegal expansion of Russian legislation to the occupied territories of Ukraine.

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84 For more on Russia's narrative on international law, see here: Marchuk, I. (2020). *Powerful States and International Law: Changing Narratives and Power Struggles in International Courts*. UC Davis Journal of International Law and Policy, 26(1), 65-97.

85 The principle is reflected in Article 43 of the 1907 Hague Regulations, which states that, upon the actual transfer of power from the hands of the legitimate Government to the enemy who has occupied the territory, the latter is obliged to take all measures in its power to restore and maintain public order and public life as far as possible, respecting the laws existing in the country, except where absolutely impossible.

86 The Occupying Power may amend the legislation in force in the occupied territory if it is necessary to maintain the effective administration of that territory and to ensure the security of the Occupying Power and its armed forces or administrations.

87 Resolutions of the Constitutional Court of the RF of 22.04.2014 No. 6-P (case of the Autonomous Republic of Crimea and the city of Sevastopol); of 02.10.2022 No. 36-P (case of the occupied districts of Donetsk region); of 02.10.2022 No. 37-P (case of the occupied districts of Luhansk region); of 02.10.2022 No. 38-P (case of Zaporizhzhia region); of 02.10.2022 No. 39-P (case of Kherson region).

88 Article 47 of the GC IV.

The policy of non-recognition of the IAC and denial of the application of IHL has a significant impact on the judicial guarantees of protected persons. It is typical for Russian state authorities, including national courts, to refuse to grant prisoner of war status to members of the Ukrainian security and defence forces. In none of the verdicts analysed[89] in this research did the courts assess the status of Ukrainian military personnel as combatants under IHL and their guarantees under the Geneva Convention relative to prisoners of war and Additional Protocol I. This approach of Russian courts in practice leads to a violation of customary international law on the immunity of combatants and, as a result, a violation of the principle of *nullum crimen sine lege*. Similarly, in judicial processes against civilians detained in connection with the armed conflict, Russian national courts do not refer to the applicable provisions of IHL relating to judicial guarantees and the internment of civilians.

This element of the policy of denial has been observed in the practice of the RF throughout the existence of the IAC with Ukraine. An illustrative example is the case of 24 Ukrainian sailors who were attacked and captured by the FSB Border Service of the RF near the Kerch Strait on 25 November 2018[90]. Despite the fact that all 24 crew members of the detained vessels were members of the Ukrainian defence and security forces, a criminal case was opened against them on the grounds of "illegal crossing of the state border of the RF" under Article 322 of the Russian CC. From the first days of the sailors' detention, the Ukrainian government demanded that Russia treat them under the Third Geneva Convention relative to the Treatment of Prisoners of War[91]. Moreover, at the stage of pre-trial investigation, all detainees claimed their status as prisoners of war, relying on their position that they were legitimate participants in the IAC, which has been ongoing between Ukraine and the RF since the occupation of the Crimean peninsula in February 2014. However, these arguments were not taken into account by the national courts of the RF, which subsequently regularly imposed on the Ukrainian military a measure of restraint in the form of detention in a pre-trial detention centre as ordinary suspects of a crime[92]. In September 2019, as a result of political agreements, all 24 sailors were released from custody and returned to Ukraine. As a result, Russia did not recognise their status as prisoners of war and continued to investigate them within the framework of the criminal case.

89 For more details, see Sections II-IV of this research.

90 International Tribunal for the Law of the Sea. Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), provisional measures. 2019. URL: https://www.itlos.org/en/main/cases/list-of-cases/case-concerning-the-detention-of-three-ukrainian-naval-vessels-ukraine-v-russian-federation-provisional-measures/

91 Statement of the Ministry of Foreign Affairs of Ukraine on the continuation of illegal actions by the RF against the Ukrainian Navy of 28 November 2018. URL: https://mfa.gov.ua/news/9537-zajava-mzs-ukrajini-shhodo-prodovzhennya-rosijsykoju-federacijeju-protipravnih-dij-proti-vijsykovosluzhbovciv-vms-zs-ukrajini

92 All 24 Ukrainian sailors were treated by Russian courts exclusively as suspects in the crime of illegally crossing the state border of the RF.

Recognition of Ukrainian organisations, including Ukrainian military formations, as "terrorists" and prohibition of their activities by the courts

Another clear example of how the state narrative of denial of the armed conflict has affected the right to a fair trial of Ukrainian citizens is in cases related to terrorism. Based on the analysis of trials from 2022 to 2024, the research found that criminal charges for terrorism-related offences against civilians detained in the armed conflict accounted for 38% of all recorded cases. Concerning prisoners of war from the security and defence forces of Ukraine, the share of such charges over the same period was more than 12%.

Between 2022 and 2024, the Supreme Court and several other military courts of the RF recognised certain Ukrainian organisations, including Ukrainian military formations, as terrorists[93]. The relevant decisions were made in closed judicial processes under the administrative procedure based on claims filed by the Russian Prosecutor's Office. At the same time, such cases were considered in the framework of non-adversarial proceedings, i.e. in the absence of the defendant. For example, in the case concerning the "recognition of the Azov Brigade as a terrorist organisation", the Supreme Court of the RF involved only the Ministry of Justice, the Ministry of Internal Affairs and the Federal Security Service of the RF as interested parties.

The reasoning of the Supreme Court of the RF in these proceedings was based on allegations of the public anti-Russian position of these units and their participation in hostilities against the so-called "DPR" and "LPR". Moreover, to justify the "terrorist" nature of these units, the Russian Supreme Court relied on the practice of the "Supreme Court of the DPR", which recognised the "Azov" and "Aidar" units as "terrorist" back in 2016[94].

Subsequently, these judgments became the "legal basis" for the massive filing of unlawful criminal charges against Ukrainian citizens, including current and former members of the security and defence forces, for participation in a terrorist community. An obvious shortcoming of these judgments is the false statements about the status of the relevant units as "paramilitary nationalist associations", "terrorist communities" or "nationalist organisations", ignoring the fact that they have officially been and remain part of the Ukrainian defence and security forces and are legitimate participants in the armed conflict under international law. However, these obvious elements of combatant status in the IHL have been repeatedly overlooked by both the Supreme Court and other Russian-controlled courts of general jurisdiction.

Use of the term "special military operation"

Even after the full-scale invasion in February 2022, Russia did not recognise the IAC status with Ukraine. Instead, its military and political leadership declared that it was conducting the so-called **"Special Military Operation"** (SVO), a euphemism used by the Russian authorities to describe their military actions in Ukraine. At the same time, the term "special military operation" seems to have no legal basis in Russian national legislation. In any case, there is no official

93 See Annex 2 to this research.

94 Decision of the Supreme Court of the RF dated 02.08.2022 in the case of AKPI 22-411S on 10.09.2022.

and publicly available source of law that would define the nature, legal basis and conditions of such an operation by Russian troops.

Nevertheless, based on this political term, Russia has formed an alternative legal reality that effectively replaces the applicable provisions of the IHL. An illustrative example in this context is the artificially created and not legally provided status of **"persons opposing the SVO"**, which is used by the Russian security forces to justify the detention and deprivation of liberty of disloyal civilians of the occupied territories and members of the security and defence forces of Ukraine. In such cases, relatives of the detainees in most cases do not receive any official notification from the Russian authorities about the fate of their loved ones. However, in rare cases, they may receive a typical formal response from the Russian Ministry of Defence stating that their loved ones were detained for opposing the SVO and that they are being subjected to "verification measures regarding their involvement in nationalist and neo-fascist groups" and "possible crimes against Russian citizens". At the same time, the responses do not specify the specific location of the detainees, only that "they are held in the territory of the RF". The Ministry of Defence of the RF explains this by stating that "information about the places of detention of persons detained for "opposing the SVO" is information of classified nature and cannot be passed on to third parties. Some of the responses concerning civilians contain information that "detainees are held per the requirements of the Geneva Convention relative to the Treatment of Prisoners of War of 1949". Thus, the Ministry of Defence of the Russian Federation creates a situation where a detained civilian is treated by the Russian authorities as a prisoner of war, i.e. a combatant under the control of the opposing side. The Russian authorities do not provide any explanation for these allegations, even in the context of judicial processes that subsequently arise in connection with the illegal detention of persons due to opposing the SVO. For example, in September 2024, fourteen citizens of Ukraine, the RF and the Republic of Belarus – relatives of sixteen civilians detained in connection with the so-called **"opposing of the SVO"** – filed a lawsuit with a district court in Moscow. They demanded that the inaction of the Prosecutor General's Office of the RF, which consisted of a systematic failure to respond to the unlawful deprivation of liberty of the plaintiffs' relatives by the Russian troops during the full-scale invasion of Ukraine, be declared unlawful[95]. In general, the claim was based on the fact that Russian legislation, including the CPC, does not provide for such a ground for detention and arrest as "opposing the illegal armed groups" and does not give such powers to the Ministry of Defence or any other state authorities or officials of the RF. The plaintiffs also noted that their relatives have been held *incommunicado* for more than two and a half years without any procedural status, access to justice, qualified legal assistance and the ability to exchange correspondence with their loved ones. Instead, the Prosecutor General's Office of the RF, which is authorised by law to stop cases of illegal detention, ignored these facts despite appeals from relatives of the detainees. Following the case, the district court dismissed the claim, noting that "disagreement with the procedure for considering the appeal does not indicate inaction or unlawfulness of the actions of prosecutorial officials". As can be seen from the judgment, the district court did not investigate the key circumstances of this case, including the legal status of the detained relatives of the applicants, the legality of their deprivation of liberty and the measures taken (or not taken) by the Prosecutor General's Office of

95 For more information about the case and the stories of some of the detainees, see: Detained for "opposing the SVO". How 14 relatives of civilian hostages from Ukraine are suing the Russian Prosecutor General's Office in Moscow. Graty. URL: https://graty.me/zatrimani-za-protidiyu-svo-yak-14-rodichiv-czivilnih-zaruchnikiv-z-ukra%d1%97ni-sudyatsya-u-moskvi-z-genprokuraturoyu-rf/

the RF to stop this human rights violation. The district court noted that "the applicants were informed that the detainees were held per the requirements of the Geneva Convention relative to the Treatment of Prisoners of War of 12.08.1949". Moreover, the district court stated that "under the Geneva Convention relative to the Treatment of Prisoners of War of 12.08.1949, prisoners of war must be released and repatriated without delay after the cessation of active hostilities (Article 4, Article 118 of the Convention), and in such circumstances, the administrative plaintiffs" claims for the release of imprisoned persons who are prisoners of war within the meaning of the Geneva Convention cannot be satisfied until the end of hostilities". However, information from open sources and information from some of the plaintiffs[96] indicates that all the detainees were civilians and were not members of any military formations, including the defence and security forces of Ukraine. In any case, the court did not address the issue of the status of the detainees under the IHL in the text of the judgment. Thus, the district court unreasonably presumed that all detainees were prisoners of war. It should be noted that open sources also contain information about the rejection by the district court of important motions of the plaintiffs, in particular, the court's request for documents from the Ministry of Defence of the Russian Federation, which served as a direct basis for the detention of the plaintiffs' relatives[97].

Restriction of freedom of speech to deny the existence of an international armed conflict

The policy of denying the existence of the IAC has had a significant impact on the freedom of speech of the population of the occupied territories. Since the occupation of the Crimean peninsula in 2014, Russia has introduced censorship and control over the media operating in the occupied territories and has used the judicial system to prosecute citizens, including journalists, who have expressed disagreement with the occupation, condemned Russia's armed aggression, and used the words "occupation", "aggression", and "annexation" in their statements in relation to the territories occupied by Russia.

Public denial of the legality of the "accession" of these territories to the RF was considered a crime, namely: 1) "public calls for actions aimed at violating the territorial integrity of the RF" (Article 208.1 of the CC of the RF), 2) "public calls for extremist activities" (Article 280 of the CC of the RF), 3) "actions aimed at inciting hatred or enmity, as well as humiliation of human dignity" (Article 282 of the CC of the RF) or 4) "organisation of the activities of a terrorist organisation and participation in the activities of such an organisation" (Article 205.5 of the CC of the RF).

Criminal law instruments to suppress freedom of speech were also used by the Russian government during the full-scale invasion of Ukraine. A week after the start of the military operation, the State Duma of the RF adopted a law that added new offences to the CC of the RF, establishing criminal liability for "public dissemination of clearly false information about the

96 See footnote No. 95.

97 Decision of the Tver District Court in case No. 02a-0731/2024 of 24 December 2024, (presiding judge Malakhova A.V.), on the claim of Akimenko T.V., Shchepets D.O., Krasnikova M.O., Doli N.P., Khrypun Y.S., Kulakovska N.V., Dorokhov A.V., Kovalchuk M.V., Nikolaieva O.A., Dmytriienko B.V, Shcherba O.N., Kononova M.K., Shevchenko E.V. to the Prosecutor General's Office of the RF for recognition of unlawful inaction, release of persons deprived of their liberty; Information on case No. 02a-1264/2024, which was considered by the Tver District Court of Moscow on 24 December 2024. URL: https://mos-gorsud.ru Mediazone. Russia is holding at least hundreds of Ukrainians suspected of "opposing the SVO". Their relatives tried to appeal this practice in a Moscow court. URL: https://zona.media/article/2024/12/25/isk-16

use of the RF Armed Forces" (Article 207.3), "public actions aimed at discrediting the use of the RF Armed Forces to protect the interests of the RF and its citizens, and to maintain international peace and security" (Article 280.3) and "calls for the introduction of restrictive measures against the RF, Ukrainian citizens or Russian legal entities" (Article 284.2)[98]. Similar changes were made to the CAO of the RF[99].

According to official Russian judicial statistics, in 2022, courts of general jurisdiction brought 4,440 people to administrative responsibility for "discrediting the Russian Armed Forces"[100], in 2023 – another 2,361[101] and in the first half of 2024, this number was 982 people[102]. In almost all cases, the courts impose a fine. According to Ukrainian state institutions, as of the end of November 2024, Russian courts operating in the occupied territory of the Autonomous Republic of Crimea have prosecuted **955** citizens for the same violation since the full-scale invasion.[103]

The practice of Russian courts shows that "discrediting the Armed Forces of the RF" is understood to mean an overly broad range of critical statements about Russia's armed aggression against Ukraine. Some of the most well-known examples are public statements such as: *"I am against the war in Ukraine"*, *"no to war"* or *"no to mobilisation"*, writing "*special military operation*" in quotes on social media, positive reactions on social media to pro-Ukrainian or anti-war posts, etc.

In June 2022, under the auspices of the Ministry of Justice of the RF, guidelines were developed for forensic experts, investigators and judges on conducting "comprehensive psychological and linguistic examinations in cases of public discredit of the Russian Armed Forces". These recommendations state that among the linguistic features that point to discrediting the Russian Armed Forces, within the meaning of Article 280.3 of the Criminal Code and Article 20.3 of the CAO, are statements in which "*the purposes of using the Russian Armed Forces are assessed as not meeting the goals of protecting the interests of the Russian Federation and its citizens, maintaining international peace and security (normative assessment), which can be expressed by the nominations* [verbal formulations, authors' note] *"military aggression", "war of aggression", "fascist war", etc."*[104]. There is no doubt that statements defining the Russian-controlled territories of

98 Federal Law No. 32 dated 04.03.2022 "On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation". URL: https://base.garant.ru/403609306/

99 Federal Law No. 31-FL "On Amendments to the Code of the Russian Federation on Administrative Offences". The Administrative Code was supplemented by Article 20.3.3 "Public actions aimed at discrediting the use of the Armed Forces of the RF to protect the interests of the RF and its citizens, and to maintain international peace and security" and Article 20.3.4 "Public calls for the introduction of restrictive measures against the RF, RF citizens or Russian legal entities". The commission of such administrative offences entails a fine of thirty to one hundred thousand rubles for citizens and one hundred to three hundred thousand rubles for officials.

100 Report on the Work of Courts of General Jurisdiction in Considering Cases of Administrative Offences for 2022 // Judicial Department of the Supreme Court of the RF. URL: https://cdep.ru/index.php?id=79&item=7645

101 Report on the Work of General Jurisdiction Courts in Considering Cases of Administrative Offences for 2023 // Judicial Department of the Supreme Court of the RF. URL: https://cdep.ru/index.php?id=79&item=8809

102 Report on the Work of General Jurisdiction Courts in Considering Cases of Administrative Offences for 6 Months of 2024 // Judicial Department of the Supreme Court of the RF. URL: https://cdep.ru/index.php?id=79&item=8773

103 Mission of the President of Ukraine in the Autonomous Republic of Crimea. Published on the official Facebook page on 28.11.2024. URL: https://www.facebook.com/ppu.gov.ua/posts/pfbid0qLUGbcDSaPobN49fD8amgGM8ucgMeXY6uLxT7S9CsrSenmWhcjCXgHNjmgQ4ZQsyl

104 Methodological Letter "On the peculiarities of complex psychological and linguistic forensic examinations of information materials related to the public discrediting of the use of the Armed Forces of the Russian Federation", approved on 17.06.2022 by the Russian Federal Centre of Forensic Expertise under the Ministry of Justice of the Russian Federation. URL: https://sudact.ru/law/metodicheskoe-pismo-ob-osobennostiakh-kompleksnykh-psikhologo-lingvisticheskikh-sudebnykh/

Ukraine as occupied would be regarded by the Russian authorities as "discrediting the Russian Armed Forces".

In the spring of 2023, 23 citizens who had been prosecuted for discrediting the Russian army challenged the provisions of Article 20.3.[3] of the CAO to the CCt of the RF. The complainants requested that this article be declared unconstitutional, stressing that it prohibits any criticism of the so-called "SVO", i.e. the war in Ukraine, and violates the freedom of speech, conscience, assembly, the prohibition on the establishment of a compulsory ideology, and is discriminatory[105].

On 30 May 2023, the CCt of the RF issued rulings refusing to accept 13 complaints for consideration. In all cases, the court's reasoning was the same and centred on the constitutionality of the contested article of the CAO. Some of the court's statements demonstrate an overt bias in favour of the national narrative on the legality of the annexation of Ukrainian territories and the so-called "SVO"[106].

For the Constitutional Court of the Russian Federation, it was obvious that such legislative restrictions on freedom of speech were introduced by Russia in connection with the so-called "SVO". Relying on its previous decisions, it legitimised the attempted annexation of Ukrainian territories, emphasising the justification and legality of the war against Ukraine. According to the judges, the administrative liability for "discrediting the Russian Armed Forces" should be considered in the context of the SVO and the "acceptance" of "new entities" into the RF:

> "Article 20.3.[3] of the CAO of the RF does not indicate that it is about defamation in connection with the ongoing Special Military Operation. At the same time, *it is clear that the federal legislator [...] established administrative liability for the relevant acts, primarily taking into account these circumstances".*
>
> [...]

Taking into account the positions previously formulated by the Constitutional Court of the RF "[...] on the verification of the constitutionality of international treaties that have not entered into force between the Russian Federation and the DPR, LPR, Zaporizhzhia region and Kherson region regarding their adoption by the RF and the formation of new entities within the RF, *such regulation during the period of the said special military operation can all the more be questioned from the point of view of constitutionality*, and its assessment outside these circumstances would essentially be an exercise of abstract rule-making, bearing in mind the connection established

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105 Constitutional Complaint of Filippov M.S. and Review of the Application of Article 20.3.[3] in the Courts of the RF // OVD-Info, 21.06.2023. URL: https://strat.ovd.info/zhaloba-v-konstitucionnyy-sud-na-statyu-2033-koap-rf-o-diskreditacii#1https://strat.ovd.info/zhaloba-v-konstitucionnyy-sud-na-statyu-2033-koap-rf-o-diskreditacii#1

106 Rulings of the Constitutional Court of the RF on the refusal to accept for consideration complaints of citizens about violations of their constitutional rights by Part 1 or 2 of Article 20.3.3 of the CAO of the RF of 30 May 2024: No. 1399-O on the complaint of citizen K.S. Lahodych. URL: https://base.garant.ru/407071204/
No. 1396-O concerning the complaint of citizen M.S. Filippov/ URL: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-30052023-n-1396-o/
No. 1397-O concerning the complaint of citizen K.E. Shatriuk. URL: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-30052023-n-1397-o/
No. 1398-O concerning the complaint of citizen I.V. Yashyn. URL: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-30052023-n-1398-o/
The Constitutional Court of the RF refused to cancel the administrative article on discrediting the Armed Forces of the RF // OVD-Info, 21 June 2023. URL: https://ovd.info/express-news/2023/06/21/konstitucionnyy-sud-otkazalsya-otmenit-administrativnuyu-statyu-o

in the court acts submitted to the court between the applicant's actions and the conduct of the Special Military Operation".

In addition, in these rulings, the Constitutional Court of the RF pointed to the illegality of expressing views that question the legitimacy of decisions of state bodies to use the armed forces (i.e., the use of the RF Armed Forces against Ukraine under the so-called "SVO"). According to the court, such criticism would have a negative impact on the implementation of these decisions and the motivation of military personnel:

> "[...] *decisions and measures taken by state bodies [...] cannot be arbitrarily, solely on the basis of subjective assessment and perception, questioned in terms of their orientation towards protecting the interests of the RF and its citizens, maintaining international peace and security*. Moreover, this would mean [...] denying the legal nature of the RF, the supremacy of its Constitution and the obligation to comply with its provisions, which is unacceptable under the Constitution of the RF".
>
> [...]
>
> "*public actions,* in particular speeches and statements that deliberately contain a negative assessment of activities aimed at protecting the interests of the RF and its citizens, maintaining international peace and security, *may [...] have a negative impact on the implementation of relevant measures and decisions, reduce the determination and efficiency of the RF Armed Forces and other state bodies in fulfilling their tasks, and motivate military personnel and other non-military organisations*".

Thus, the established administrative and criminal liability for "discrediting" the Russian army has, in practice, led to a ban on public criticism of the armed aggression against Ukraine. Even the definition of the so-called "SVO" as a "war" or an "international armed conflict" between Russia and Ukraine may in itself constitute this offence. The above-mentioned rulings of the Constitutional Court and the practice of general jurisdiction courts show that the judicial system is successfully used by the Russian government not only to suppress dissent, but also to maintain a nationwide narrative of denial.

The practice of persecuting citizens for "discrediting the Russian army" eventually became the subject of consideration by the ECtHR. In its judgment of 11 February 2025, the Court unanimously found that the RF had violated Article 10 of the Convention (freedom of expression)[107]. The Court found that Russia had initiated a systematic and widespread practice of unjustified restrictions on freedom of expression related to the war in Ukraine:

> *"[...] The measures applied to the applicants went far beyond combating statements that could actually threaten national or public security. Instead, they targeted a wide range of expressions, from simple pacifist slogans to detailed reports of alleged war crimes, indicating a coordinated effort by the Russian authorities to suppress dissent rather than mitigate real threats to national security. These restrictions appear to be part of a broader campaign to suppress criticism or dissent regarding the military action in Ukraine. This is evidenced by the variety of expressions targeted by these restrictions, as well as the way in which the relevant legislation was formulated and applied, allowing for a broad interpretation of terms such as "discrediting" the armed forces or disseminating "deliberately false information".*

107 ECtHR judgment in the case of Novaya Gazeta and Others v. Russia, applications No. 11884/22 and 161 others of 11.02.2025. URL: https://hudoc.echr.coe.int/?i=001-241738

Other manifestations of disregard for the status of prisoners of war in Russian courts

Since August 2023, the practice of the Russian occupation courts has seen an increase in the number of cases against detained Ukrainian military personnel under Article 356 of the CC of the RF (Use of prohibited means and methods of warfare). In the period from 2023 to 2024, the share of charges under this category of crimes was 27% of all cases examined.

The peculiarity of the offence under Article 356 of the CC of the RF, as well as any other crime related to the violation of the laws and customs of war, is the presence of a contextual element – the commission of a crime in the context of an armed conflict. Nevertheless, the policy of denying the IAC between Russia and Ukraine is reflected even in such categories of cases. Russian courts operating in the occupied territories only mention in their decisions the existence of the IAC between Ukraine and the so-called quasi-republics of LPR and DPR.

For example, the verdicts of the occupation courts of the "LPR" usually state the following[108]:

> "*Since April 2014, an armed conflict of a non-international nature has been ongoing in the South-East of Ukraine between the militia of the self-proclaimed LPR on the one hand and the National Guard of Ukraine, the Armed Forces of Ukraine and other Ukrainian military formations on the other.*
>
> […]
>
> *Taking into account the will of the people of the LPR, Ukraine's refusal to peacefully resolve the conflict in accordance with the Agreement[109] on 12.02.2015, the LPR was recognised as a sovereign and independent state by the Decree of the President of the RF dated 21.02.2022 No. 72.*
>
> […]
>
> *Due to the recognition by the RF of the LPR as an independent state and the continuation of hostilities on its territory by Ukrainian military formations, the armed conflict between Ukraine, on the one hand, and the LPR, on the other hand, has acquired the status of an international one".*

Thus, despite having broad powers to influence the legal and judicial systems, the Constitutional Court and the Supreme Court of the RF have repeatedly ignored the applicability of IHL in the treatment of the occupied territories and persons under protection. This position of the highest courts of the RF established a nationwide narrative of non-recognition of the armed conflict and the applicability of IHL throughout the entire Russian-subordinate court system. A judge's recognition of the Russian-controlled territories of Ukraine as occupied, granting prisoner of war status or applying other relevant provisions of the IHL would mean a deviation from the state policy of such non-recognition of the IAC and could even lead to criminal, administrative or disciplinary liability of the court representative.

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108 The verdicts of the "Supreme Court of the LPR of the Russian Federation", spring 2023, summer 2023, the case number and personal data of the persons involved in the trial are not disclosed for security reasons.

109 Referring to the Agreement of the Trilateral Contact Group for the peaceful settlement of the situation in Eastern Ukraine, also known as the Second Minsk Agreement – authors' note.

SECTION II.

FAIR TRIAL GUARANTEES VIOLATIONS IN CASES INVOLVING UKRAINIAN CIVILIANS AND PRISONERS OF WAR IN RUSSIA AND OCCUPIED UKRAINIAN TERRITORIES

MONITORING DATA ON THE RIGHT TO A FAIR TRIAL

Scale of violations

Various publicly available sources highlight the scale and intensity of criminal prosecutions against Ukrainian civilians and military personnel in the context of Russia's full-scale aggression against Ukraine, which began on 24 February 2022. Data from publicly available sources[110], including official statistics, prosecutor's reports, law enforcement materials and judicial processes, indicate a significant escalation of such prosecutions over time[111].

It should be noted that the number of specific charges, such as high treason under Article 275 and espionage under Article 276[112] of the CC of the RF, increased markedly by approximately 60-100% in 2022 and 2023. This trend is particularly noticeable in the Southern Federal District of the Russian Federation (including the cities of Rostov-on-Don, Belgorod and Krasnodar)[113], which has become a centre of persecution of Ukrainian citizens. The region demonstrates a disproportionate increase not only in the number of criminal cases initiated, but also in the number of sentences passed by the courts.

In addition, the number of charges of terrorism under Article 205 and violation of territorial integrity under Article 280.2 of the CC of the RF has increased dramatically[114]. Between 2022

110 Official statistics of the Supreme Court of Russia is a comprehensive desegregated source of court decisions, but in 2024 it became unavailable. Some data was collected, analysed and stored by the expert group and passed on to the initiators of the research. URL: https://stat.xn----7sbqk8achja.xn--p1ai/ (or https://legalpress.ru/).

111 For example, official Russian statistics on judicial processes from 2016 to 2023 provide information on the structure of criminal penalties for these groups of crimes with a tendency to a slight increase of approximately 5% in 2022 and 2023 (data for 2024 is not available). Data from the Russian resource of the Legal Information Agency, registered by the Federal Service for Supervision of Communications, Information Technology and Mass Media. URL: https://stat.xn----7sbqk8achja.xn--p1ai/stats/ug/t/14/s/17
Law enforcement sources report a significant increase in the number of investigations in 2022, 2023 and 2024. URL: http://gvsu.gov.ru/news/predsedatel-sledstvennogo-komiteta-rossiyskoy-federatsii-podvel-itogi-raboty-voennykh-sledstvennykh-/?sphrase_id=90296, https://nsk.sledcom.ru/news/item/1866688/

112 "The year 2023 was a record year in terms of the number of convicted "traitors to the homeland". Their number increased almost tenfold in ten years". URL: https://dept.one/story/rekord-gosizmena/
"Learned how to work in large volumes. How in 2023 the FSB set a record for cases of high treason and espionage and what to expect in 2024". Current Time, 08.01.2024. URL: https://www.currenttime.tv/a/rekord-po-delam-o-gosizmene-i-shpionazhe/32762549.html
"The system never went backwards. How in 2023 the FSB set a record on cases of high treason and espionage". Sibir. Realii, 05.01.2024. URL: https://www.sibreal.org/a/kak-v-2023-godu-fsb-ustanovila-rekord-po-delam-o-gosizmene-i-shpionazhe/32753617.html

113 Indicators of crime. Portal of Legal Statistics, Prosecutor General's Office of the RF. URL: http://crimestat.ru/offenses_map

114 Changes to the list of terrorists and extremists. URL: https://extrem.ishukshin.ru

and 2024, the number of terrorism-related prosecutions increased by approximately 4,000 cases, and the number of extremism charges increased by 800 cases. These figures represent an unprecedented expansion in the application of counter-terrorism and counter-extremism laws during this period.

In terms of total volume, the available data indicates that approximately 500 criminal cases were initiated in 2022. In 2023, this figure increased to 3,000 cases, and by 2024, the total number of cases will reach approximately 5,000. However, accurate tracking of individual cases remains problematic due to the high level of secrecy surrounding these prosecutions, which further complicates transparency and accountability in the criminal justice process related to these charges.

The analysis of these sources allows us to identify a certain typology of charges in criminal prosecutions, which can be classified into separate groups of criminal cases.

Table 2.1. Classification of criminal charges by category

Categories of Crimes	**Articles of the CC of the RF**	**Explanation**
Group 1. Attempted Crime	30	Preparation for a crime and attempted crime
Group 2. Crimes Against Life	105-107, 126	Crimes against life and health, abduction
Group 3. Destruction of Property	162, 167-170	Crimes against property
Group 4. Terrorist Crimes	205, 205.2, 205.3, 205.4, 205.5	Terrorism, links to terrorist organisations
Group 5. Armed Groups and Their Illegal Activities	208, 211, 214, 278	Organisation and participation in illegal armed formations, etc.
Group 6. Weapons and Explosives	222-223.1, 226, 226.1	Manufacture, possession, use, or trade of weapons or explosives
Group 7. Crimes Against the State	275-277, 281	Treason, espionage, sabotage, extremism
Group 8. War Crimes[115]	356	Violation of the laws and customs of war

Evidence suggests that Russia is developing and implementing a deliberate policy of judicial persecution of Ukrainian civilians and military personnel to strengthen control and suppress resistance in the occupied territories, aligning these prosecutions with military operational goals and additional strategic objectives.

The structure and oversight of this policy emphasise its centralised and hierarchical nature. For example, the heads of the investigative bodies (the Investigative Committee, the FSB and the MIA of the RF) are appointed directly by the President of Russia, act under his super-

115 A small number of cases involving allegations of violations of the rules of war were considered by the expert group as an exception to demonstrate trends or in cases of high profile cases involving accused Ukrainian military personnel.

vision and are accountable to him. To effectively implement this policy, Russia has created law enforcement and judicial bodies under its control, which are tasked with prosecuting criminal cases in the occupied regions[116].

DATA FROM THE MONITORING OF SAMPLED CASES

For a more detailed analysis, individual cases were selected[117] for monitoring from the initial database of human rights organisations, which included about 600 cases (taking into account such factors as the gender and status of the accused, geography of the trials, qualifications of the charges, etc.) Further observations of each court hearing were provided by the monitoring teams and consist of 22 cases and 145 court hearing observations during 2023-2024. A selective number of court hearings were attended, where it was possible to observe and fill in a specially designed questionnaire[118] for each court hearing. Some court hearings were recreated based on information from participants or visitors to the court hearing, as well as judicial processes and other relevant information.

The collected information was disaggregated and systematised according to 40 criteria of fair trial guarantees, which formed a database subject to standard statistical analysis[119].

The total number of hearings per defendant is expressed both in absolute numbers and as a percentage of all monitored hearings. The graph below shows the breakdown of monitored court hearings by charges (articles), territory, status (civilian or military), sex and age of the accused.

The profile of the cases selected for monitoring is presented in the graph below. All personal data is anonymised, but the initiators of this research have full details.

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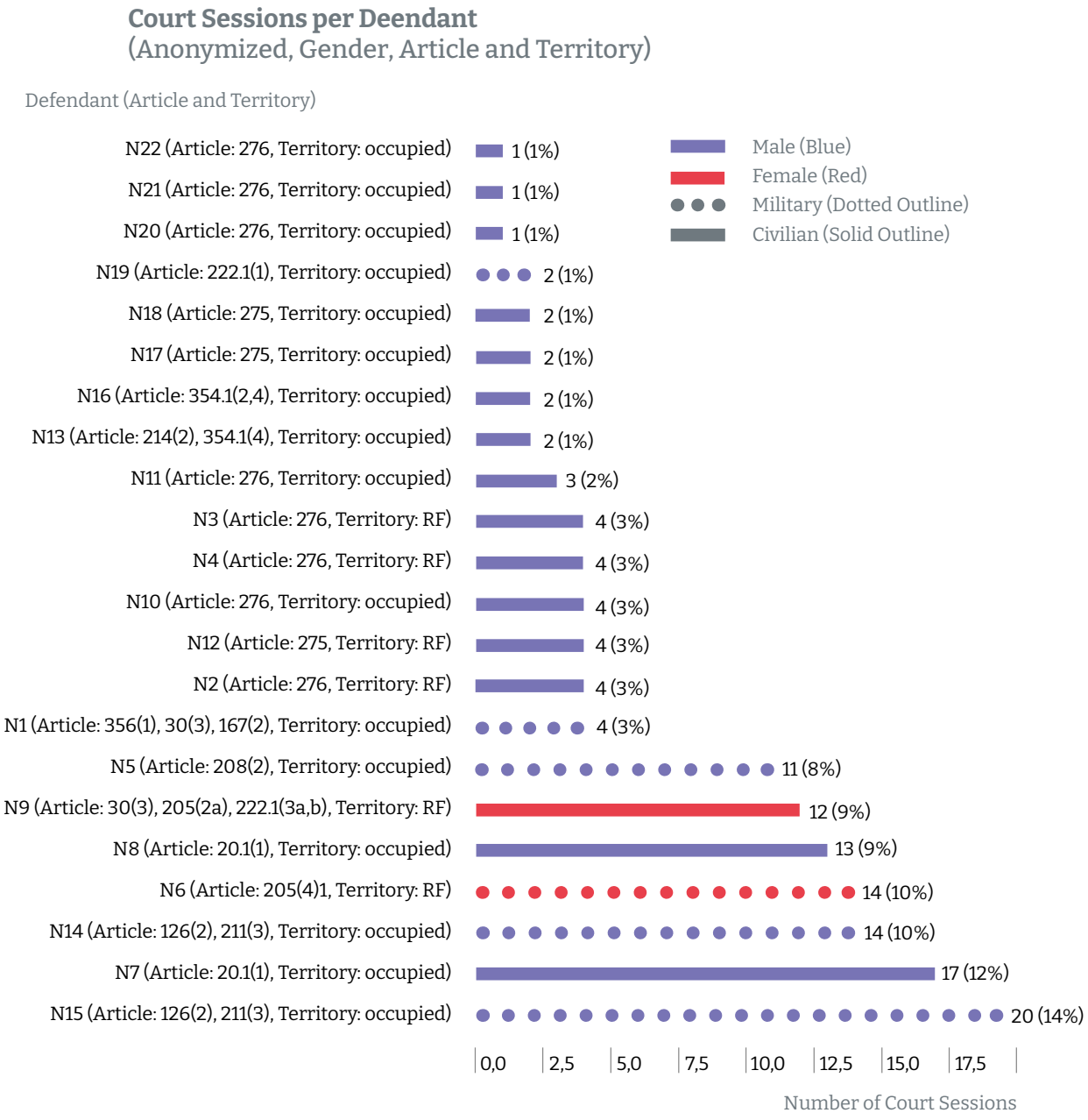
116 For more details, see Section I of this research.
Increase in the number of law enforcement investigators dealing with the occupied territories by 100 since 2022, namely, the Presidential Decree No. 880 of 5/12/2022 increased the staffing of the Investigative Committee of the RF. Website of the Investigative Committee of the RF. URL: https://sledcom.ru/news/item/1746881/
Federal law from 28.12.2010 N 403-FL "About Investigatory committee of the RF". Pravo.gov.ru ConsultantPlus. URL: https://www.consultant.ru/document/cons_doc_LAW_108565/3cc6b4164b4b7f7c995e1722c9968aa0f4455149/
Decree of the President of the RF 05.12.2022 No. 880 "On Amendments to the Decree of the President of the RF of 14/01/2011 No. 38 "Issues of Activity of the Investigative Committee of the RF". Portal Official publication of legal acts of the RF. URL: http://publication.pravo.gov.ru/Document/View/0001202212050095?index=2

117 A full list of the relevant selected cases is in the file "Section II_Fair_Trials.xlsx", held by the initiators of the research.

118 The monitoring questionnaire was developed and used on the basis of the OSCE/ODIHR fair trial monitoring approach. URL: https://www.osce.org/files/f/documents/f/0/233511.pdf

119 A depersonalised dataset is available. Statistical analysis was conducted using two software packages: Python and R, all scripts are available on request to the initiators of the research.

Graph 2.2. Profile of cases selected for monitoring



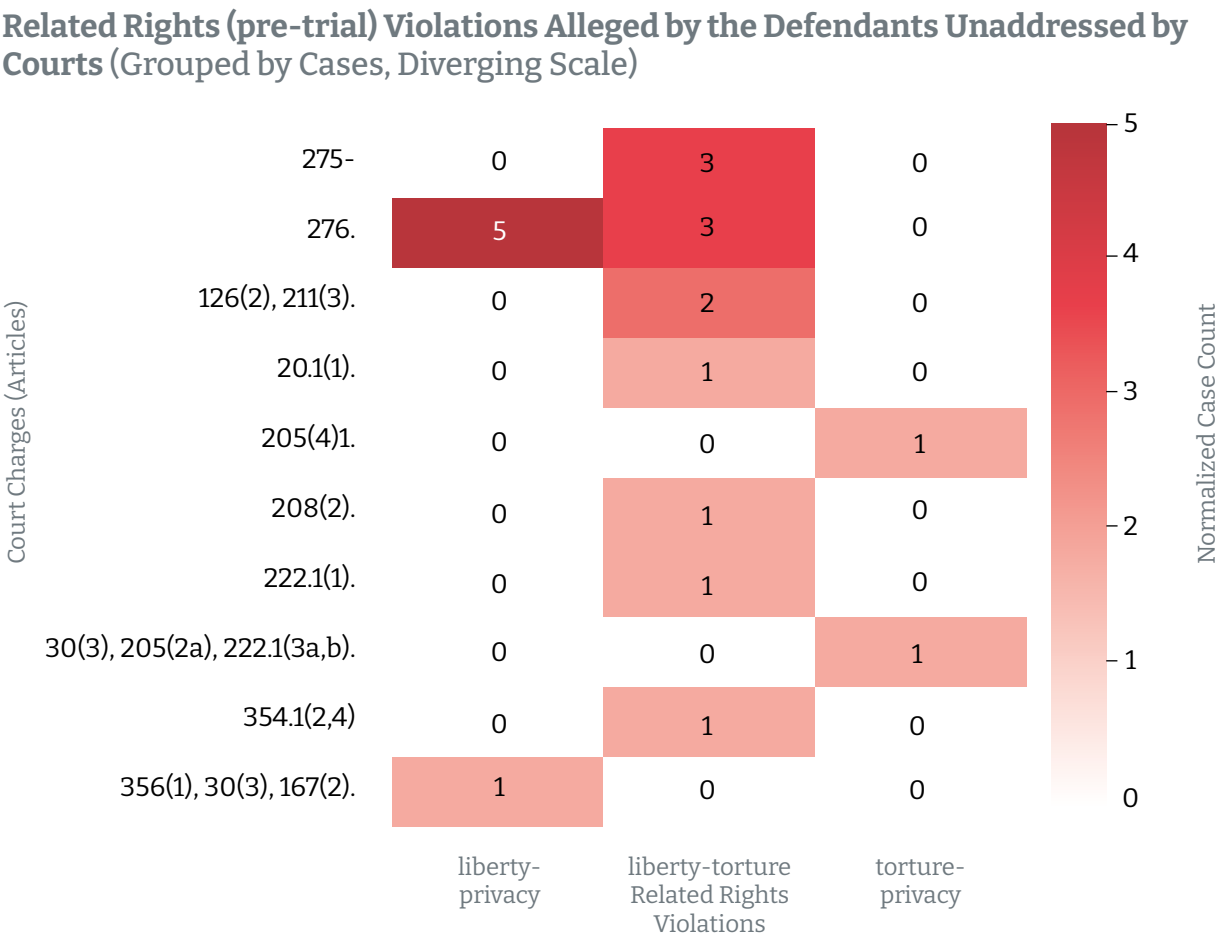
At the same time, 10 of the cases selected for monitoring were identified as leading cases, as they are considered to be the most representative in the respective category. The leading cases were subjected to a comprehensive legal analysis, which included the examination of all court materials, including judgments, indictments and other documents relevant to the case. Two documents were prepared for each leading case: a list of cases with an analysis of fair trial guarantees for each court hearing and key criteria for assessing the relevant judgments under Article 6 of the ECHR[120].

120 The corresponding file "Section II_Fair_Trials.xlsx" with full personal data and case analysis is held by the initiators of this research.

Associated violations of fundamental rights

The dataset, as shown in Graph 2.3 below, reveals patterns of charges (articles of the CC of the RF) and their connection with violations of the rights of the persecuted persons, in particular in the context of "freedom", "prohibition of torture", and "privacy"[121]. Each row represents a legal allegation, and the columns show the number of cases involving specific types of rights violations. In general, this highlights the recurrence of rights violations related to certain allegations. The data highlights specific allegations that require further legal analysis and monitoring to ensure that procedural safeguards are respected and that rights are protected in the administration of justice.

Graph 2.3. Related violations of fundamental rights



The most notable observation is the recurring link of Article 276 of the CC of the RF (Espionage) with violations of the right to liberty[122]and torture[123] (torture to obtain evidence and in-

121 In accordance with the standards of international human rights law and international criminal law.

122 There are several patterns in relation to civilians: administrative detention for matters unrelated to the alleged offence, which is applied to arrest for a period of 1-2 months, actual detention *incommunicado* without any legal basis, and in both cases, a recognition of the lack of access to legal protection. In the case of military detention, the actual detention is not reflected in judicial proceedings, but lasts from several months to one year.

123 In most cases, the convictions of civilians and military personnel involve serious psychological pressure throughout the entire period of detention, various forms of physical violence, both of which are used to force self-incrimination or extract confessions. The notoriously degrading conditions of detention include significant restrictions on access to water, sleeping conditions, overcrowding of cells, absence of hygiene, running water, toilets, etc.

humane conditions of detention) against the persecuted persons. Five cases were initiated under this article, which included violations of the personal liberty of the accused, and three cases where the accused reported being subjected to torture and ill-treatment.-Similarly, Article 275 of the CC of the RF (High Treason), although less frequently observed in the selected category of cases, is also related to violations of the right to liberty and torture (one and two cases, respectively).

Torture appears as a recurring violation in the cases of several accused persons. In addition to Articles 276 and 275 of the CC of the RF, torture is linked to cases under Articles 126(2), 211(3), 208(2), 20.1(1) and 354.1(2,4) of the CC of the RF. This pattern suggests that certain charges are disproportionately associated with coercion or ill-treatment, potentially reflecting systemic deficiencies in the treatment of defendants under these articles.

Violations of privacy (communication with relatives) are less frequent, but are associated with specific charges, in particular Article 205(4)1 and the combination of Articles 30(3), 205(2a) and 222.1(3a,b) of the CC of the RF. Although these violations are isolated, they may indicate a targeted approach justified by these specific charges. These findings call for further research into the procedural safeguards and oversight mechanisms applied in cases of privacy violations.

In contrast, violations of the right to liberty are observed more broadly across several articles of the charges. While Article 276 of the CC of the RF is the most visible in this regard, other charges, such as Articles 356(1) and 167(2) of the CC of the RF, also reflect violations of the right to liberty. This trend indicates the systematic use of detention or restriction of liberty in response to certain charges.

The frequent connection of torture and violations of the right to liberty to specific charges raises concerns about possible systematic practices in the judicial and law enforcement systems. The data indicate that charges such as Articles 276 and 275 of the CC of the RF may be disproportionately used in a manner that leads to serious violations of the rights of the persecuted persons, which highlights the need for a more in-depth examination of the procedural application of these charges.

VIOLATIONS OF THE RIGHTS TO A FAIR TRIAL

Patterns of violations

Based on the specific guarantees of a fair trial, the research examined the key groups of guarantees under Article 6 of the ECHR and their interdependence based on the analysis of the cases selected for monitoring[124]. These percentages are representative of the initial set of 600 cases, out of the total number of recorded violations for the monitoring set:

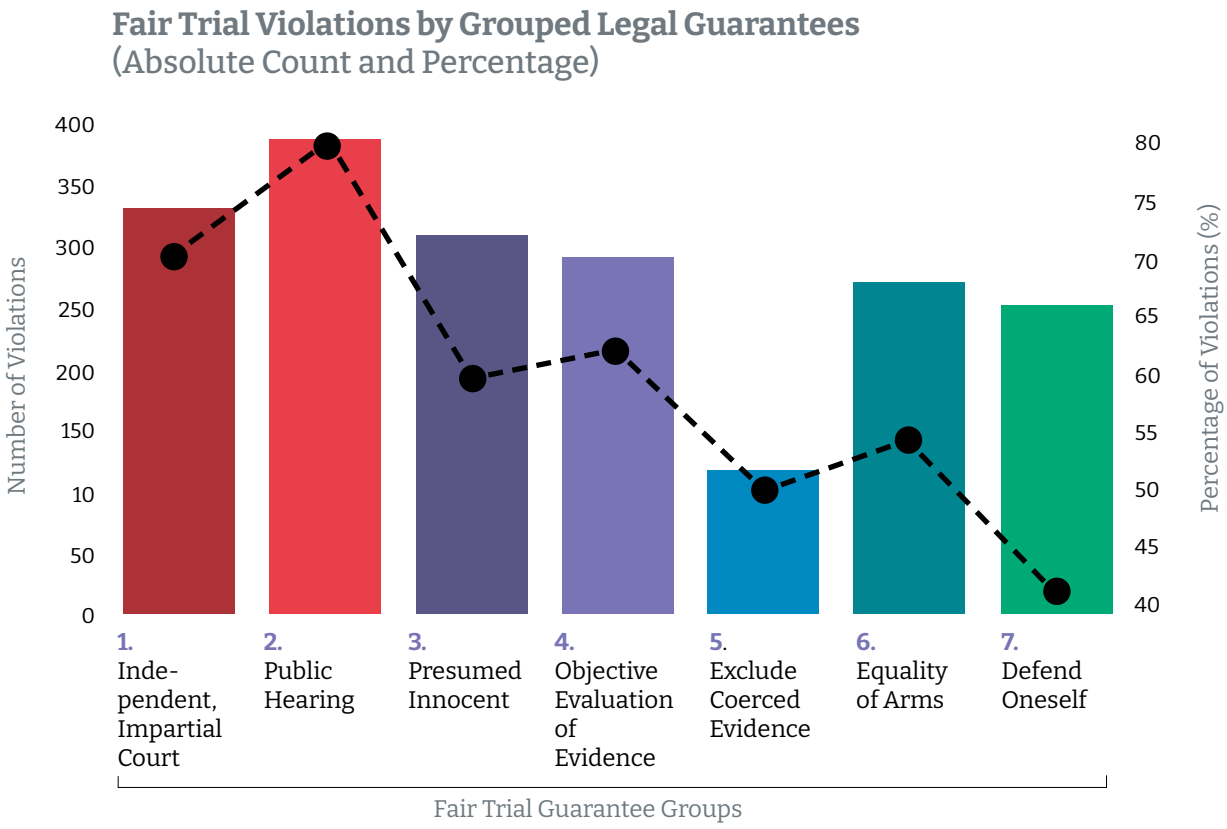
- **Group 1:** Independent, impartial court: 70% of violations of guarantees (330 cases recorded)

124 For more details, see Graph 2.5 below and the file "Section II_Fair_Trials.xlsx" (held by the initiators of the research), based on the results of the research of 145 court hearings in 22 cases and the analysis of violations of fair justice standards. These results of the analysis, according to the research methodology, can in fact be extended to the entire initial data set of 600 cases identified in the course of the research.

- **Group 2:** Public hearing: 80% of violations of guarantees (387 cases recorded)
- **Group 3:** Presumed innocent: 59% of violations of guarantees (309 cases recorded)
- **Group 4:** Objective evaluation of evidence: 62% of violations of guarantees (290 cases recorded)
- **Group 5:** Exclude coerced evidence: 49% of violations of guarantees (117 cases recorded)
- **Group 6:** Equality of arms: 54% of violations of guarantees (271 cases recorded)
- **Group 7:** Defend oneself: 41% of violations of guarantees (252 cases recorded)

The graph below shows these groups of violations.

Graph 2.4. Groups of violations of the right to a fair trial



The results of the identified violations are presented in detail below.

Group 1: *Independent, impartial court – 330 violations (70%).* The high percentage of violations related to the independence and impartiality of judges indicates significant systemic problems in the judiciary. This group covers the main guarantees of a fair trial, such as the impartiality of judges and prosecutors, as well as the integrity of court procedures. This is evidenced by the prevalence of violations:

- Possible political or external interference affecting judicial decision-making;
- Structural deficiencies in ensuring an impartial trial, such as bias or conflicts of interest among judges;

- Absence of accountability mechanisms to prevent bias or unfair formation of the judiciary.

Consequences: A compromised independent judiciary undermines public trust in the legal system, creating the impression that courts serve the interests of external actors (state authorities) rather than justice.

Group 2: *Public hearing - 387 violations (80%).* The high frequency of violations in this category indicates widespread procedural non-transparency and limited public access to judicial processes. Specific problems identified through observation and analysis:

- Denial of access to courtrooms for the public or the media;
- Failure to ensure sufficient transparency of information on the case or decisions, and their non-publication;
- Absence of full texts of court verdicts in publicly available materials.

Consequences: The absence of transparency undermines the principle of accountability of the judiciary, creating conditions under which judicial mistakes can occur without public oversight.

Group 3: *Presumed innocent - 309 violations (59%).* The significant number of violations in this group indicates systemic problems with the presumption of innocence, which is the cornerstone of fair trial guarantees. Key issues identified through observation and analysis:

- Treatment of accused persons as guilty prior to sentencing (e.g. biased statements by prosecutors or judges);
- Pressure on the accused to self-incriminate, such as through coercion or leading questions during the trial.

Consequences: Violation of the presumption of innocence indicates an accusatory culture in the judicial processes, where the burden of proof may be improperly shifted to the accused. This undermines the legitimacy of convictions.

Group 4: *Objective evaluation of evidence - 290 violations (62%).* The level of violations in this group indicates significant procedural shortcomings, in particular in the handling and evaluation of evidence. Key issues identified through observation and analysis:

- Courts do not review relevant motions or exclude key evidence in the case;
- Problems with the reliability of witness or expert testimony;
- Absence of a comprehensive and impartial evaluation of the available evidence.

Consequences: Deficiencies in evidence evaluation processes lead to unfair trials and contribute to unfair judgments. They raise concerns about procedural safeguards, especially in politically sensitive cases.

Group 5: *Exclude coerced evidence - 117 violations (49%).* In about half of the cases, violations were found, in particular, in the failure to exclude evidence obtained under coercion:

- Failure to comply with the requirement to exclude evidence obtained under torture or coercion;
- Courts refusing to satisfy motions to exclude evidence obtained under coercion.

Consequences: The acceptance of evidence obtained under coercion is a serious violation of international human rights standards, often linked to systemic problems such as police brutality, abuse of power by prosecutors or absence of an independent trial.

Group 6: *Equality of arms - 271 violations (54%).* This group includes, in particular, violations related to the principle of equality of the prosecution and defence. Specific issues identified through observation and analysis:

- Failure to review motions or evidence submitted by the defence;
- Procedural bias in favour of one party (often a positive bias towards the prosecution);
- Inequality in time or resources provided to the defence compared to the prosecution.

Consequences: The violation of the equality of arms is indicative of a structural imbalance in the judicial system, where defendants may not have sufficient means to effectively challenge the charges against them, especially in politically motivated or resourceful cases.

Group 7: *Defend oneself - 252 violations (41%).* This group has the lowest percentage of violations, but their number is still significant. The identified issues include:

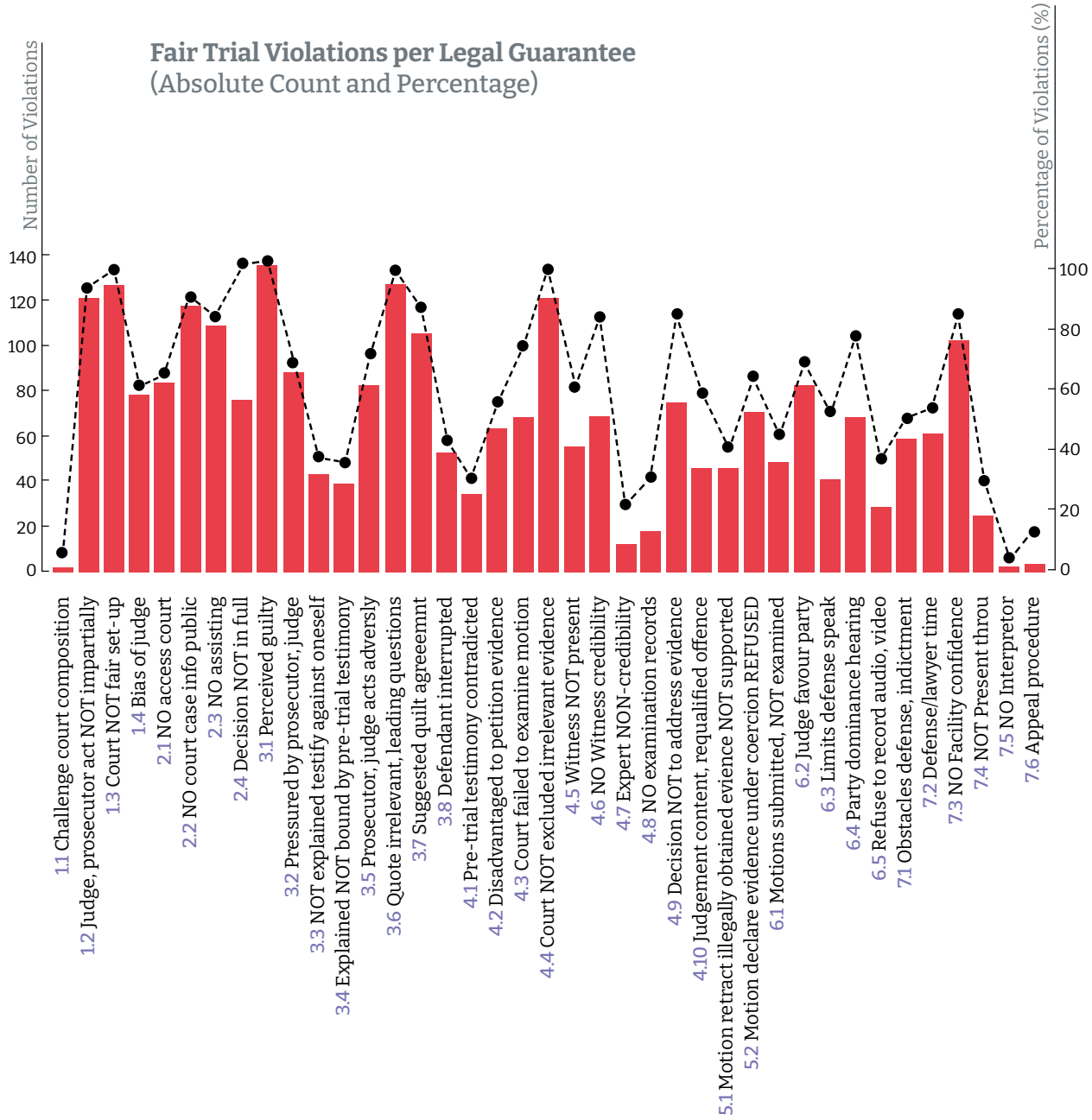
- Obstructing the defence team or individual defence counsels in the preparation or presentation of their case;
- Limited time or resources available to the defence counsel to defend the accused;
- Denial of basic rights, such as access to interpreters or proper working conditions, communication with the client, etc.

Consequences: Violations in this group highlight the barriers and obstacles faced by accused persons in obtaining defence counsel, particularly in cases involving non-native Russian speakers, vulnerable groups or complex legal contexts.

VIOLATIONS OF THE FAIR TRIAL GUARANTEES

To provide a comprehensive overview of the observance of the right to a fair trial, the monitoring was conducted based on dozens of fair trial guarantee indicators grouped into 7 categories (see Graph 2.5 for detailed explanations). The data obtained provides a comprehensive picture of violations of the right to a fair trial under several legal guarantees. Each guarantee reflects the percentage of violations of its application, highlighting systemic problems and problematic issues in the judicial processes. The graph below shows the frequency of violations of procedural rights in absolute numbers and in percentage terms in the cases selected for monitoring and analysis.

Graph 2.5. Violations of fair trial guarantees



Independent, Impartial Court (*1.1, 1.2, 1.3, 1.4)*

- *Appeal against the composition of the court:* Only 2 violations (3%) indicate that appeals against the composition of the court are rare, which may indicate a low demand for such appeals or systemic barriers to their effective submission.
- *Impartiality of the judge/prosecutor:* 122 violations (91%) indicate significant failures to maintain impartiality, indicating systemic bias or interference.
- *Fairness of the court in the organisation of proceedings:* 127 violations (97%) indicate wide-spread problems with the structural fairness of judicial proceedings.

- *Judicial bias:* 79 violations (59%) indicate that judicial bias is a serious problem that undermines confidence in the impartiality of justice.

Consequence: Structural and procedural fairness is seriously compromised, and the judicial system is prone to bias and absence of impartiality, undermining the right to a fair trial in this category of cases.

For example, the following case can be cited:

Status	Court	Article of the CC of the RF	Comments on key violations
Military and civilian cases (N6, N7)	Court in the RF	30, 205	During most court hearings, the prosecutor and the judge acted as a team, often communicating with each other, supporting and defending each other. The prosecutor and the judge sat close to each other and communicated in a friendly atmosphere. The defendant's statements were treated as a mere formality, which was hardly noticed. Throughout the trial, the judge made encouraging statements and used a negative tone when addressing and commenting on the defence counsel's words and statements. In several instances, the defendant was interrupted and effectively prevented from fully presenting his position. The texts of the judgments contain politically biased language reflecting bias and a negative stance towards the defendants, in particular with regard to their Ukrainian citizenship.

Public Hearing *(2.1, 2.2, 2.3, 2.4)*

- *Access to the court:* 84 violations (62%) reflected limited public access, possibly due to procedural or security restrictions.
- *Availability of information about the case to the public:* The 118 violations (87%) indicate a lack of transparency, which further undermines public trust.
- *Assistance in court:* 109 violations (81%) point to obstacles in providing adequate support or representation to the accused.
- *Publication of the full text of the decision:* 76 violations (99%) indicate almost universal non-compliance with the practice of publishing full texts of decisions.

Consequence: The absence of openness and transparency in judicial processes hinders accountability and public oversight, which further violates fair trial guarantees.

Problems were identified with the conduct of trials behind closed doors, which, in particular, probably took place from the beginning of the occupation and only worsened with the introduction of Russian legislation to these territories. The practice of restricting public access to information about trials was systematic (information about hearings was not published in

advance in 34% of cases monitored). A significant number of judgments were not published. Systemic violations were recorded as a result of administrative and logistical obstacles to the presence of the public and journalists at court hearings. There was also a widespread practice of refusing to record court hearings, as well as refusing to allow the public and journalists to take photos and videos of court hearings (in six cases observed, the motions of the defence and/or the public were systematically rejected). In addition, there were even cases of creating conditions and an atmosphere of intimidation of monitors in the courtroom.

For example, since the beginning of the full-scale invasion of Russia in February 2022, the closure of judicial processes in the occupied Crimean peninsula has become even more systemic and demonstrates the continuation and deterioration of the practice previously recorded by researchers. Moreover, the closure and restriction of the publicity of trials, in particular in politically motivated cases and cases concerning the consequences of international armed conflict, is part of the occupation authorities' policy of judicial persecution.

As noted by the Crimean Process initiative in its research on the state of openness of the Crimean judiciary[125], most judicial bodies used the positions from the joint order of the Office of the Judicial Department of the Republic of Crimea and the Office of the Federal Bailiffs Service in the Republic of Crimea, issued on 25 February 2022, on *"strengthening anti-terrorist security measures of the court and in connection with the prevention of illegal actions in the court premises, increasing the level of security of judges"*. Referring to this order, the heads of the local occupation courts determined a new procedure for visiting the court premises, according to which only employees and participants in the proceedings are allowed to enter the court building.

Due to such actions, any independent court monitors were deprived of the opportunity to attend the hearings related to the cases under Article 208 of the CC of the RF "Organisation or participation in an illegal armed formation", which took place in the so-called Kyiv District Court of Simferopol, Razdolnensky District Court and Krasnoperekopsk District Court (at least three attempts were made by the initiative's monitors to attend the court hearings). At the same time, in Krasnoperekopsk, it was not even possible to establish the name of the convicted person, as the court concealed this information and made efforts to consider the case without the audience.

In addition to the general restrictions prohibiting visits to the court building, there is a widespread practice of restricting the publicity of judicial processes by court order under Paragraph 1 of Part 2 of Article 241 of the CPC of the RF, which allows for a closed trial "if the consideration of a criminal case in court may lead to the disclosure of state or other secrets protected by federal law".

During the monitoring period, at least 23 cases were recorded in which the court allegedly issued a separate court ruling on the closure of the judicial process due to the possible presence of information related to state secrets in the case file. The presence in such rulings of specific, factual circumstances based on which the court made the decision has not been established, as there is no access to court files. A notable trend is the consistent practice of "closing" judicial

125 Analytics "Openness of the Crimean court proceedings is closed to non-participants". Crimean Process Initiative, 15.09.2023. URL: https://crimean-process.org/otkrytost-krymskogo-sudoproizvodstva-zakryta-dlya-neuchastnikov-proczessa/

processes under Article 275 of the CC of the RF "High Treason" and under Article 275.1 of the CC of the RF "Cooperation on a confidential basis with a foreign state, international or foreign organisation", which are often used against Ukrainian civilian detainees in the occupied territories.

It should also be noted that according to the results of observations of 23 "closed" cases, in 15 cases, the monitors not only found it impossible to get to the hearing, but also tried to get to the verdict announcement, which also proved impossible. The rulings on the closure of the judicial processes were extended to the announcement of verdicts.

Presumed Innocent *(3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8)*

- *Perception of guilt:* 137 violations (99%) indicate an almost complete disregard for the presumption of innocence.
- *Pressure from prosecutors/judges:* 89 violations (65%) indicate systemic coercion in the judicial processes.
- *Explanation of the right not to incriminate oneself:* 44 violations (35%) indicate a certain level of compliance with the law, although problems remain.
- *Refusal to be bound to pre-trial testimony:* 39 violations (33%) indicate partial compliance with this right.

Consequence: Systematic violations, particularly regarding the presumption of innocence, reflect a judicial culture that is inclined to the presumption of guilt, often leading to coerced confessions or testimony.

For example, the following case can be cited:

Status	Court	Article of the CC of the RF	Comments on key violations
Civilian (N9)	Court in the TOT	119	The accused person was the victim of a smear campaign organised by numerous media and messenger campaigns. During the arrest, the person was filmed and subsequently disseminated in an incriminating context. The information disseminated included defamatory statements, accusations of treason, and the use of degrading terms. The individual was initially detained and placed under administrative arrest. Later, criminal charges were brought against the accused over the same facts, after which law enforcement officers pressured the person to confess against oneself.

Objective Evaluation of Evidence *(4.1-4.10)*

- *Contradictory pre-trial testimony:* 35 violations (28%) reflected some compliance with procedures, but with notable shortcomings.
- *Obstructing a motion for the submission of evidence:* 64 violations (53%) indicate frequent procedural shortcomings for the accused.

- *Refusal to consider motions:* 69 violations (72%) demonstrate widespread disregard by the courts of the defendant's motions.
- *Refusal to exclude irrelevant evidence:* 122 violations (97%) indicate significant procedural gaps.
- *Questions from witnesses and experts:* Distrust of witnesses (69 violations, 81%) and failure to appear (56 violations, 58%) indicate systemic shortcomings in the work with witnesses.

Consequence: The handling of evidence is highly problematic, with a systematic disregard for procedural fairness and proper evidence management.

For example, the following case can be cited:

Status	Court	Article of the CC of the RF	Comments on key violations
Military (N11)	Court in the TOT	105, 356	The text of the verdict contains about 20% of information that is not relevant to the case. Much of the text relates to political assessments of the general situation without individualisation or direct application of the facts to the specific case. The prosecutor's office presented several expert opinions and heard testimony from experts on technical military matters. However, the defence was unable to question the experts or ask them questions on behalf of the accused and could not present its own expert due to the absence of an appropriate institution and the limited time available to order alternative expert opinions. At the pre-trial stage, the accused was formally represented by an appointed lawyer who did not challenge the investigative procedural actions, leaving the accused without proper support and even without knowledge of the actions of the appointed lawyer. The motion to challenge the pre-trial confession of the accused was rejected by the judge. The verdict contains several deficiencies in the causal structure of the prosecution, in particular with regard to the facts directly related to the prosecution, which should have been the basis of the verdict.

Exclude Coerced Evidence *(5.1, 5.2)*

- *Failure to comply with the requirement to exclude illegally obtained evidence:* 46 violations (38%) indicate partial compliance, but there are systemic gaps.
- *Refusal to recognise evidence obtained under coercion:* 71 violations (62%) indicate problems with evidentiary integrity.

Consequence: Evidence obtained under coercion remains widespread, undermining the rights of defendants and the credibility of the judicial process.

For example, the following case can be cited:

Status	Court	Article of the CC of the RF	Comments on key violations
Civilian (N7)	Court in the RF	30, 205	The accused was convicted based solely on the confessions made at the pre-trial stage. In the first days after the detention by the police, the accused was subjected to prolonged psychological pressure and physical beatings. The testimony and confessions were obtained under coercion, which was repeatedly stated in court through several motions, all of which were rejected. In addition, the defence filed a motion regarding the incompatibility of the accused person's testimony at the pre-trial and trial stages, but the court rejected this motion, upholding the position of the investigating authorities.

Equality of arms *(6.1 - 6.5)*

- *Failure to consider motions:* 49 violations (42%) indicate a certain procedural imbalance.
- *Judicial bias in favour of one arm:* 83 violations (66%) indicate judicial bias.
- *Restrictions in the defence speech:* 41 violations (50%) indicate systemic restrictions on the ability of defendants to fully argue their case.
- *Dominance of the opposing side*: 69 violations (75%) indicate the absence of balance in court hearings.

Consequence: The judicial process favours one arm, with limited opportunities for defendants to present their positions fairly.

For example, the following case can be cited:

Status	Court	Article of the CC of the RF	Comments on key violations
Military (N6)	court in the RF	205.4	The defendant filed a motion to invalidate the pretrial confessions and testimony on the grounds that they were obtained under coercion. The prosecutor's office objected to the motion, which was rejected by the court, as the pre-trial investigation authorities provided evidence confirming that the established procedure was followed. The defence repeatedly filed motions for the use of coercion against the accused, including torture, physical violence and psychological pressure. However, the court rejected these motions, finding the allegations of torture unfounded, without properly assessing the testimony and evidence provided. Instead, the court relied on the testimony of the investigators who conducted the pre-trial investigation.

			An additional motion challenging the relevance of this testimony on the grounds that it was obtained at the pre-trial stage without the presence of the chosen defence counsel and that the signature of the lawyer was only a formality, was also dismissed. The court reasoned that the lawyer's signature was contained in the relevant documents. In addition, the motion to re-qualify the charges due to the absence of the necessary legal elements was rejected without detailed consideration, based solely on the prosecutor's formal position on maintaining the previous qualification. Moreover, at the request of the prosecutor, the court decided to increase the charges against the defendant.

Defend Oneself *(7.1-7.6)*

- *Obstacles to defence:* 59 violations (48%) indicate difficulties in building a proper defence.
- *Insufficient time to prepare:* 61 violations (51%) indicate frequent procedural shortcomings.
- *Absence of trust in legal remedies:* 102 violations (82%) indicate systemic shortcomings in ensuring access to adequate conditions of detention for defendants.
- *Problems with the provision of interpreters:* 2 violations (2%) reflect a relatively small number of language barriers.

Consequence: The accused face significant obstacles in exercising their right to defence, including limited resources and inadequate support.

For example, the following case can be cited:

Status	Court	Article of the CC of the RF	Comments on key violations
Civilian (N10)	Court in the TOT	276	Absence of critical evidence to prove the crime: The prosecution is based on political motives, in particular, the persecution of former law enforcement officers and pro-Ukrainian individuals in the occupied territory. The verdict is based on allegations of collecting and transmitting publicly available information without proving specific consequences, which does not allow the establishment of the necessary elements of the crime. Incorrect qualification of actions and disregard of procedural guarantees: the court does not substantiate the key elements of the crime under Article 276 of the CC of the RF, including intent, classification of the information transmitted and real damage to the state interests. The decision ignores fundamental procedural rights, including access to a lawyer, the principle of equality of arms and guarantees against prolonged isolation.

			Ignoring key arguments of the defence: The court does not consider the critical arguments of the defence, which makes it impossible to have a fair trial. The appointed counsel did not perform his duties properly, did not appeal against procedural violations and did not provide an effective defence. These violations indicate significant restrictions on the right to defence, absence of access to adequate legal representation and disregard for procedural guarantees, which undermines the fairness of the trial.

ANALYSIS AND KEY FINDINGS

The analysis of the data highlights systemic problems with the observance of fair trial guarantees, pointing to several critical areas of concern. The impartiality of judges is a significant challenge in such cases, and the high level of violations of this standard indicates systemic interference with justice or a tendency for judges themselves to be biased in this category of proceedings. This undermines the fundamental principle of an impartial justice system.

In addition, there is a widespread lack of publicity and accessibility of judicial processes, as well as closed information resources of courts in general and information on court cases and decisions in the cases under investigation in particular. The limited public access to court hearings and the failure to provide comprehensive information on cases significantly reduce the accountability of the judiciary. This absence of openness undermines public confidence and makes it virtually impossible for any independent monitoring and observation of the proceedings.

Another serious challenge is the treatment of evidence and witnesses. Numerous irregularities related to the management of evidence and the credibility of witnesses expose procedural flaws that call into question the fairness and reliability of judicial processes and judgments based on such evidence.

Finally, of particular concern is the almost complete erosion of the presumption of innocence. Evidence suggests that the judicial culture is heavily weighted towards an accusatory approach, where guilt is presumed rather than proven. This undermines the fundamental rights of the accused and the principle of fair justice.

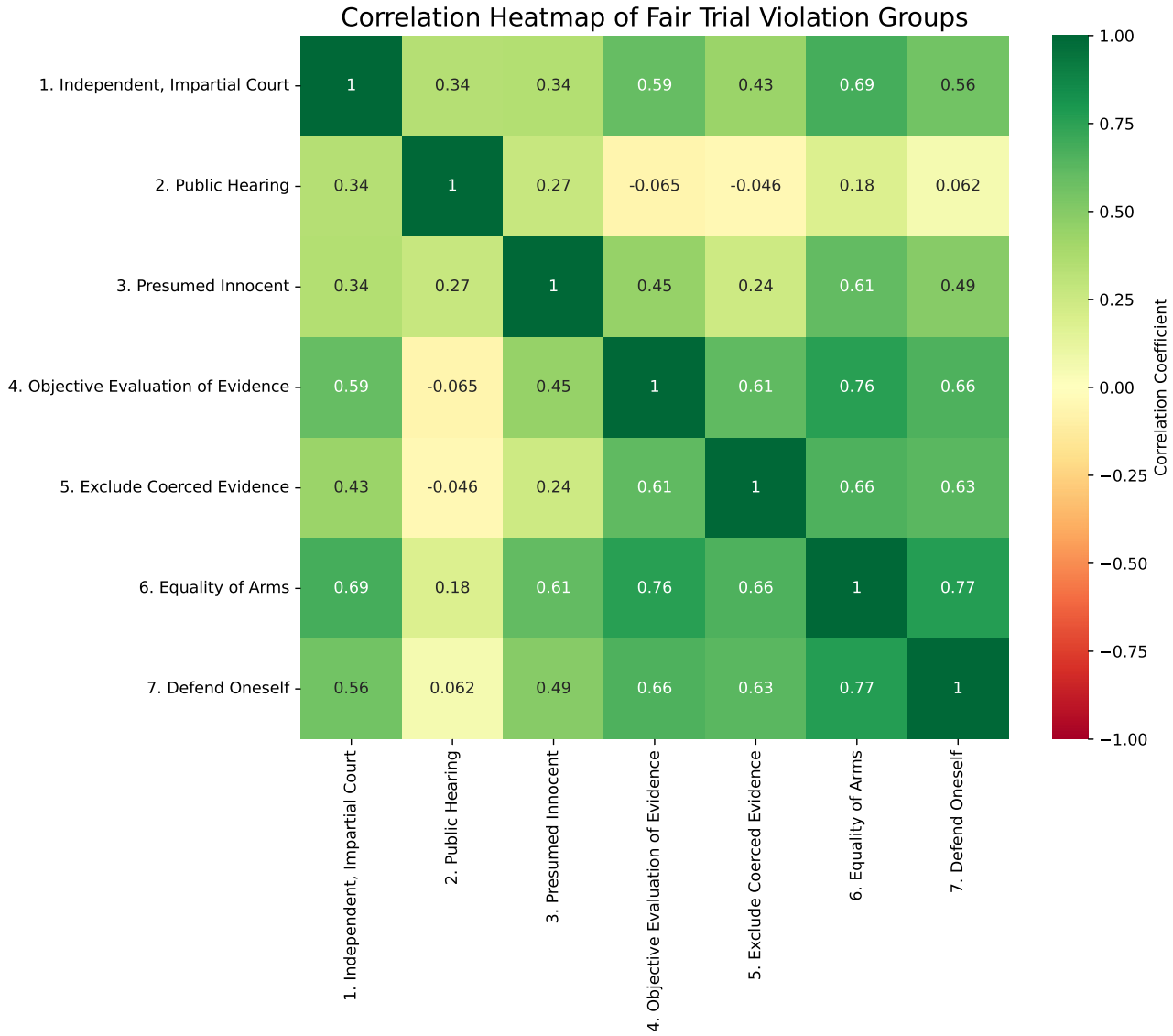
The data indicate systemic problems in all key aspects of fair trial guarantees, with violations being most prevalent in the categories relying on institutional independence and transparency. Specific patterns include:

- *Structural shortcomings:* The high level of violations in such categories as judicial impartiality and public hearings indicates institutional shortcomings and possible external interference in the work of the courts and specific judicial processes.
- *Procedural non-transparency:* The absence of publicity in judicial processes contributes to the public perception of injustice.

- *Absence of a common culture:* The high prevalence of violations of the presumption of innocence and equality of arms, and limited rights to defence, indicates an accusatory bias in the judiciary in this category of cases.

Below is presented the correlational interdependence between groups of guarantees and their corresponding consequences. The correlation matrix provides an insight into how violations of one category of legal guarantees are related to violations of other categories. This analysis is carried out by correlating the data for each group of guarantees.

Graph 2.6: Correlations of violations of the right to a fair trial



1. Independent, Impartial Court

- *Strong correlation with the equality of the arms (0.68):* This suggests that violations related to the impartiality of judges are often accompanied by violations of procedural parity between the prosecution and defence. The bias of the judiciary is likely to perpetuate unequal treatment of the parties, favouring the prosecution.

- *Moderate correlation with objective assessment of evidence (0.59):* This suggests that when courts fail to remain independent and impartial, they may also improperly evaluate evidence, for example, by excluding relevant evidence or relying on a biased interpretation of it.
- *Moderate correlation with the right to defence (0.56):* This demonstrates that an impartial judiciary is crucial for defendants to exercise their right to a defence, including access to a lawyer and adequate means of defence.

2. Public Hearing

- *Weak correlation with the right to defence (0.06):* The insignificant correlation indicates that publicity and public access to court hearings do not have a significant impact on the ability of defendants to exercise their rights.
- *Weak or moderate correlation with other groups (e.g. 0.34 with presumption of innocence):* This highlights the limited but significant link between publicity and fundamental guarantees such as the presumption of innocence. Lack of transparency can indirectly affect other fair trial rights by reducing accountability.

3. Presumed Innocent

- *Moderate correlation with the right to defence (0.49):* This reflects the interrelated nature of these guarantees. Violations of the presumption of innocence often limit the ability of the accused to mount an effective defence, as prejudice may limit the scope of legal representation and procedural rights.
- *Weak correlation with public hearings (0.34):* This weaker relationship suggests that public access to trials has less of an impact on the presumption of innocence, which is perhaps more directly influenced by the attitudes of judges and the behaviour of prosecutors.

4. Objective Evaluation of Evidence

- *Strong correlation with the equality of the arms (0.66):* This strong correlation highlights that errors in the assessment of evidence often result from or contribute to procedural imbalances. For example, excluding defence evidence or favouring prosecution witnesses reflects systemic inequalities.
- *Moderate correlation with the right to defence (0.66):* There is a strong link between evidence-related irregularities and the ability of the accused to defend themselves. Inadequate access to evidence or biased assessments hinder effective defence strategies.

5. Exclude Coerced Evidence

- *Moderate correlation with the right to defence (0.63):* This suggests that when courts do not exclude coerced evidence, defendants face significant obstacles in asserting their rights. Evidence obtained under coercion can distort the outcome of a trial, limiting the possibility of a fair defence.

- Moderate correlation with the equality of the arms (0.43): The use of evidence obtained under coercion reflects an imbalance in procedural guarantees when the prosecution benefits disproportionately compared to the defence.

6. Equality of Arms

- *Strong correlation with the right to defence (0.77):* This high correlation indicates a close link between procedural equality and the ability of a defendant to exercise their rights. Procedural bias undermines the ability of defendants to present their cases and defend themselves effectively.
- *Strong correlation with objective assessment of evidence (0.66):* This reinforces the idea that improper handling of evidence often arises from or exacerbates procedural imbalances.

7. Defend Oneself

- *Strong correlation with the equality of the parties (0.77):* The ability to defend oneself depends to a large extent on a balanced procedural framework. Unequal treatment, for example, by favouring the prosecution in terms of resources or the dynamics of the judicial process, directly affects the defendant's ability to exercise their rights.
- *Moderate correlation with objective assessment of evidence (0.66):* This reflects the interdependence of fair trial guarantees. Inadequate assessment of evidence significantly hinders the ability of the accused to appeal the charges.

Key findings on compliance with fair trial standards:

- *Strong interdependence:* Guarantees related to procedural fairness (equality of arms), the impartiality of the judiciary and the treatment of evidence show a close interconnection, reflecting the systemic vulnerability of judicial processes.
- *Publicity as an isolated guarantee:* Public hearing guarantees show weaker correlations with the other categories, indicating that violations of publicity may not directly affect other procedural rights, but still undermine overall accountability and trust in the judicial process.
- *Right to defence as a central indicator:* The right to defence category has moderate to strong correlations with almost all other groups of rights. This highlights its central role in ensuring fair trial guarantees and its dependence on broader systemic guarantees.
- *Equality of arms as a fundamental guarantee:* Strong correlations with most of the other groups indicate that procedural parity of arms is fundamental to the observance of other fair trial rights. Removing systemic imbalances can reduce the number of violations in different categories.

The violations observed in these categories of cases selected for monitoring and analysis often appear to be a chain reaction. One violated right is likely to lead to the violation of one or more others. This is indicative of systemic problems affecting the right to a fair trial, where failure to comply with one guarantee can complicate and compromise several aspects of a fair trial. Thus, failure to address systemic issues such as judicial independence, publicity, evidence handling practices and the right to defence could have a significant and lasting negative impact on the overall fairness of trials of Ukrainian civilians and prisoners of war in the TOT and the RF in cases resulting from Russian aggression.

SECTION III.

BIAS AND DISCRIMINATION IN THE PRACTICE OF RUSSIAN-CONTROLLED COURTS REGARDING UKRAINIAN CIVILIANS AND PRISONERS OF WAR

The purpose of this section is to investigate possible discriminatory and biased approaches of the judicial bodies controlled by the RF in criminal cases against Ukrainian civilians and prisoners of war. For this purpose, the relevant judgments (*Group 2*. 2022-2024), as well as decisions of Russian courts (*Group 1*. RF, 2013-2020) on similar criminal charges in cases of **non-Ukrainian** citizens, were analysed to systematically compare these two practices.

The first block, "*Decline in the quality of practice of courts under Russian control*", is devoted to a comparative analysis of the quality of judgments and their compliance with legal requirements. This method involved a systematic comparison of two groups of cases (as well as US/EU indicators) to assess the level of legal arguments and compliance with procedural standards. The analysis of judgments in groups allows us to identify possible changes or deterioration in the quality of judicial reasoning, including deviations in the consistency, clarity and proportionality of court opinions.

The next section, "*Signs of bias and discrimination*", demonstrates the identification of discriminatory, biased or politically motivated terminology in the reasoning of judgments and the analysis of discriminatory trends in legal interpretations. This approach involved researching the judgments in Groups 1 and 2 to identify changes in the language of the court's reasoning that may indicate political motives, discriminatory approaches or bias towards the respective groups of defendants. The research also examined how judgments refer to the citizenship, nationality or identity of the accused and whether this could lead to more severe decisions or a special approach to the qualification of offences. Additionally, the application of the law in similar cases of both groups was compared to determine whether the same legal norms are applied selectively depending on the citizenship or identity of the accused, which could indicate systemic discrimination in court practice.

The last block, "*Discrimination due to discrepancy between prosecutorial charges and court verdicts*", contains a quantitative analysis of the request for punishment in prosecutors' demands and subsequent sentencing by courts. This method involves a statistical analysis of the data on prosecution demands and court responses in Groups 1 and 2 to identify changes in court practice concerning persons of different citizenship or nationality. The analysis includes an evaluation of the severity and frequency of prosecution and court response requirements for similar offences, which allows us to determine whether there are certain groups of individuals who are disproportionately prosecuted or sentenced. Comparison between the two Groups allows to identify possible changes in the practice of prosecution and court response,

providing an opportunity to assess the existence of discriminatory trends in the criminal justice process in different periods and concerning different groups of prosecuted persons.

DATASET FOR ANALYSIS

The results of this research, based on the data collected, including from various open sources, demonstrate the significant scale and intensity of prosecutions on criminal charges against Ukrainian civilians and military personnel in the territory of the RF and the territories occupied by it.

It should be noted that the number of specific charges, such as high treason under Article 275[126] and espionage under Article 276 of the Russian Criminal Code, increased significantly by approximately 60-100% in 2022 and 2023. This trend is particularly noticeable in the Southern Federal District of the Russian Federation (including the cities of Rostov-on-Don, Belgorod, and Krasnodar)[127], which has become a centre of persecution of Ukrainian citizens. The region demonstrates not only a disproportionate increase in the number of criminal cases initiated, but also in the number of sentences passed by the courts.

The analysis of relevant sources, including selected 17 judgments on some cases from the initial database (out of about 600 cases)[128], allows us to identify a certain typology of allegations of criminal prosecution by the Russian authorities, which can be classified into separate categories of criminal cases under the Criminal Code of the RF:

- ***Category A:*** Terrorist crimes (Articles 205-205.4 of the CC of the RF);
- ***Category B:*** Crimes against persons (Articles 105 and 119 of the CC of the RF);
- ***Category C:*** Weapons/Explosives (Articles 222.1, 214, 329 of the CC of the RF);
- ***Category D:*** Crimes against the state (Articles 275, 276 of the CC of the RF);
- ***Category E:*** Armed groups (Article 208 of the CC of the RF).

The expert group also randomly collected from open official sources of the Russian authorities another 26 judgments in criminal cases for 2013-2020 under similar qualifications in the CC of the RF, but in cases involving Russian citizens that are not related to the persecution of Ukrainian civilians and prisoners of war.

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126 "The year 2023 was a record year in terms of the number of convicted "traitors to the Motherland". Their number increased almost 10 times in ten years". "First Department" – community of lawyers and journalists, 07.05.2024. URL: https://dept.one/story/rekord-gosizmena/
"There were three times as many convictions for "high treason" in 2023 as in 2022. It's going to get worse from here". "First Department" – community of lawyers and journalists, 21.12.2023. URL: https://dept.one/story/gosizmena-2023/
"Have learnt to work in large volumes". How in 2023 the FSB set a record for cases of high treason and espionage and what to expect in 2024. TV channel "Current Time", 8.01.2024. URL: ttps://www.currenttime.tv/a/rekord-po-delam-o-gosizmene-i-shpionazhe/32762549.html
"The system didn't go backwards". How in 2023 the FSB set a record for cases of high treason and espionage. Sibir.Realii, 05.01.2024. URL:
https://www.sibreal.org/a/kak-v-2023-godu-fsb-ustanovila-rekord-po-delam-o-gosizmene-i-shpionazhe/32753617.html

127 Legal Statistics Portal. URL: http://crimestat.ru/offenses_map

128 For more details, see the file "Section III_Discrimination.xlsx" (held by the initiators of the research).

In addition, five more verdicts on similar qualifications of crimes as those listed in the categories above, but in cases that were considered by the courts of the EU and the USA, were also randomly selected from public sources[129].

In the legal context, the persecution of Ukrainians was investigated and documented through prosecutorial indictments and judgments issued in the occupied territories. A critical assessment of the quality, impartiality and compliance of these decisions with standards can be made based on a set of defined criteria[130]:

- Evidence in the case is reliable and fairly interpreted (based on 3 sub-criteria)[131];
- Principle of presumption of innocence is observed (based on 3 sub-criteria)[132];
- Penalties imposed are fair and proportionate (based on 3 sub-criteria)[133];
- Political influence on the trial is minimised (based on 2 sub-criteria)[134];
- Discrimination by the judiciary has been avoided (based on 2 sub-criteria)[135].

Thus, this section presents the results of the analysis and comparison of the differences in such groups of cases according to the sample:

Group 1. *(RF, 2013-2020):* A pool of cases with a large sample size (10-15 cases per category), a total of about 60 verdicts in various courts of the RF[136].

Group 2. *(2022-2024):* A smaller sample size (2-4 cases per category) due to the existing limitations of the research methodology, a total of about 17 verdicts in the courts of the RF and the territories occupied by it.

Group 3. *(USA/EU indicators):* Some leading cases as samples, a total of 5 verdicts of the USA and some EU countries for the period 1970-2020.

The analysis and comparison of these two groups of decisions (1 and 2) examined the differences in the approaches to prosecuting persons related and unrelated to Ukraine and the consequences of Russian aggression for similar crimes.

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129 U.S. Law, Case Law, Codes, Statutes & Regulations. URL: https://law.justia.com/
A complete list of cases used within the USA and EU judicial systems is available in the file "US-EU_cases" (held by the initiators of the research).

130 See Annex 3 for more details on the approaches and criteria used by the expert group to analyse judgments. Among other things, they are based on the approaches developed in the ECtHR case-law, in particular, such judgments of the Court as Van de Hurk v. the Netherlands No. 16034/90, Taxquet v. Belgium No. 926/05, García Ruiz v. Spain No. 18390/91, Boldea v. Romania No. 19997/02, Papon v. France No. 54210/00, Scoppola v. Italy No. 10249/03 and others were taken into account.

131 The criterion of evidence is divided into: the presence of objective (sub-criterion 1) and subjective (sub-criterion 2) elements of the crime, as well as legally relevant facts and information (sub-criterion 7).

132 The presumption criterion is divided into: the presence of legally irrelevant information in the judgment (sub-criterion 7), the court's assessment of the defendant's views (sub-criterion 6) and the observance of the right to a fair trial (sub-criterion 11).

133 The punishment criterion is divided into: the punishment requested by the prosecutor (sub-criterion 3), the severity of the punishment imposed by the court (sub-criterion 4), deficiencies in the legal analysis: the objective element of the crime (actus reus), the subjective element of the crime (mens rea) and causation (sub-criterion 8).

134 The criterion of political influence is divided into: the presence of political statements in the judgment (sub-criterion 5), the political nature of the criminal prosecution (sub-criterion 12).

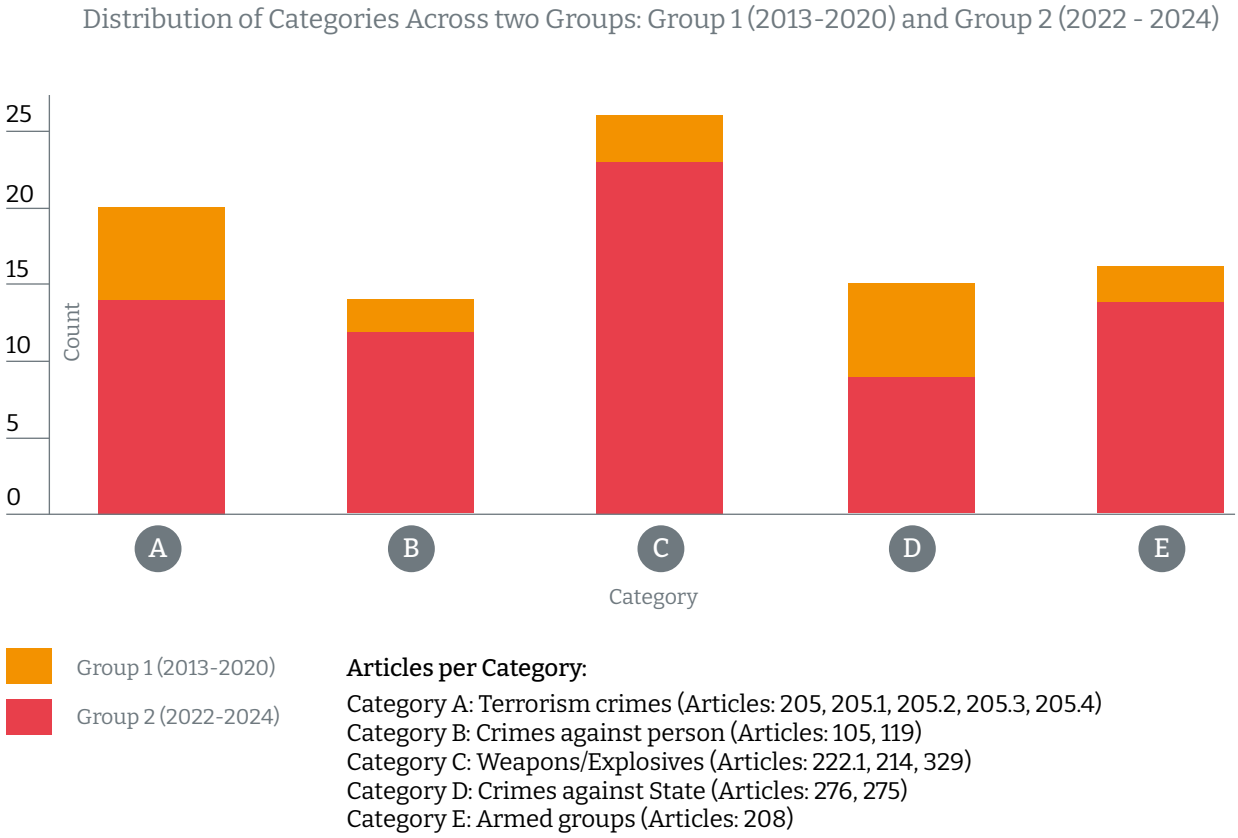
135 The criterion of discrimination is divided into: discriminatory grounds in the decision (sub-criterion 9), recorded wording in the prosecutor's indictment (sub-criterion 10).

136 The cases were selected randomly to represent a reliable sample. Legal sources for case law in 2013-2020. URL: https://www.zakonrf.info/uk/, https://sud-praktika.cloud/codex/4.html, https://dogovor-urist.ru/судебная_практика/

A balanced comparative analysis of the cases in these three groups yields several key conclusions about the functioning of the judicial system, including the degradation of courts under Russian control, the presence of bias and discrimination in judgments, and the disparity in sentencing. Taken together, these aspects provide convincing evidence of a systemic policy of judicial persecution of Ukrainians (civilians and prisoners of war) in the period of 2022-2024.

The database for this comparative analysis is representative and covers different types of cases and categories of offences for Group 1 and Group 2.

Graph 3.1. Presentation of the analysis of the initial data set



Articles per Category:

Category A: Terrorism crimes (Articles: 205, 205.1, 205.2, 205.3, 205.4)
Category B: Crimes against person (Articles: 105, 119)
Category C: Weapons/Explosives (Articles: 222.1, 214, 329)
Category D: Crimes against State (Articles: 276, 275)
Category E: Armed groups (Articles: 208)

DECLINE IN THE QUALITY OF PRACTICE OF COURTS UNDER RUSSIAN CONTROL

The results of the analysis highlight significant deviations in the case law of Russian-controlled courts (*Group 2)* in the period after the start of the full-scale invasion in 2022, characterised by systemic politicisation, bias and non-compliance with international standards, including those enshrined in Article 6 of the ECHR. The case law of the RF for the previous period of 2010-2020 (*Group 1*) demonstrates intermediate results, indicating partial compliance with legal standards, but leaving room for improvement. The EU and the USA (Group 3, EU/USA) consistently show a high level of fair and impartial case law. A comparison of Group 2 (2022-2024) with Group 1 (2010-2020) reveals a sharp shift towards political suppression in the occupied ter-

ritories. Group 2 shows a significant deviation from the relatively moderate problems of Group 1 and is in sharp contrast to Group 3, where legal integrity and due process are maintained at a high level. The absence of legal certainty and the increase in politically motivated trials in Group 2 are indicative of the degradation of the judicial system, particularly in TOT.

These findings call for the establishment of reliable mechanisms for monitoring and implementing judicial reforms, especially in times of armed conflict, to ensure compliance with international legal standards and the impartial administration of justice.

Graph 3.2 is based on systematic data from the analysis of judgments collected according to certain criteria[137]. An interpretation of the graph is provided below.

Examples of analysing case categories according to graphical data

Category A: Terrorist crimes

When analysing terrorism-related cases, a significant transformation of the judicial process is observed when comparing Group 2 (Occupied: 2022-2024) with Group 1 (Russia: 2010-2020) and contrasting these changes with Group 3 (EU/USA). This comparison reveals an alarming shift towards increased political influence and degradation of the judiciary, including in the occupied territories.

Objective and subjective elements

In Group 2 (2022-2024), data is missing or unavailable, indicating a dramatic shift in the way terrorism-related cases are handled in the TOT. It is likely that cases are either not documented or are concealed and completely closed to avoid public oversight. This sharp contrast shows that in Group 2, the judicial process has deteriorated significantly, likely due to political considerations or attempts to conceal significant procedural irregularities. Compared to Group 3 (EU/USA), which demonstrates a high level of compliance with a score of 6.0 on both elements, reflecting full compliance with legal definitions and a high legal standard in Western jurisdictions, the situation in Group 2 has deteriorated significantly compared to Group 1, moving from partial compliance to a virtual absence of proper standards.

Court policy and bias against the accused

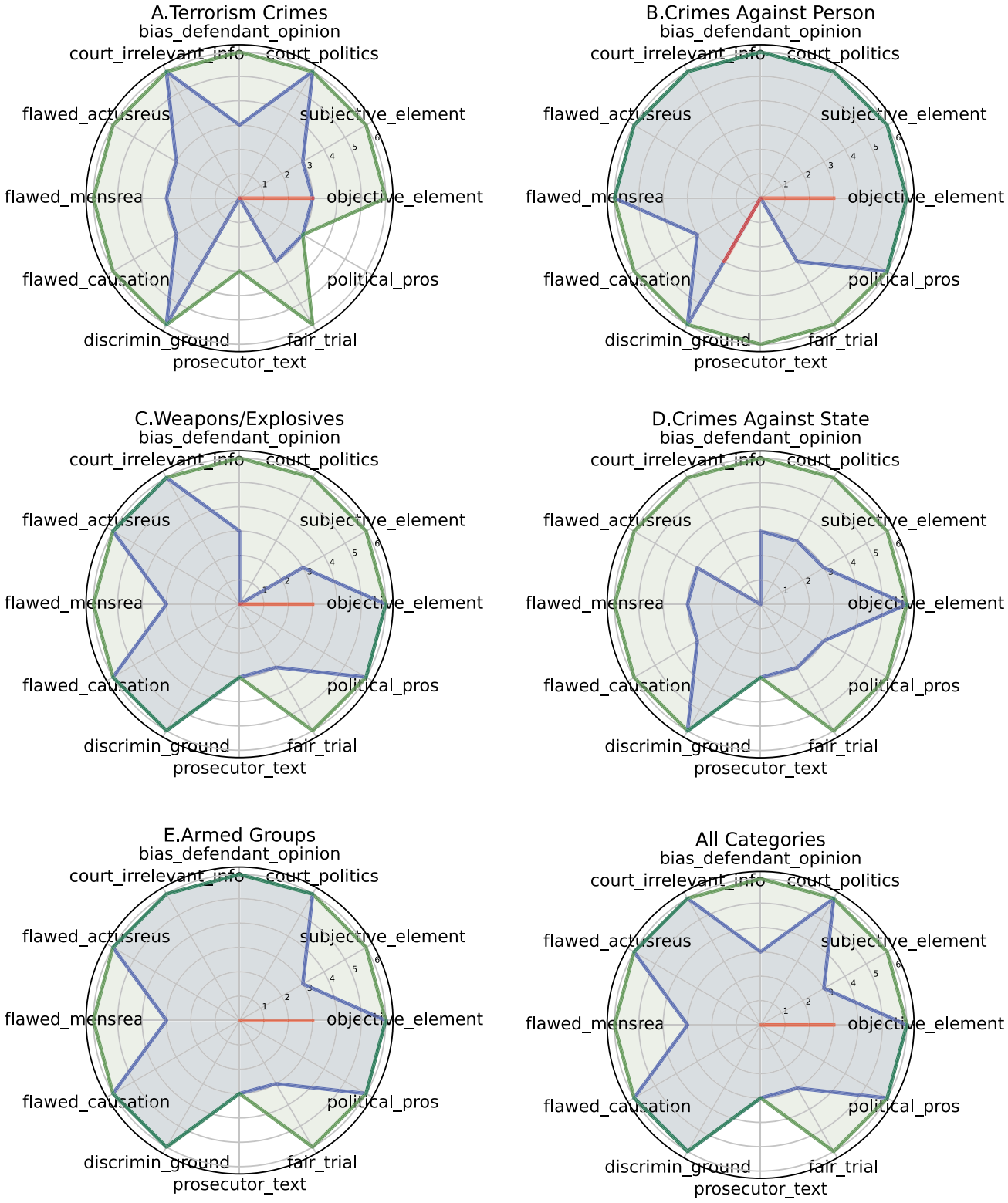
In Group 2 (2022-2024), the absence of data indicates that the level of political interference has probably increased to the point where it no longer merely influences the judicial process, but completely dominates it. The absence of transparency and the disappearance of court records from the public domain may indicate that trials in Group 2 are likely to be politically motivated or even non-existent, a significant deviation from the situation in Group 1. Court procedures appear to have shifted from moderate bias in Group 1 to overtly political trials in Group 2. Compared to Group 3 (EU/USA), where the court's politics score is 6.0, indicating a high level of political neutrality, and the bias against defendants is 0.0, meaning no systemic bias, the situation in Group 2 is even more distressing, where political interference is likely to have become much more widespread than in Group 1.

Inadequate information and violation of legal justification

137 See Annex 3 for a detailed description of the approaches and criteria used by the expert group to analyse the judgments.

Graph 3.2. Radar charts for key aspects

Legal Degradation of Group 2 (Occupied:2022-2024) Courts Practice vs Group 1 (RF:2013-2020) & Benchmark Group 3 (EU/USA)



In Group 1 (2013-2020), the courts generally provided legal reasoning with minimal irrelevant information, although there were moderate deficiencies in the logic of legal decisions, resulting in scores of 3.0 for the violated actus reus, mens rea and causation. These deficiencies indicate gaps in the legal reasoning, although moderate. In Group 2 (2022-2024), the absence of data indicates a significant degradation of the indicator, likely due to political influence on the judiciary. It is not known whether these deficiencies have worsened, but it is likely that the legal framework has significant gaps or has become fully politicised. This indicates that in Group 2, decisions are likely to have no proper legal basis and are based on political motives. Compared to Group 3 (EU/USA), where all aspects are scored at 6.0, indicating strong and sound legal argu-ments with minimal deficiencies, the degradation from Group 1 to Group 2 is clear: what started as moderate deficiencies in Group 1 probably escalated in Group 2, where the legal rationale was already significantly deficient or absent, replaced by political narratives.

Category B: **Crimes against persons**

Analysis of crimes in Group 2 (2022-2024) compared to Group 1 (Russia, 2013-2020) and Group 3 (EU/USA) indicates a significant deterioration in the judicial process. In Group 2, the absence of transparency, increased political influence, and violations of fair trial standards have led to a serious decline in the legal system, where trials have become politicised and unfair.

Objective and subjective elements

In Group 1 (Russia, 2013-2020) and Group 3 (EU/USA), the objective and subjective ele-ments score 6.0, indicating a high level of compliance with legal standards. They show that both elements were fully implemented, with no significant violations or deviations. In Group 2 (2022-2024), while the subjective element is absent, there is a certain level of presence in the objective element, which may indicate that formality and control are maintained at all stages of the judi-cial process.

Court policy and bias against the accused

In Group 1 (RF, 2013-2020) and Group 3 (EU/USA), the scores for political influence on the judicial process and bias against defendants are 6.0, indicating a low level of political influence and no systemic bias. This means that the courts acted more independently, ensuring fair trials. In Group 2 (2022-2024), there is a significant increase in political influence (0.0), which leads to increased judicial bias and a de facto absence of justice.

Inadequate information and violation of legal justification

In Group 1 and Group 3, both categories – irrelevant information and errors in legal rea-soning – are scored at 6.0, indicating that the legal arguments are clear and relevant without significant errors. In Group 2, the absence of data on irrelevant information and errors may in-dicate a complete lack of transparency in the judicial process, where it is possible that such rea-soning is either absent or replaced by political goals.

Category D: **Crimes against the state**

The analysis of crimes against the state in Group 2 (2022-2024) compared to Group 1 (Russia, 2013-2020) and Group 3 (EU/USA) shows significant changes in the legal process, in particular in terms of the level of political influence, fairness of the trial and quality of legal arguments.

Objective and subjective elements

In Group 1 (Russia, 2013-2020), the objective element is scored at 6.0, indicating a high level of compliance with legal standards. However, the subjective element is scored at 3.0, which indicates certain problems with taking into account subjective aspects in the consideration of cases. At the same time, in Group 2 (2022-2024), the subjective element score has deteriorated to 0.0, which may indicate a growing political influence on judicial processes and, accordingly, a decline in justice standards. Compared to Group 3 (EU/USA), where the objective and subjective elements are assessed at 6.0, the situation in Group 2 looks much worse, which may indicate a significant degradation of the judicial system.

Court policy and bias against the accused persons

In Group 1, the level of political influence is 3.0, indicating that there is some political influence on the judiciary, but it is not yet dominant. However, in Group 2, the absence of data or transparency indicates that politics completely dominates the judicial process, which indicates a significant deterioration. Compared to Group 3 with a score of 6.0, which indicates political neutrality, in Group 2 political influence has significantly increased, indicating serious violations of judicial independence.

Inadequate information and violation of legal justification

In Group 1, the courts generally presented arguments that did not contain excessive irrelevant information, but there were moderate deficiencies in the legal arguments (score 3.0 for all). In Group 2, the absence of data may indicate a complete departure from the standards of legal reasoning, where the legal basis may have been completely absent or replaced by political considerations. This is in contrast to Group 3, where the scores in all categories reach 6.0, indicating a high quality of legal argumentation.

Category C, E: **Weapons/explosives; armed groups**

The rest of the categories show a similar pattern. Group 2 (2022-2024) consistently scores poorly in all aspects, which may indicate significant political influence, the inclusion of irrelevant information, and failure to comply with fair trial standards. Group 1 (RF, 2013-2020) demonstrates partial compliance. Group 3 (EU/USA) remains highly compliant and impartial, with a low median in most categories.

Results of a comparative analysis of group sentences by category of crimes

The comparative analysis between the categories highlights a systematic decline in judicial standards and adherence to legal principles in the period after the start of the full-scale invasion in 2022, represented by Group 2 (2022-2024). This decline is consistently evident in all

categories, from terrorism-related crimes to crimes against the state and the activities of illegal armed groups.

The most worrying trend is the significant politicisation of trials in Group 2 (2022-2024), which is manifested in the presence of political statements in the verdicts and pronounced bias against the accused. These problems are completely absent in Group 3 (EU/USA) and only partially observed in Group 1 (RF, 2013-2020).

A critical difference between the categories is the extent to which discriminatory grounds and legally irrelevant information are present in Group 2 judgments (2022-2024). In cases of terrorism-related crimes and crimes against the person, discriminatory grounds and irrelevant content prevail, which indicates systemic bias and procedural violations. This pattern is somewhat less pronounced, but still noticeable in cases involving crimes against the state and armed groups, indicating a widespread problem rather than individual shortcomings. The presence of these elements fundamentally undermines the neutrality and objectivity of trials, particularly in cases of Group 2 (2022-2024).

In addition, the consistent compliance of Group 3 (EU/USA) with fair trial standards in all categories reinforces the demonstration of a significant gap in the quality of judicial practice between the groups of sentences analysed. Group 1 (RF, 2013-2020), while demonstrating partial compliance with the indicators, still indicates systemic bias in the courts of the RF that preceded the period of full-scale war. However, the complete absence of compliance with the principles of subjectivity, impartiality and fair trial in Group 2 (2022-2024) in all categories indicates a significant negative impact of the consequences of the ongoing international armed conflict on the judicial system controlled by the RF, including in the territories occupied by it.

COURTS' BIAS AND DISCRIMINATION

Grounds for discrimination

The analysis of the grounds for discrimination reveals sharp contrasts between the analysis of verdicts from Group 1 (RF, 2013-2020) and Group 2 (2022-2024). In Group 1 (RF, 2013-2020), discrimination was virtually absent in most cases, with a share of 91.7%. Partial or full documentation of the grounds for discrimination was rare, and fully documented cases amounted to less than 1.2%. However, the indicators for Group 2 (2022-2024) show significant progress: in 90.9% of cases, the grounds for discrimination were documented, indicating a potential systemic focus on identifying and recording discriminatory elements in judgments. Comparative data from Group 3 (EU/USA) does not contain comparable examples, which underlines the uniqueness of this trend within the analysed jurisdiction.

Statistical tests highlight the profound changes: the chi-square and Fisher's exact tests yield p-values well below the usual thresholds, confirming a statistically significant increase in the number of documented grounds for discrimination during the war period[138].

138 See Graph 3.3: Distribution by discriminatory grounds (according to the data in "Section III_Discrimination.xlsx": "14_discrim_ground"): Group 1 (RF, 2013-2020): Absent – 0.92; Partially present – 0.07; Fully present – 0.01. Group 2 (2022-2024): Fully present – 0.91; Partially present - 0.09.

Biased attitude of judges towards defendants

The level of bias towards defendants differed significantly between the groups. Group 1 (RF, 2013-2020) demonstrated moderate bias in approximately 51.2% of cases, while cases of no bias accounted for 45.2%. High levels of bias were rare, occurring in only 3.6% of cases. In contrast, in Group 2 (2022-2024), the situation changed dramatically: 100% of cases showed a high degree of bias, especially in politically sensitive categories such as "Terrorist crimes" and "Crimes against the state". This sharp contrast shows a significant departure from the impartial judicial practice in Group 2. Comparative data with Group 3 (EU/USA) did not reveal any similar cases for comparison.

Statistical tests confirmed the significance of these changes: The p-values again showed a statistically significant increase in the number of biased judgments in Group 2 (2022-2024)[139],[140].

Political influence on judgments

Political influence, as measured by the presence of political statements in the verdicts, was generally low in Group 1 (RF, 2013-2020). In approximately 54.8% of cases, political statements were absent, and fully present political statements were observed in only 1.2% of cases. However, in Group 2 (2022-2024), this figure changed dramatically: 100% of the verdicts contained political statements in full. This demonstrates the open alignment of judicial practice with the political narratives and priorities of the Russian authorities in the context of the occupation.

Categories such as "Terrorist crimes" and "Crimes against the state" demonstrated the highest level of political influence in Group 2 (2022-2024), with a significant increase in the rate of full presence compared to Group 1 (RF, 2013-2020). Statistical tests again confirmed the significance of this trend, which indicates a deliberate change in Russian policy after the start of the full-scale invasion or the judiciary's response to the needs of the authorities in wartime[141],[142].

Detailed comments to Graph 3.3:

Grounds for discrimination

A comparison of Group 1 (RF, 2013-2020) and Group 2 (2022-2024) shows a noticeable shift in the recording of grounds for discrimination. Categories such as "Terrorist crimes" and "Crimes against the state" show an increase in the number of references to discrimination in Group 2 (2022-2024). This pattern indicates a potential change in policy or judicial emphasis on these factors in the context of a full-scale Russian invasion of Ukraine.

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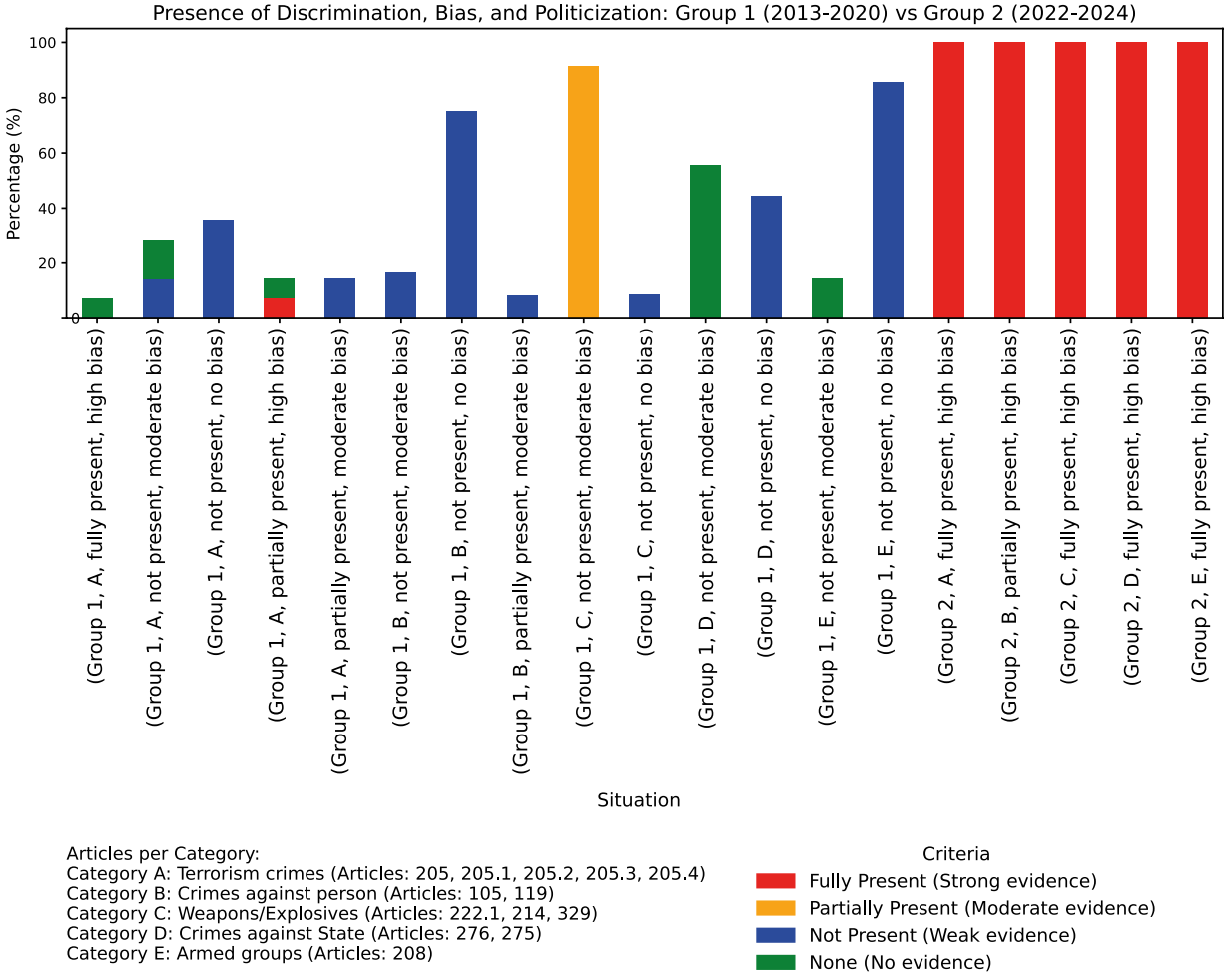
139 Distribution for the judicial bias towards the defendant's position (according to the data in the file "Section III_ Discrimination.xlsx": "11_bias_defendant_opinion"): Group 1 (RF, 2013-2020): moderate bias 0.51, no bias 0.45; high bias 0.035; Group 2 (2022-24): high bias 1.0.

140 According to Graph 3.3: Contingency table for judicial bias in relation to the defendant's position (according to the file "Section III_Discrimination.xlsx" l: "11_bias_defendant_opinion"): high bias – moderate bias – no bias for Group 1 (RF, 2013-2020) is: 3|43|38, and for Group 2 (2022-2024) is: 22|0|0.

141 According to Graph 3.3: Distribution for judicial political content (according to the data from the file "Section III_ Discrimination.xlsx": 10_court_politics): Group 1 (RF 2013-2020): absent 0.5457619; absent 0.3019524; partially present 0.130952; fully present 0.011905; Group 2 (2022-2024): fully present 1.0.

142 According to Graph 3.3: Contingency table for judicial political content (according to Discrimination.xsl: 10_court_ politics): fully present – absent – not present – partially present, for Group 1 (RF, 2013-2020) is: 1|26|46|11, and for Group 2 (2022-2024): 22|0|0|0.

Graph 3.3. Presence of discrimination[143]



Biased conclusions about the accused

In Group 2 (2022-2024), there is a significant increase in biased treatment of defendants, especially in politically sensitive categories. The share of decisions without bias decreases significantly, indicating a tougher judicial stance influenced by broader wartime policies.

For example:

Status	Court	Article of the CC of the RF	Comments on discrimination and bias
Civilian (M1)	Court in the RF	205.4	The judgment is based on deep bias and inaccurate identification of the accused with Ukrainian identity, reflecting a refusal to recognise Ukrainian nationality, rather than establishing evidence of individually culpable acts that meet the legal requirements of criminal liability. The decision does not contain a legally justified definition of the offence.

143 Graph 3.3 is based on systematic data from the analysis of judgments collected according to certain criteria.

			A significant part of the decision (approximately a quarter of the text) is devoted to irrelevant information about Ukrainian national identification due to cultural aspects that are secondary and not of significant legal significance for the consideration of the criminal offence.
Civilian (M11)	Court in the TOT	276	The judgment contains approximately 1/3 of the text devoted to facts not relevant to the merits of the case (general information, decisions against Ukrainian identity), which are irrelevant to assessing responsibility for individual actions, but create a contextual assumption of guilt. The key rationale is based on the persecution of the accused based on his former social status and pro-Ukrainian (directly quoted in several cases) citizenship criteria. The judgment generally refers to actions of a public information-gathering nature, yet it provides no contextual or specific consequences of these actions within the scope of the case under consideration.

Political statements

In the Group 2 indicators (2022-2024), there is a sharp increase in the number of verdicts in categories related to national security that contain openly political statements. This trend reflects the increasing alignment of judicial practice with political priorities during this period, which raises concerns about the independence and impartiality of the judiciary in the administration of justice in this category of cases. For example:

Status	**Court**	**Article of the CC of the RF**	**Comments on the political criteria**
Civilian (M14)	Court in the RF	275	About a third of the text of the judgment is devoted to facts not related to the merits of the case (general information, political decisions, etc.), which are not useful and applicable for assessing individual responsibility for the actions of a person, but create a contextual assumption of guilt. The facts set out in the decision regarding the intent of the accused are general and not specific, reflecting mainly the plurality of the accused's views on the war, which indicates a politically motivated persecution. Firstly, the justification of the judgment focuses on the prosecution of the defendant for his opposition opinion on the war and Russia's aggression against Ukraine. Secondly, there is no grounded evidence that the accused person acted with direct intent and awareness of harming external security (the mentioned anti-war position of the person is not an integral element of the incriminated offence).

Analysis of subgroups by category

Category A (Terrorist crimes: Articles 205-205.4 of the CC of the RF): Terrorism-related crimes have undergone significant changes in all three aspects analysed. Discriminatory motives were fully documented in 31.8% of cases in Group 1 (RF, 2013-2020), and in Group 2 (2022-2024) the figure rose to 100%. The bias of the judicial system also increased dramatically: in 40.9% of cases in Group 1 (RF, 2013-2020), high bias was observed, and in Group 2 (2022-2024), it increased to full bias. Political statements showed a similar trend: the number of cases of full bias increased from 31.8% in Group 1 (RF, 2013-2020) to 100% in Group 2 (2022-2024).

Category B (Crimes against persons: Articles 105 and 119 of the CC of the RF): In cases involving crimes against persons, there were no grounds for discrimination, and judicial bias changed from 66.7% no bias in Group 1 cases (RF, 2013-2020) to 100% high bias in Group 2 cases (2022-2024). Political influence also increased: fully expressed political statements increased from 13.3% in Group 1 cases (RF, 2013-2020) to 100% in Group 2 cases (2022-2024).

Category C (Weapons/Explosives: Articles 222.1, 214, 329 of the CC of the RF): This category showed less significant changes compared to the others. In Group 1 cases (RF, 2013-2020), grounds for discrimination were present in 11.5% of cases. High bias and fully expressed political statements were relatively rare in Group 2 cases (RF, 2022-2024), increasing to 100%.

Category D (Crimes against the state: Articles 275, 276 of the CC of the RF): The category of cases involving crimes against the state showed the most significant changes. The signs of discrimination that were present increased from 40% in Group 1 (RF, 2013-2020) to 100% in Group 2 (2022-2024). The high level of bias and the presence of political statements had similar dynamics, indicating targeted attention to these aspects in the verdicts in Group 2 (2022-2024).

Category E (Armed groups: Article 208 of the CC of the RF): In cases involving armed groups, the number of documented grounds for discrimination increased significantly, from 16% in Group 1 (RF, 2013-2020) to 100% in Group 2 (2022-2024). There has also been a sharp increase in the number of biased verdicts and political statements, reflecting a broader trend of increasing political influence and bias in the judiciary in Group 2 (2022-2024).

Conclusion

This analysis highlights significant changes in court practice across all categories when comparing the approaches of the courts in Group 1 (RF, 2013-2020) and Group 2 (2022-2024) cases. Discrimination on national grounds, judicial bias and political influence have increased in Group 2 cases (2022-2024), with statistically significant increases across all indicators. This indicates potential problems with judicial impartiality and compliance with fair trial standards in cases involving Ukrainian prisoners of war and civilians after the start of the full-scale Russian invasion. It also raises the question of the impact of decisions of the political authorities in the context of the deployment of armed aggression on judicial processes.

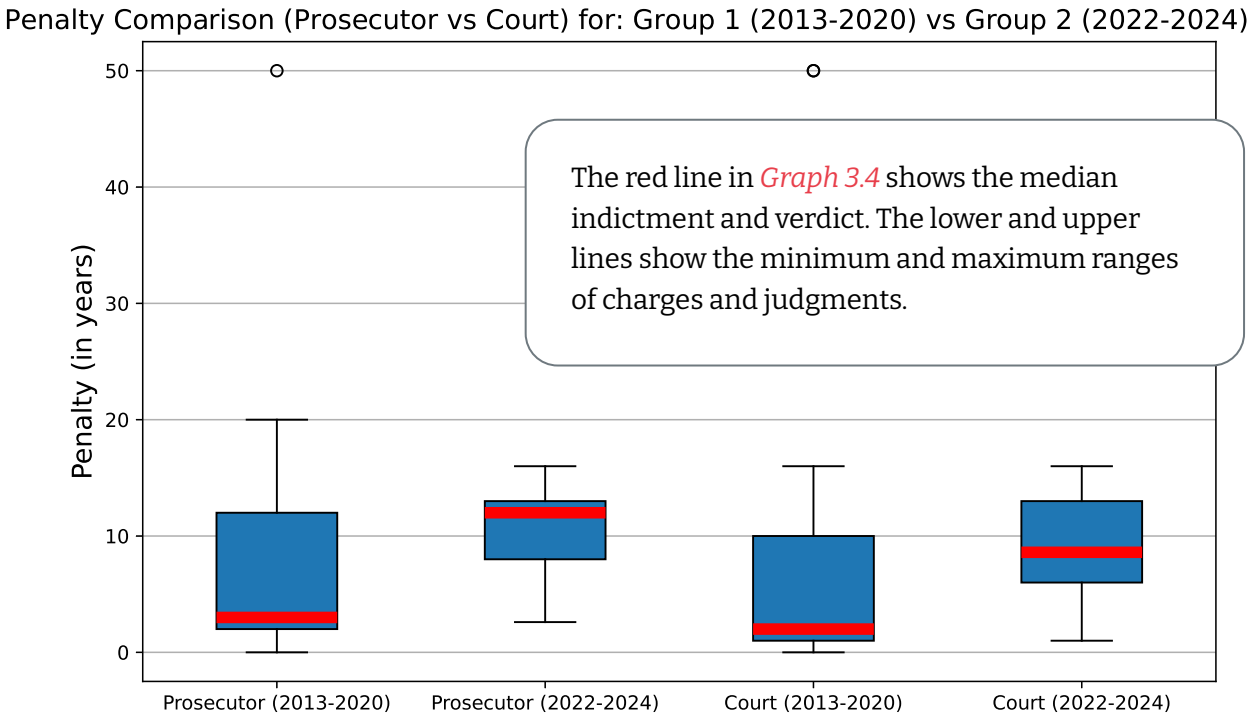
DISCRIMINATION DUE TO DISCREPANCY BETWEEN PROSECUTORIAL CHARGES AND COURT VERDICTS

Comparative analysis of prosecutors' demands and judgments within the same category of criminal offences charged to different individuals in different periods can be an important complementary method for identifying discriminatory practices. Disproportionate or unusually harsh prosecutorial demands and judgments for the same offences may indicate a tendency to discriminate based on Ukrainian citizenship and identity, as the persecuted persons are disadvantaged based on these criteria. The selective application of legislation (criminal qualifications) differs significantly between defendants from certain political, ethnic or social groups.

Summary overview

Graph 3.4 below shows the significant changes in prosecutors' demands and court sentences over the two periods: Group 1 (RF, 2013-2020) and Group 2 (2022-2024). The average (median) sentence (in years) demanded by prosecutors in Group 1 cases (RF, 2013-2020) was 3 years, which indicates that prosecutors' demands were relatively moderate. This period was characterised by a consistent approach, as evidenced by the limited variation in the distribution of sentences. However, in Group 2 (2022-2024), there is a sharp increase in the level of prosecutorial demands: The average (median) sentence (in years) is 12 years, a 300% increase compared to the previous period. This significant shift indicates a change in prosecutorial strategies, likely driven by political considerations of the prosecution.

Graph 3.4. Disparity in verdicts in Group 1 and Group 2 cases[144]



144 The graph is based on systematic data from the analysis of judgments collected according to certain criteria.

The courts also showed a marked increase in the gravity of the sentences imposed during these two periods. In Group 1 (RF, 2013-2020), the average (median) sentence (in years) imposed by the court was 2 years, which indicates a lenient approach to passing verdicts compared to the prosecutor's requests. However, in Group 2 (2022-2024), the average (median) sentence (in years) increased to 8.5 years, i.e. 330% more. This significant change indicates that the courts have adopted a more punitive position, which may be influenced by external factors such as public opinion, wartime circumstances or changes in sentencing guidelines.

The distribution of sentences in Group 1 (RF, 2013-2020) was narrower for both prosecutors and courts, indicating a more standardised application of sentences in this period. In contrast, Group 2 (2022-2024) showed greater variability, especially in the requirements of prosecutors. This variation reflects inconsistencies in prosecutorial approaches and in reality, which may reflect political considerations related to cases in Group 2.

The observed trends indicate an increase in the severity of both prosecutorial demands and court sentences in Group 2 cases (2022-2024). This shift can be explained by the political objectives of Russian policies of persecution, such as increased security requirements in wartime, legislative changes or increased pressure on the justice system. The narrowing gap between the sentences demanded by prosecutors and those imposed by courts in Group 2 cases (2022-2024) may reflect a growing alignment between prosecutorial priorities and judgments. Such alignment raises questions about the independence of the judiciary, especially in politically sensitive Group 2 cases (2022-2024), as well as about the possible influence of external factors (direct pressure, loyalty to political authorities, influence of the information field, etc.) on judicial practice.

These findings highlight the factors behind the observed changes in sentencing. Consistency and predictability of prosecutorial discretion and judicial practice is important to ensure fairness, but the implementation of a policy of judicial persecution requires harsher sentences to the detriment of legality and consistency.

The discrepancy between prosecutorial charges and subsequent judgments (see previous Graph 3.4) is at least 2 times greater in Group 1 (2013-2020) compared to Group 2 (2022-2024), with a difference of 10 and 4 years, respectively, for prosecutorial charges and judgments. This additionally indicates that in Group 2 (2022-2024), there is a kind of "disciplining" approach to sentencing (when the investigation "dictates" to prosecutors what charges to demand within a rather narrow framework, and then the court does not deviate from these requirements). The breadth of the discrepancy determines the degree of independence of the criminal prosecution and punishment system based on the freedom of prosecutors and judges to individualise and contextualise the degree of punishment.

Examples of reviewing discrepancies across specific articles

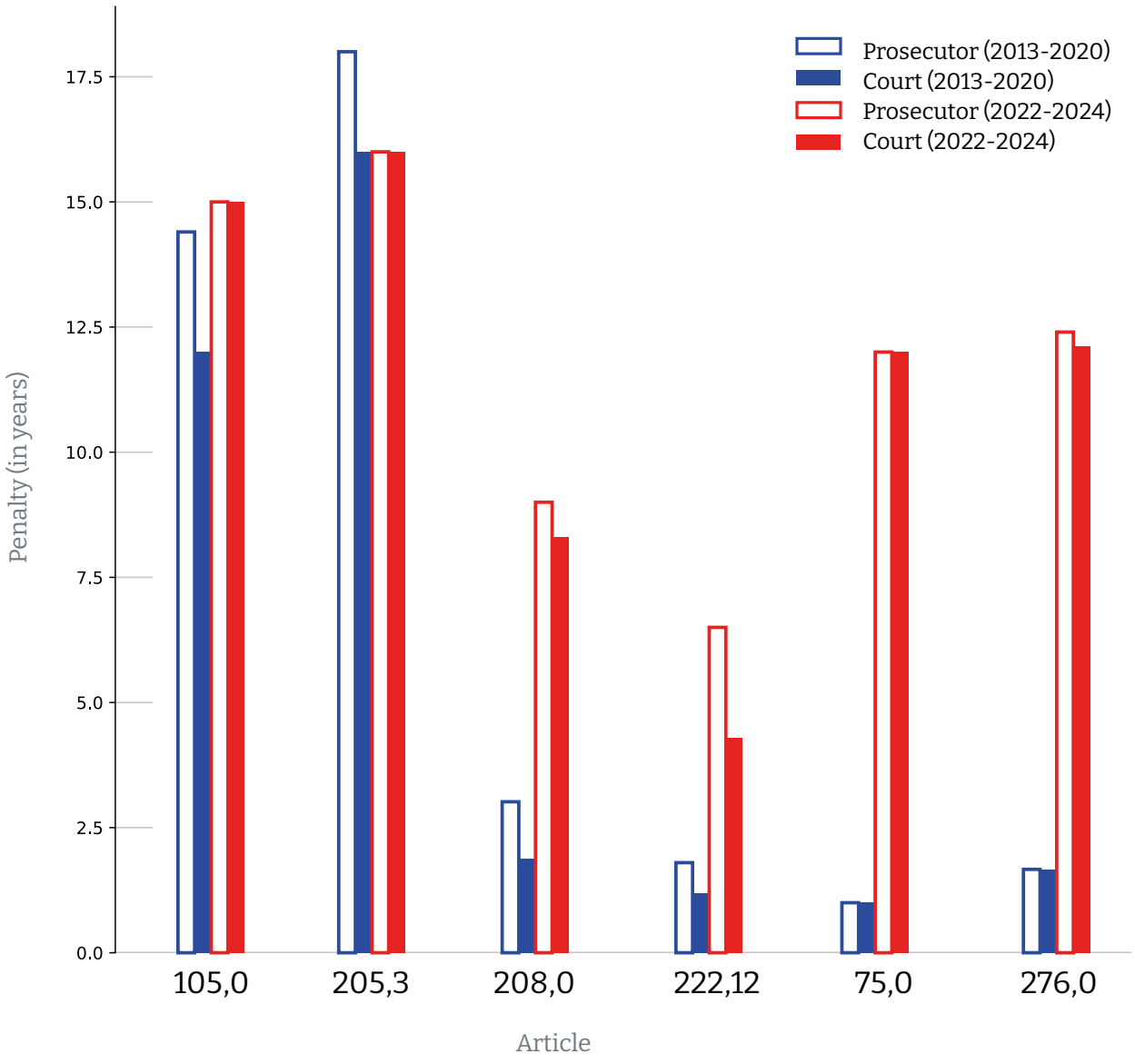
The analysis indicates a marked escalation in the severity of sentences in Group 2 (2022-2024), especially for crimes related to the threat to national security. This trend underlines the growing emphasis of the judiciary on deterrence and repressive approaches in response to the urgent needs of the Russian occupation administration.

The increase in penalties for most of the relevant offences indicates a deliberate prioritisation of cases related to terrorism, espionage and participation in illegal armed activities. By their very nature, these crimes pose significant threats to the stability and security of the Russian occupation authorities, which requires a harsher response from the prosecutor's office and the judiciary as part of the policy of judicial persecution.

In addition, the data shows a significant alignment between prosecutorial demands and court sentences in Group 2 (2022-2024). This synchronisation indicates a greater acceptance by the courts of the prosecutor's assessment of the gravity of the crimes and, in general, reflects the willingness of the judiciary to accept prosecutorial demands for prosecution, thereby exercising tighter control over the temporarily occupied territories – at the cost of proportionality and fairness of the sentences imposed.

Graph 3.5. Discrepancies in sentencing for certain articles

Penalty Indictment and Sentences Comparison by Selected Articles for Group 1 (2013-2020) and Group 2 (2022-2024)



Article 105 of the CC of the RF (Murder). Prosecutor-requested sentences remained relatively stable over both periods, averaging *14.4 years* in Group 1 (RF, 2013-2020) and *15 years* in Group 2 (2022-2024). The sentences imposed by the court followed a similar trend, with an average of *12 years* in Group 1 and *15 years* in Group 2, which is in line with the requests of prosecutors. This alignment in Group 2 indicates an increasing alignment of court sentences with prosecutors' requests, reflecting a more severe position.

Article 205.3 of the CC of the RF (Undergoing training to carry out terrorist activities). The penalties for this offence have shown considerable stability. In Group 1 cases (RF, 2013-2020), prosecutors requested an average of *18 years* of imprisonment, and in Group 2 cases (2022-2024), the average request was *16 years*. The courts agreed with these demands, imposing a sentence of *16 years* in both periods. This consistency underlines the clear position of both the prosecution and the judiciary in these cases.

Article 208 of the CC of the RF (Illegal armed groups). In Group 1 cases (RF, 2013-2020), the average sentence requested by prosecutors was *3 years*, and the courts imposed an average of *1.8 years*. These figures increased significantly in Group 2 (2022–2024), with prosecutorial demands rising to *9 years* and court-imposed sentences reaching *8 years*. This trend underlines the increased severity of the response to the participation of armed groups in hostilities, which is mostly used by the RF to persecute the Ukrainian military.

Article 222.1 of the CC of the RF (Crimes related to explosive materials). In Group 1 cases (RF, 2013-2020), the sentences requested by prosecutors averaged *1.8 years*, and courts imposed *1.2 years* of imprisonment. In Group 2 (2022-2024), the prosecutors' demands increased to *6.5 years*, and the courts imposed *4.3 years*.

Article 275 of the CC of the RF (High treason). In Group 1 cases (RF, 2013-2020), both the prosecutor's office and the courts consistently imposed a *1-year* prison sentence. However, in Group 2 (2022-2024), these figures increased to *12 years*, which indicates the critical importance of this qualification, and its use against Ukrainian citizens under occupation became possible for the Russian authorities as a result of the forced passportisation of the civilian population of the occupied territories.

Article 276 of the CC of the RF (Espionage). In Group 1 (RF, 2013-2020), the average sentence requested by prosecutors was *1.7 years*, and courts imposed approximately identical sentences. In Group 2 (2022-2024), they increased to *12.4 years* for prosecutors and *12.1 years* for courts, indicating a harsher response to espionage after the start of the full-scale invasion.

SECTION IV.

ROLE OF RUSSIAN-CONTROLLED MEDIA IN THE IMPLEMENTATION OF THE POLICY OF JUDICIAL PERSECUTION[145]

The use of state-controlled media resources plays a significant role in the Russian authorities' policy of judicial persecution against Ukrainian citizens. As the results of the research show, this practice is quite widespread and deeply rooted. Using a coordinated network of state-owned, affiliated private and ideological media, the Russian authorities ensure the unimpeded and massive dissemination of accusatory narratives against the individuals targeted by such policies. This approach not only undermines the rights of individuals, including the right to a fair trial, but also normalises the destruction of democratic principles. Russia's systemic policy of using the media to support judicial processes in politically motivated cases is one of the tools for violating the presumption of innocence.

One of the important results of the observations is the apparent synchronisation of publications. In almost all cases, the initial wave of accusatory articles appeared in state media, and later, regional and private media outlets repeated this narrative. This pattern strongly suggests a coordinated information approach, indicating centralised planning and execution. The chronological sequence of these publications underlines the role of the state media as the main initiator and leader of these information campaigns.

The role of the media in Russia goes far beyond its traditional function of informing the public. They act as a controlled tool in the wider state strategy of judicial persecution, disseminating narratives that undermine the presumption of innocence and justify punitive actions against dissenters or those perceived by the Russian authorities as a potential threat, including the threat of the occupation regime and the unleashing of aggression against Ukraine. This section of the research examines mass media and media resources grouped by ownership, coverage and alignment with state interests, which work in concert to shape public opinion and disseminate accusatory narratives against Ukrainian citizens targeted by the policy of judicial persecution.

Of the approximately 600 publicly known and recorded cases of persecution of Ukrainian civilians and military personnel in Russian courts as of September 2024, only about 10% received significant media coverage, as described in more detail below. The approach to the selection of cases is subordinated to the goal of filling and maintaining the public agenda with the necessary information and contributing to the formation of a public narrative that supports the war and justifies the consequences of the policy of judicial persecution. Therefore, a limited

145 This section reflects the analysis of data from 15 cases taken from the original database of about 600 cases. In particular, the section focuses on violations of the presumption of innocence and information tools of the policy of judicial persecution of Ukrainian citizens in the framework of judicial processes against them in the RF and TOT. More detailed information can be found in the file "Section IV_Media", held by the initiators of the research.

number of cases is sufficient to implement this strategy. For this part of the research, 15 leading cases were selected from the relevant database[146].

The results of the analysis also demonstrate the special role of the FSB, the Investigative Committee and the Prosecutor's Office in prioritising selected cases for coverage and further accusatory information campaigns. These agencies selectively publish brief information on their official websites, which is subsequently picked up by national state media. In half of the cases analysed, this scheme was followed.

PROPAGANDA MEDIA NETWORK[147]

State media: dominance and synchronisation

State-owned Russian media outlets such as RT, RIA Novosti, TASS and Vesti.ru play a central role in disseminating state-sanctioned narratives. With a wide reach - from tens of millions to more than 100 million monthly visitors or listeners – these platforms can control the information ecosystem. Their alignment with state interests ensures that their messages are synchronised, often initiating the formation of an accusatory narrative in politically significant cases.

For example, RT and RIA Novosti, as divisions of the Rossiya Segodnya media group, have consistently used their international influence to bring charges against political opponents, presenting them as a threat to national security. In domestic cases, Vesti.ru and TASS reinforce these accusations by disseminating sensationalist content that criminalises the accused before the trial even begins. This coordinated activity provides a continuous narrative loop, reinforcing guilt through the constant repetition of these messages.

An important observation is the timing of publications. In almost all documented cases, state media is the first to publish accusatory narratives, which serves as a signal to regional and private media to follow suit. This pattern underscores the role of state media as the leaders in the hierarchical information strategy of the policy of judicial persecution.

State-affiliated private media: amplifiers of accusatory narratives

Although many private media outlets in Russia are allegedly independent, they are closely linked to the Russian government through ownership or regulatory dependence. Platforms such as Gazeta.ru, Lenta.ru and Izvestia are prominent examples. Their ownership structures, controlled by entities such as Sberbank, the Central Bank of Russia or Gazprom Media, link them to the state, ensuring that they conform to and reinforce state narratives.

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146 A detailed graph with the structure of the data set on leading cases involving personal data is held by the initiators of the research. It contains information on 15 leading representative cases, analysing a total of about 100 media publications, which were systematised chronologically by the stages of the judicial process of each case.

147 See the full list of media covered by the analysis in the document "Section IV_Media.xlsx" (held by the initiators of the research) and Annex 4. "Information about the media researched".

For example, the Izvestia newspaper, part of the National Media Group, serves as a critical amplifier of state narratives in high-profile cases. Their coverage often reflects that of the state media, but with the appearance of editorial independence to appeal to a wider audience. Similarly, Lenta.ru and Gazeta.ru focus on combining sensationalism with a facade of balanced reporting, ensuring that state messages are delivered to different audience demographics without overt state branding.

Examples of publications:

Izvestia	*"...The FSB of Russia reported that Ukrainian saboteurs who were preparing a terrorist attack against a humanitarian convoy using a mined vehicle on the instructions of the Security Service of Ukraine (SBU) had been detained in the territory controlled by the Russian army. A criminal case has been opened against them for preparation for an act of international terrorism. In a video provided by the FSB, one of the saboteurs admits that the explosion was being prepared at a distance of 5 metres from passing Russian military vehicles...."*[148].
Gazeta.ru	*"...In the course of operative-search measures and investigative actions, it was established that the sabotage was organised by the territorial division of the Main Directorate of Intelligence of the Ministry of Defence of Ukraine in Kherson – the so-called Operational Strategic Group Tavria with the participation of the "Mejlis of the Crimean Tatar people (an organisation banned in Russia)". The attackers, on the orders of one of the Mejlis leaders, travelled this summer to the territory of Ukraine, where they were, according to the investigation, trained in bomb-making. The saboteurs were promised a financial reward of $2,000 from Ukrainian military intelligence. Their action was timed to coincide with the 30th anniversary of Ukraine's independence...".*

In resourceful cases involving high-profile defendants (e.g., high-profile trials against captured Ukrainian soldiers), such private media intensify their coverage after the verdict. Their role changes from simply repeating state narratives to reinforcing them, presenting the defendants as enemies of the state and reinforcing public perceptions of their criminality and danger.

Examples of publications:

Rambler. News	*"...Azov's cooks were preparing to seize power in the DPR...".*
AiF	*"...The most massive trial of Ukronazis in Russia began with tears from the suspects. Prior to the start of the hearing, some female defendants wiped their tears with a handkerchief and were waved back by their relatives, who came mainly from Mariupol...".*
Kommersant	*"...Azov's cooks were preparing to seize power. The trial over the alleged participants of the organisation recognised as a terrorist organisation has begun In Rostov-on-Don, the consideration of a resourceful case against 24 alleged participants of the Ukrainian Azov Brigade (recognised as a terrorist organisation in Russia and banned by the RF) has begun....".*

148 Here and further, quotes from texts on media resources are given in the original version, preserving the spelling and other features of the original presentation, but with an English translation to convey the essence.

Ideological and nationalist mass media: shaping the image of the "enemy"

Some private media outlets, including Tsargrad TV, Rossaprimavera and Zavtra, operate with a clear ideological or nationalist bias. Owned by Russian politicians such as Kostiantyn Malofieiev and Serhii Kurhinian, these platforms target audiences looking for conservative, patriotic narratives. Their coverage of politically motivated persecutions is characterised by extreme sensationalism and derogatory language, and the defendants are presented as existential threats to Russian values and sovereignty.

Examples of publications:

Tsargrad	*"...Valuable character: A Ukrainian propagandist was captured in the Gorskoe cauldron. He was involved in the Euromaidan, worked for the BBC and Ukrainian media, and supported coups in Belarus and Kazakhstan ..."*
Zavtra.ru	*"...A valuable character- a notorious Ukrainian propagandist - has been captured. And suddenly - whoops! – a prominent Kiev propagandist-grant eater was spotted among the surrendered militants....A journalist who incited hatred against Russians on Soros-funded platforms like "Hromadske Television" and "Hromadske Radio", which are financed by the International Renaissance Foundation (a component of George Soros" transnational subversive network). During the Euromaidan, he was one of the main presenters on "Hromadske TV", actively stoking the coup. In January 2022, he fuelled civil war in Kazakhstan from Kyiv. Previously, he supported actions to overthrow Lukashenko in Belarus", reports Rusvesna...."*.

In cases involving Ukrainian figures or topics, these media outlets reinforce the narrative of "otherness". For example, Tsargrad TV and Rossaprimavera often present those being judicially persecuted as representatives of Western aggression or Ukrainian nationalism, using geopolitical narratives to justify unjustified and harsh legal actions. This alignment with state goals makes them indispensable in cases where public support for state actions needs to be strengthened.

Regional media: local amplification of national narratives

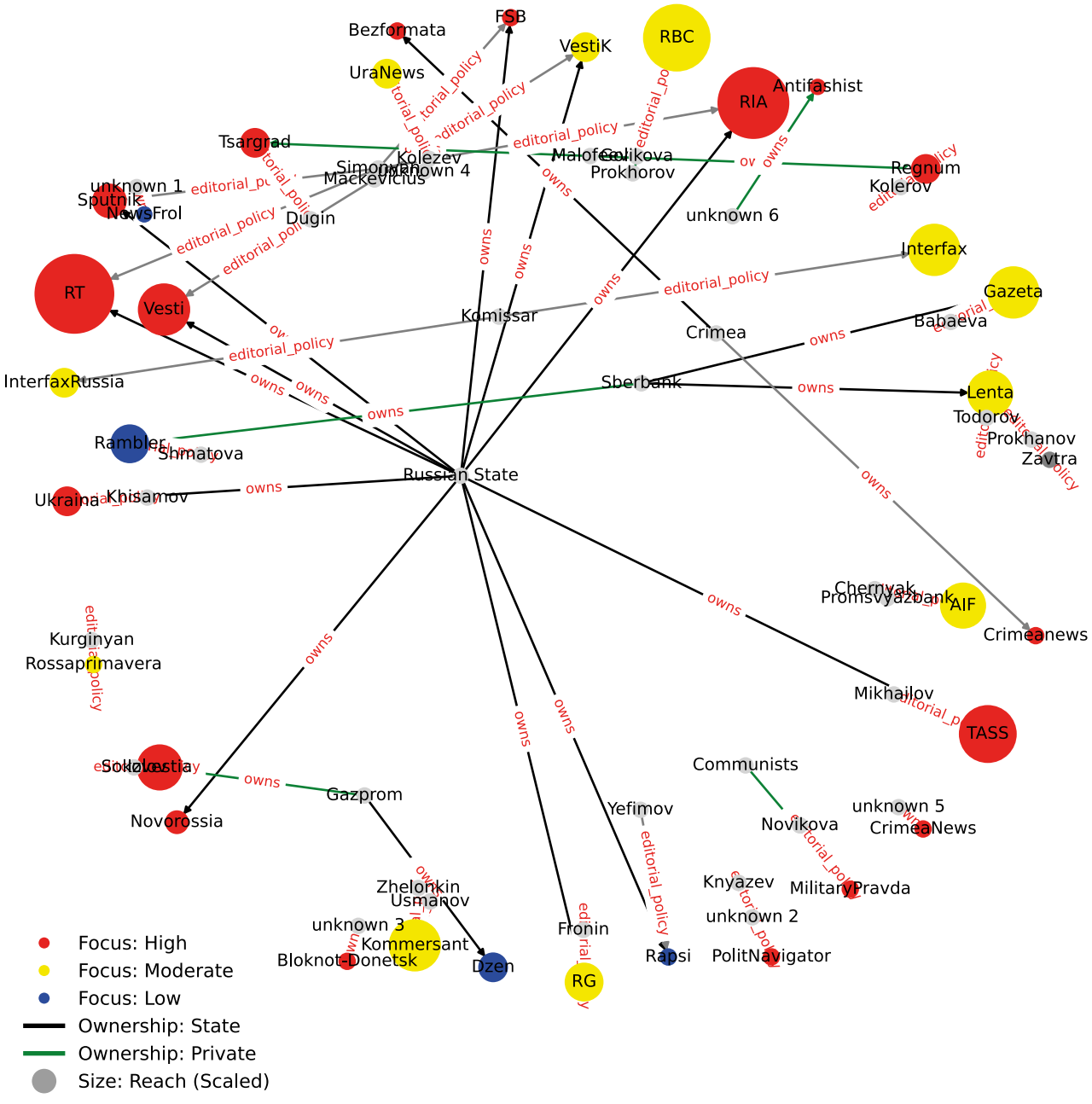
Regional media outlets, including those in the Russian-occupied Ukrainian territories, such as Vesti-K and Bloknot-Donetsk (Luhansk, etc.), play a crucial role in localising and personalising accusatory narratives. With a smaller but highly targeted audience, these platforms ensure that national narratives are conveyed to the general population in certain local regions. Their coverage often includes sensationalised reports of arrests and judicial processes designed to resonate with the immediate concerns and biases of local audiences.

These regional media outlets often begin to form a negative narrative immediately after the arrest of a person. Their sensationalist and criminal stereotyping reports create a perception of guilt among the persecuted, which is later reinforced by reports based on judgments handed down by the courts.

Network analysis of media

The research shows that the media landscape is highly centralised, with the Russian state playing a dominant role in both ownership and editorial policy. Media outlets covering events in Ukraine, especially the major ones, are largely controlled by the Russian authorities, which effectively shapes the focus and narratives of the armed conflict. Although there are private media outlets, their influence is secondary to that of the state-owned media, and they tend to take a more moderate or neutral stance towards Ukraine. The overall structure of the network shows that the media is not only a tool for informing the public, but also a means of political control, especially when it comes to shaping the perception of the war in Ukraine.

Graph 4.1 Russian-controlled media network



The media network, their ownership structure and editorial policy provide a general understanding of the structure of media influence, especially in the context of coverage of events related to the aggression against Ukraine. In the graph below,[149], each node in the network represents either a media agency, its owner or editor. The nodes differ in size and colour, reflecting their coverage and focus on Ukraine, respectively. The size of each node is proportional to the media outlet's audience reach, with larger nodes indicating media outlets with a wider reach. The colour of the node reflects the level of focus on Ukraine: red – high, yellow – moderate, blue – low.

RT, RIA, Sputnik, TASS and similar large media outlets dominate the network in terms of size and coverage, which indicates their significant coverage and attention to Ukraine. Most of the information about cases appears with reference to the resources of the FSB and other law enforcement agencies. These outlets are marked in red, indicating a high level of attention to Ukraine, and they are heavily controlled by the state, through the government, state-owned corporations and state-owned banks, which ultimately have a key influence on their editorial policy. This indicates a high level of state control over the media narrative, especially concerning Ukraine. State institutions are closely interconnected, with numerous ownership relationships linking them to the Russian president.

On the other hand, outlets such as Kommersant, RBC and Lenta show moderate attention to Ukraine, as indicated by their yellow colour. These media outlets, while remaining important players in the media market, tend to provide more balanced or neutral coverage of events compared to more state-controlled agencies. Their connections to the owners are not as centralised, but they still retain significant influence, especially in shaping public opinion through their reach.

Private media outlets such as Tsargrad, Regnum, Rambler and others also play a role in the network: they are marked with a green line indicating their private ownership. These agencies, while still influential, have less direct control over the media narrative than state structures. Nevertheless, they are an integral part of the overall media system, offering views that may differ from those of the state media outlets.

The size of the nodes in the graph highlights the difference in coverage between different media outlets even more. For example, RT and RIA, with their large node sizes, indicate their huge audience and influence compared to smaller media outlets such as Zavtra and Crimea News, which have a much more limited audience. Despite their smaller size, these outlets still contribute to the wider media network, especially in niche areas or specialised topics.

The lines connecting these nodes reflect the relationship between media outlets, their owners and editors. The **black** lines indicate ownership relationships where the government or the president directly or indirectly owns many of the major media outlets. This centralisation of ownership underscores the state's strong control over the media landscape. Meanwhile, the green lines indicate private ownership, where individuals such as Malofieiev, Prokhorov and Usmanov are linked to outlets such as Tsargrad, Regnum and Kommersant. These ties to private ownership suggest that while the state controls most of the media, private entities still hold sway in certain segments of the media landscape.

149 The graph was developed based on the analysis of data on media outlets, their owners, editorial policy, frequency, type, tone and approach to covering the court cases under research.

The editorial policy is represented by grey zones, which show the connections between media agencies and their editors, such as Marharyta Symonian, Aleksandr Duhin and others. These ties are crucial in shaping the editorial direction of the media, influencing their content and stance on key issues, including the aggression against Ukraine. The existence of editorial connections in the network emphasises the role of key individuals in determining the narrative of these agencies.

ADAPTIVE STRATEGIES OF MEDIA PROPAGANDA

Accounting for the type of information campaigns

The information campaigns described above are aimed at shaping public opinion, undermining the presumption of innocence and aligning narratives with state goals. The results of this analysis demonstrate the use of a total of three different strategies based on the perceived importance and public profile of individual cases. The categories of cases can be divided into relatively **ordinary** cases, **resourceful** cases for the media and **public** cases related to famous personalities. All these types of cases, according to the analysis, are used only to the extent necessary to maintain and fill the public agenda of the media campaign to justify the aggressive war, including justifying the policy of judicial persecution of Ukrainian civilians and prisoners of war and using these cases to reinforce state narratives.

Ordinary cases

They are designed to shape and consolidate local narratives. They involve individuals of limited public or media relevance, but they serve as tools to support accusatory narratives in the local audience (at least 3 of the 15 leading cases).

The main *goal* is to create and maintain an impression of guilt so that the defendant remains publicly discredited throughout the judicial process. The financial costs of these campaigns are relatively low as they rely on local media and repeated narratives.

Coverage of such cases is based on the following *strategy*:

Stage 1 (pre-trial and/or during trial): The accusatory narrative begins immediately after the arrest of the individual, using local bloggers, influencers and regional Telegram channels. The messages are sensationalistic, using criminal stereotypes and hyperbolic language to position the accused as guilty before the trial.

Stage 2 (post-verdict Phase: Court decision, Appeals, Post-Trial): After the verdict, local and regional media reinforce the narrative, using the same accusatory and sensationalist tone.

Examples of publications:

Crimean SMERSH	*"...What's wrong with your f#cking face? The forelocked warrior was waging his pathetic little fight, discrediting the army and the country on social media, posting Nazi symbols, sticking up leaflets, and tying ribbons. While I'm at it, I'd like to send a big hello to the pathetic little Ukrainian channels like "pissed ribbon", partisans, winds, and the rest – your followers here will be dealt with harshly and brutally. The animal's been sent to a pre-trial detention centre for two months, a criminal case has been opened, and he'll get about three years in the slammer..."*[150]
Crimean News	*"...In Crimea, they've sniffed out yet another "waiter", who was faking it big time by pretending there's an anti-Russian underground on the peninsula. ...he was busy churning out and disseminating pro-Ukrainian leaflets, snapping photos, and leaking "work reports" to his handlers via a Telegram channel...."*
Politnavigator	*"...An aggressive agent of the Ukrainian CIPSO (Psychological and Information Warfare Center) has been denazified in Crimea.* *In Crimea, they've sniffed out yet another Ukraine-lover, who was play-acting the existence of an anti-Russian underground on the peninsula...".*

Resourceful cases

They are designed to enhance perception through national channels. These include high-potential cases with informational or symbolic resonance (most of the top 15 cases).

These campaigns *aim* to mobilise public opinion against the accused and present them as an existential threat to public or state security. The costs are higher, given the involvement of national media and the need for continuous coverage.

Coverage of such cases is based on the following *strategy*:

Stage 1: Coordinated accusatory campaigns are initiated by regional and lo-cal media, supported by telegram channels and influencers. The tone is humiliating, sensation-alistic, and designed to evoke strong negative emotions in readers or viewers towards the heroes of such campaigns.

Stage 2: National media intensify coverage, portraying the defendants as enemies of the state. The narrative shifts from the local to the national level, reinforcing the top-ics of crime and the threat posed by the convicts.

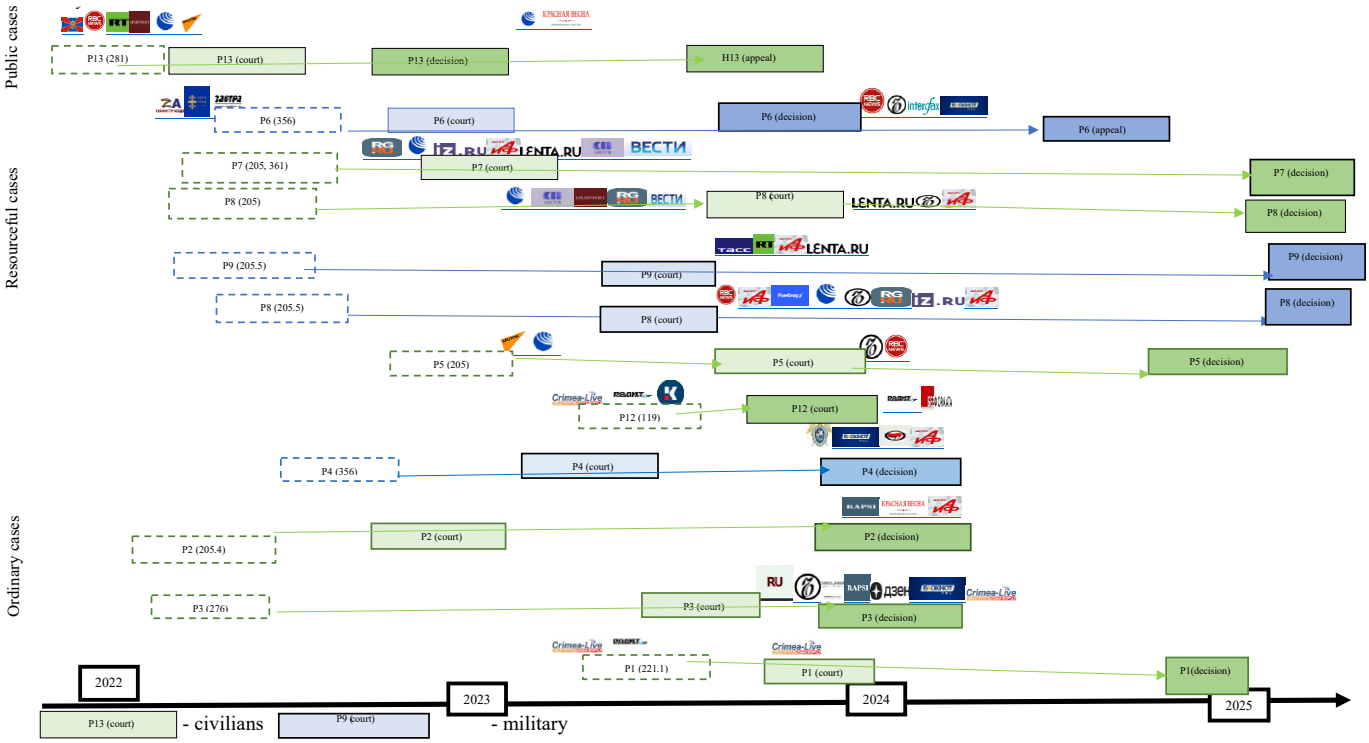
Examples of publications:

RIA	*"...Radio Sputnik. The DPR Ministry of State Security has opened a criminal case against a Mariupol resident who tried to commit a terrorist act to disrupt the referendum in the republic, the DPR territorial defence headquarters said. After being subjected to psychological pressure ... agreed to co-operate with the Security Service of Ukraine (SBU) for a reward of 100,000 hryvnias (about 2,700 US dollars)...".*

150 Quotations from media resources are given in the original version with preservation of spelling and other features of the original presentation, but with an English translation to convey the essence.

RIA	*"...In the presence of witnesses, she showed where the cache was, where she took the pre-prepared explosives and where she kept the improvised explosive device. After that, the girl showed the place where she put the package, it was bushes near the building of the administration of the Prymorskyi district of Mariupol. When asked whether she admits her guilt and repents of what she had done, she said yes, RIA Novosti correspondent reports..."*
Kommersant	*"...a terrorist attack on a bicycle. A Ukrainian citizen is convicted of preparing a bomb attack at the referendum..."*

Graph 4.2. Leading cases by type and stage of proceedings (detention, prosecution, trial): interventions and timelines by media agencies[151]



Public cases

Designed to maximise national and international impact. Cases involving high-profile and well-known individuals or cases with significant political or social resonance (at least one of the top 15 cases).

These campaigns *aim* to achieve maximum impact both nationally and internationally by leveraging the symbolic value of the cases. The costs associated with these campaigns are significant, reflecting the scale of media involvement and intensity of coverage.

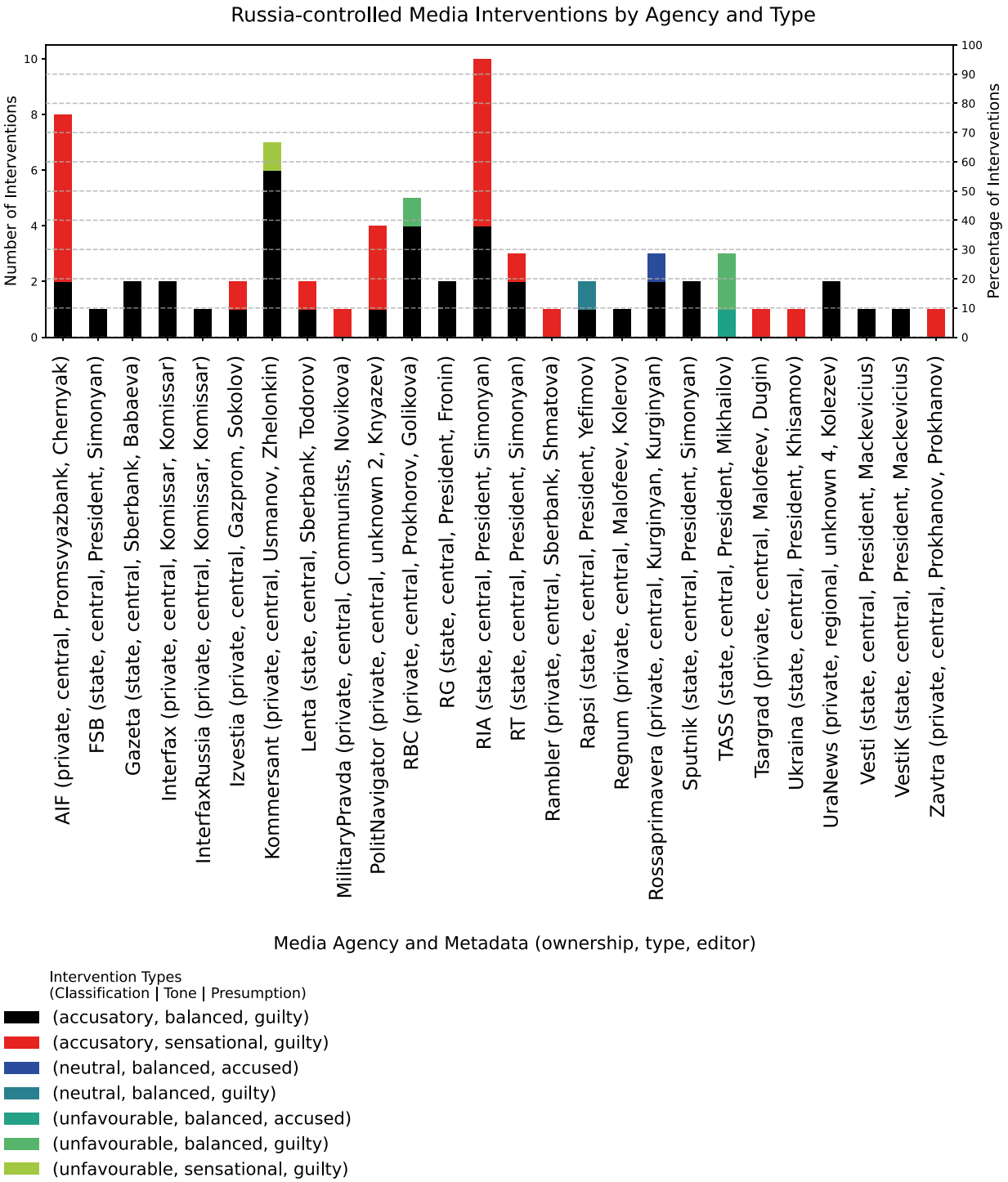
151 The graph was developed based on the content analysis (tone, approach, balance, facts, opinions) of media materials and relevant publications on the court cases under research.

Coverage of such cases is based on the following *strategy*:

Stage 1: National media dominate the coverage of events immediately fol-lowing the arrest of an individual, using sensationalist narratives that criminalise the accused and present them as a direct threat to state security. The coverage is consistent and intense, ensuring that the state's narrative is disseminated to a wide audience.

Stage 2: The same national media confirms the accusatory narrative after the verdict, often supplemented by local amplification by bloggers and smaller media outlets.

Graph 4.3. Media interventions by type



The analysis revealed significant trends in media coverage and the dynamics of interventions between different agencies in the coverage of these judicial processes. The data shows that the state-owned media outlet RIA is in the lead with the highest number of interventions (10), reflecting its central role in promoting government narratives. It is followed by the private media outlet AiF with eight interventions, indicating its active involvement in politics. The private media outlets Kommersant and RBC also demonstrate considerable activity, with seven and five interventions, respectively. This indicates that private media outlets retain a significant presence in shaping the public discourse around the researched court cases against Ukrainian civilians and prisoners of war.

A noticeable pattern emerges when comparing the interventions of state and private media outlets in the media coverage of these judicial processes. Although state agencies such as TASS, RT and Sputnik are present, the number of interventions is lower than that of well-known private media outlets such as Kommersant and AiF. This may indicate a more targeted or selective strategy of the state media, as opposed to the wider involvement of private media. In addition, regional representation, such as that of UraNews, emphasises the involvement of non-centralised media, although on a smaller scale.

The percentage breakdown of the types of interventions provides a deeper insight into the situation. Some outlets, such as Gazeta, Interfax, Sputnik and RG, show 100% accusatory interventions, reflecting a clear tendency to portray guilt or assign responsibility to those being judicially persecuted. State media outlets, such as RT and Rossaprimavera, also tend to adopt an accusatory tone, following narratives aimed at discrediting specific actors. In contrast, outlets such as RIA and Kommersant show a higher proportion of balanced interventions, indicating efforts to provide more detailed coverage.

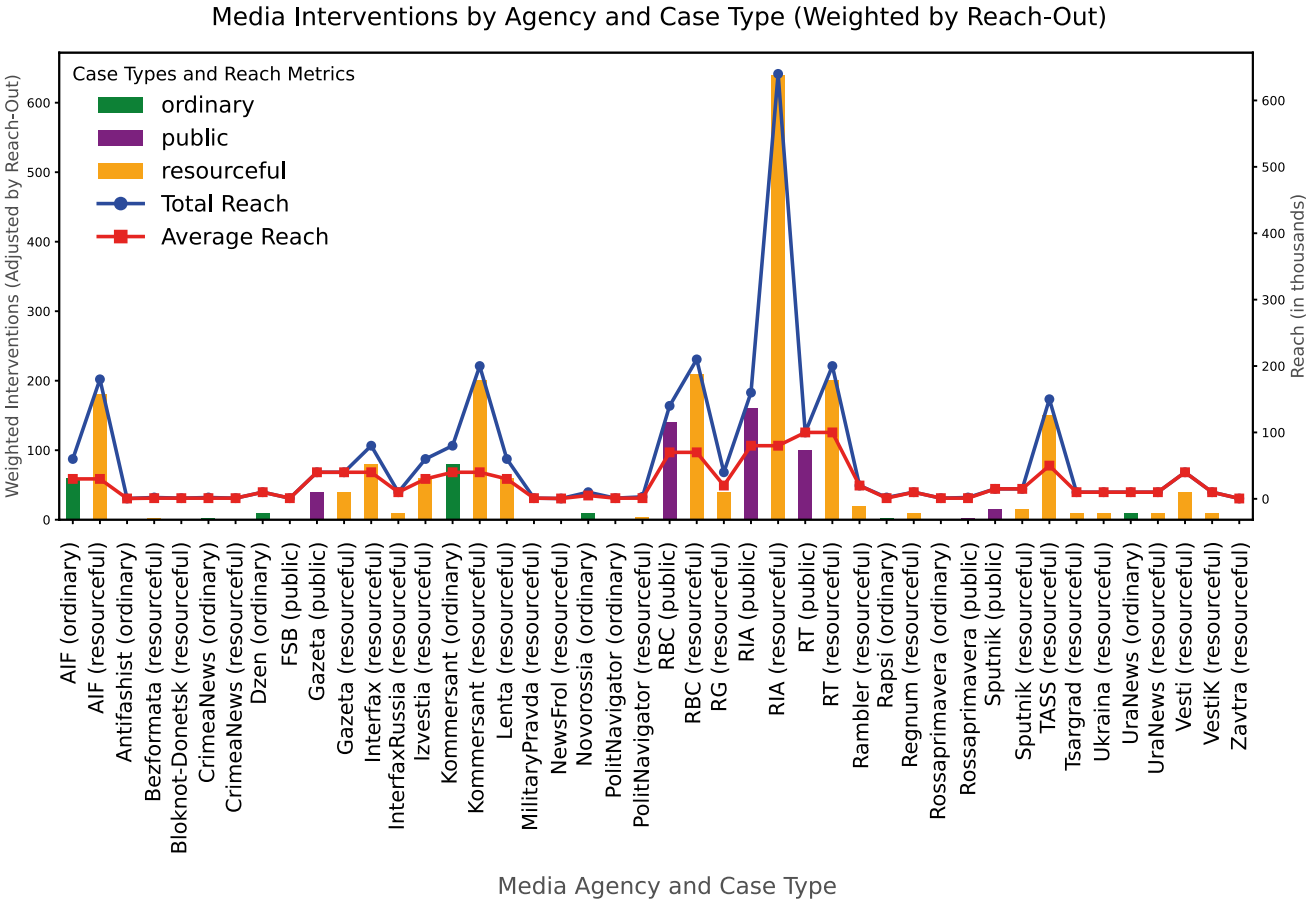
The presumption of guilt prevails among the state media, with agencies such as the FSB (public relations service, their official websites and other media resources), Gazeta, Sputnik and RG covering events from this perspective. This raises questions about the presumption of innocence, especially when compared to outlets such as Lenta and Izvestia, which have a more neutral position. A tendency towards sensationalism is evident in outlets such as Rossaprimavera and RT, which may strengthen narratives but risks compromising journalistic integrity. On the other hand, Kommersant and AiF have been more balanced in their coverage, which reflects a desire for greater credibility.

Regional media outlets, such as UraNews, focus heavily on specific cases, and their reporting is predominantly accusatory. This local focus may reflect regional biases or targeted narratives. The overall mix of state-owned, private, central and regional outlets demonstrates a diverse landscape of coverage, but also highlights the bias and ideological bias that comes with state-owned media ownership.

The high rate of accusatory reporting in the state media is closely linked to the Russian authorities' strategies for prosecuting Ukrainian civilians and prisoners of war. This, in turn, may influence public opinion and the outcome of such judicial processes. Private media, while offering a more balanced tone, are not free from bias, also due to the influence and bias of their owners. The prevalence of presumption of guilt and sensationalist reporting raises concerns about media ethics and adherence to journalistic standards, especially among state-owned outlets.

This analysis shows the complex interaction of ownership structures, editorial policies and strategic intentions in shaping media narratives. While private media is supposed to provide a counterbalance to the propagandist bias of state media, the overall coverage of events shows that Russian private media fail to provide factuality, balance and accuracy in public discourse, and support state media in promoting the presumption of guilt, accusatory narratives against persecuted individuals and in general completely lack neutrality.

Graph 4.4. Media interventions by agency and audience coverage[152]



The analysis reveals a significant concentration of media influence among several key agencies, with RIA being the most dominant player. RIA demonstrates a total weighted intervention score of 640[153] for high-profile cases and 160 for public cases, making it the leading media agency in terms of both coverage and engagement. Its large audience ensures that its interventions have a greater impact. Other important players are RBC, RT and Kommersant, each of which demonstrates high engagement with intervention rates of 210, 200 and 200 respectively, in resourceful cases. These outlets play a key role in shaping narratives around public cases and resourceful cases.

152 The timeline is based on the classification of cases by typology as indicated and their classification by case and media.

153 This indicator (640) and the others in this section are a composite indicator consisting of the number of publications and audience reach (i.e., an indicator of impact on the target audience). For example, RIA media outlet has many publications and a large audience reach with each publication.

RIA, RBC and RT are leading the way in covering public cases with interventions of 160, 140 and 100 respectively. This reflects their active role in influencing public opinion on wider public issues. AiF and TASS also play a significant role in resourceful cases, with scores of 180 and 150 respectively, highlighting their significant involvement in covering these categories of cases.

Media outlets such as Sputnik, Regnum and UraNews have less influence, with minimum intervention scores ranging from 10 to 15. Their limited influence reflects either a focus on a niche audience or a reduced overall impact. Marginal players such as Bloknot-Donetsk, Rossaprimavera and Zavtra show minimal intervention scores, reflecting their low reach and influence in the overall broader narratives.

When analysing the total and average coverage of these outlets, RIA stands out with the highest values of 640 and 80 respectively, which underlines the unprecedented influence of this media outlet in disseminating narratives to a wide audience. RT and RBC also demonstrate significant average reach scores of 100 and 70, which demonstrates their ability to achieve a significant impact with fewer interventions. Kommersant, TASS and AiF maintain moderate average reach values in the range of 40-50, reflecting a balance between the frequency of interventions and the size of their audiences.

Niche or low-influence outlets such as Antifashist, BezFormata and NewsFrol have low overall and average coverage, indicating their limited role in shaping public opinion. Interestingly, public case outlets are usually characterised by a lower number of interventions, but higher average coverage per intervention. For example, RT and RBC, with average coverage of 100 and 70 respectively, demonstrate a strategic focus on broad public narratives through a smaller but more influential number of interventions. The resourceful cases, although having a larger number of interventions, show slightly lower average reach, which probably indicates that the messages are targeted at a narrower audience.

In general, the analysis highlights the *dominance of resourceful cases* in media coverage, which indicates their importance in media narratives. Public cases, although less frequent, are associated with higher levels of audience engagement per intervention, which underscores their strategic importance in shaping public discourse. Influence is concentrated among a few major players, such as RIA, RT and RBC, which dominate both overall and average coverage. These outlets play a crucial role in shaping the agenda for both resourceful and public cases.

Smaller and regional media outlets, such as Bloknot-Donetsk and Crimea News, serve specific communities or niche issues. Although their overall impact is limited, they remain relevant in their respective areas. This concentration of influence among a few key players suggests the need for further strategic monitoring of media outlets with a large audience reach to understand their role in shaping public opinion. At the same time, it is important to take into account the unique role of niche media to have a balanced and complete assessment of the media environment.

ECONOMIC CONSEQUENCES AND RESPONSIBILITY

Economic analysis of media campaigns[154]

The financial dynamics of these coordinated media campaigns reveal the state's priority to control public opinion. Costs vary depending on the scale and reach of the campaign: in ordinary cases, they are minimal due to the use of regional media and the reuse of narratives. At the same time, large-scale and resourceful cases involve significantly higher costs, reflecting the involvement of national and international media. According to the approximate distribution of economic costs of the media strategy in each case, which includes writing, production and distribution, the following cases can be distinguished[155]:

- ***Ordinary case:*** Estimated costs for all agencies involved range from $10,000, mostly covering regional publications and social media influencers.
- ***Resourceful case[156]:*** The costs of all agencies involved increase to $50,000, covering broader media coverage and narrative support.
- ***Public case[157]:*** Campaigns for high-profile individuals involving all agencies can reach $100,000, including international coverage and multimedia content.

These financial figures highlight the dependence of the state on the media as a tool for managing public opinion and political control. The total estimated financial cost of all 15 selected key cases could be as high as *$3,000,000*, including all related costs (writing, production, distribution, etc.).

The economic implications of media interventions in the 15 cases studied reveal a significant uneven distribution of resources between the three types of cases: *ordinary, resourceful and public*.

Resourceful cases accounted for the largest share of financial costs, totalling around *$2.5 million*, or *73% of total costs*. This dominance reflects the priority given by Russian media outlets to covering resourceful and resource-intensive issues. Such cases are usually complex, requiring significant investigative efforts, legal analysis and prolonged media coverage due to their importance.

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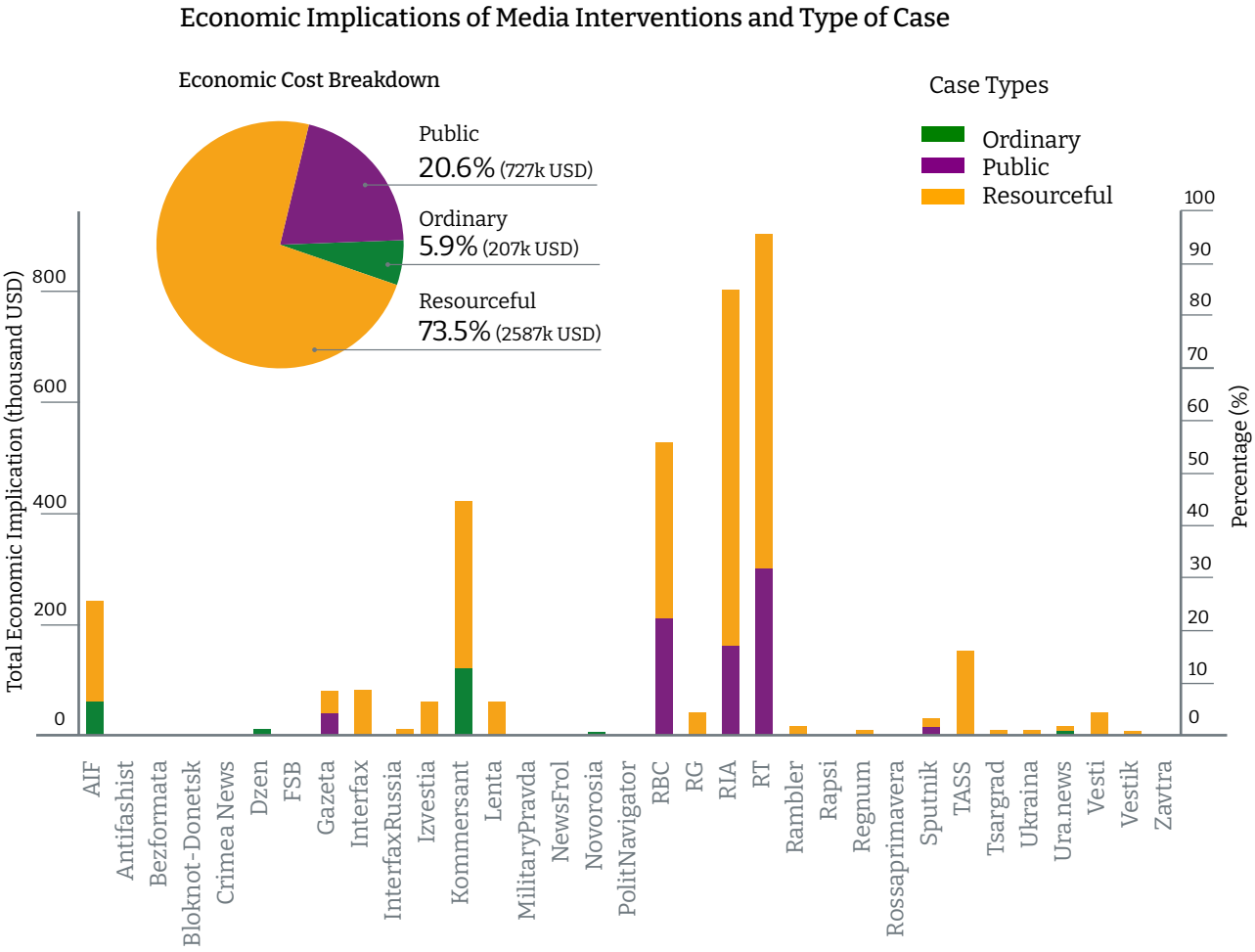
154 This economic analysis was carried out on the basis of 15 selected cases and was estimated at around $3 million, so extrapolating it to hundreds of actual cases could indicate a significant increase in the cost of such information support.

155 For more details, please see the file "Section IV_Media.xlsx", which is available to the initiators of the research.

156 In one of the analysed cases (resourceful case, military P6), 14 publications were recorded with an estimated. economic value of about $30,000. It consisted of three longreads in the leading national media (3×$6000=$24,000), seven articles in national (high-level) and other national media (5×$1000=$5000 + 2×$500=$1000), and the rest of the short articles.

157 In one of the analysed cases (public case, civilian P13), 11 publications with an estimated economic value of $45,000 were recorded. The cost structure includes 7 publications in leading national media, 2 in national and 1 in regional media, of which 5 are longreads and the rest are articles. Thus, the estimated economic value is as follows: – 7 longreads in the leading national media (8×$6000) = $48,000 – 2 national articles (2×$500) = $1000.

Graph 4.5. Economic implications of media agency interventions[158]



Public cases take the second place in terms of financial costs, with *$0.7 million* allocated for their coverage, which is *21% of the total amount*. These cases are of broad social significance and are aimed at engaging the public in discussions on key social issues. Although they require fewer resources than resourceful cases, the level of financial investment remains significant, which underscores their importance in the media agenda.

Ordinary cases have the lowest total financial costs – *$0.2 million*, or *5.9% of the total amount*. This suggests that such cases are likely to be less complex or less sensational and, therefore receive limited attention and resources. Their narrower audience and lower public profile are likely to result in a lower priority for media agencies.

The data demonstrate a clear hierarchy of priorities, with *resourceful cases* dominating both total and proportional financial investments. This is in line with their key role in media narratives, given their complexity. *Public cases*, although receiving less funding, still reflect the media's intention to cover issues of broad public importance. Instead, *ordinary cases* play only a minor role in the allocation of funds, indicating their secondary importance in the overall media strategy.

158 This graph was developed on the basis of economic data on the costs of writing various types of publications, production, marketing and promotion by case type and their aggregate value.

Liability for violation of the presumption of innocence and an information tool for the policy of judicial persecution

The use of the mass media to systematically violate the presumption of innocence and shape public opinion in the researched category of cases raises serious ethical and legal issues. By identifying the owners and editorial structure of these media outlets, accountability mechanisms can be proposed. For example:

- **Documenting violations:** Systematic documentation of these campaigns and their consequences can serve as an evidence base for advocacy, litigation, and eventually holding politicians accountable;
- **Holding media owners and editors accountable:** Media owners and editors directly involved in the planning and implementation of these campaigns may be subject to assessment of their actions for international crimes or sanctions for propagating state narratives.

The owners and editorial leadership of Russian state and private media outlets play a central role in organising and disseminating accusatory narratives that are closely linked to the state's goals of unlawful judicial persecution of Ukrainian civilians and prisoners of war. Among the state media outlets, RIA Novosti, RT, TASS and Vesti.ru are directly controlled by the Russian government or its affiliated bodies, which ensures that their activities are fully aligned with the priorities of the Russian top political leadership. For example, RIA Novosti and RT are part of the Rossiya Segodnya group, headed by Dmitrii Kyselov, a media figure known for his strong pro-Kremlin position, disseminating Russian propaganda, etc. These media outlets play an important role in initiating accusatory campaigns against political opponents or those who disagree with the actions of the Russian authorities, setting the narrative tone that is often followed by private and regional media in Russia and the occupied territories.

Private media outlets with close ties to the Kremlin also play an important role. Gazeta.ru and Lenta.ru, owned by Sberbank and linked to the Central Bank of Russia, operate under the influence of state-affiliated management; for example, Sberbank's supervisory board is dominated by officials close to the Kremlin. Similarly, Izvestia, owned by the National Media Group[159], is part of a conglomerate with deep ties to Russia's political elite, including figures associated with Gazprom Media. These platforms maintain the visibility of editorial independence while consistently aligning their narratives with state messages, especially in public and resourceful cases. The editors-in-chief and top managers of these media outlets, such as Marharyta Symonian of RT, are well known for their public loyalty to Russian government policy, which further ensures compliance with state directives.

In addition to state-owned and Kremlin-linked private media, ideological and nationalist platforms such as Tsargrad TV and Zavtra have been disseminating more extremist narratives. Tsargrad TV, owned by Konstantin Malofieiev[160], a businessman with direct ties to the Kremlin, actively promotes ultra-conservative and pro-Kremlin content. Malofieiev's editorial influence

159 Headed by Alina Kabayeva since 2014, alegengly in personal relations with Kremlin leader. URL: https://surli.cc/rhrvfu And since 2022 reference to Kabayeva was removed. URL: https://www.svoboda.org/a/s-sayta-nmg-ischezli-upominaniya-o-glave-soveta-direktorov-aline-kabaevoy/31789052.html

160 War Sanctions: Web Portal. URL: https://war-sanctions.gur.gov.ua/kidnappers/persons/376

ensures that the TV channel frames political persecution within a broader narrative of defending Russian sovereignty and "traditional values". Similarly, Zavtra media, headed by Oleksandr Prokhanov, a nationalist writer, plays an important role in persecuting dissenters through sensationalist and humiliating publications. Together, these owners and editors form a tightly controlled ecosystem that systematically undermines the presumption of innocence and supports the political agenda of Russia's top political leadership, including the unlawful prosecution of Ukrainian civilians and prisoners of war.

SECTION V.

POLICY OF JUDICIAL PERSECUTION OF UKRAINIAN CIVILIANS AND MILITARY PERSONNEL: DEVELOPMENT, IMPLEMENTATION AND RESPONSIBILITY

ORGANISATION AND IMPLEMENTATION OF THE POLICY OF JUDICIAL PERSECUTION

The development of policies of judicial persecution, in particular, consists of several important elements. Policy direction and coordination are determined by the political leadership of the RF. The implementation of the policy is supported and ensured by regulatory, institutional, financial and information instruments.

The following ***goals*** of the policy of judicial persecution of Ukrainian civilians and military personnel can be identified, which complement or synchronise with the goals of Russia's military occupation of Ukrainian territories:

- **Delegitimisation of Ukrainian statehood:** To show Ukraine as an illegitimate state, to criminalise the actions of Ukrainian military and civilians as part of a broader propaganda narrative against the state of Ukraine as a whole;
- **Subjugation of Ukrainian resistance:** To undermine Ukrainian sovereignty by persecuting those who resist the occupation and aggressive war, and suppressing the voices of those who disagree with the occupation;
- **Control through fear:** to instil fear in the Ukrainian population through targeted persecution, detention and punishment and dissemination of information about such actions of the Russian authorities, as well as to strengthen Russian dominance (of the institutions created by it) in the occupied territories, promoting economic, political and social dependence on Russia in the territories it has occupied.

The "concept of denazification of Ukraine" declared by Russian President Vladimir Putin provided for the so-called ban on "neo-Nazi movements" and getting rid of people who "promote the ideology of Nazism" in the country[161]. It was announced as a key goal of Russia's full-scale

161 Vladimir Putin answered Tucker Carlson's questions. URL: http://kremlin.ru/events/president/news/73411 (transcript); Putin explained the meaning of the word "denazification" ("banning all kinds of neo-Nazi movements" and the need to "get rid of those people who keep this theory and practice alive and try to preserve it"), 09.02.2024. URL: https://www.forbes.ru/society/505882-putin-ob-asnil-znacenie-slova-denacifikacia
Putin, in an interview with Carlson, explained the significance of denazification within the framework of the SVO. URL: https://www.kommersant.ru/doc/6495975
Putin explained what is meant by denazification of Ukraine. URL: https://rtvi.com/news/putin-obyasnil-chto-podrazumevaetsya-pod-denaczifikacziej-ukrainy/
Putin says Russia has not yet achieved its goals in Ukraine. URL: https://www.rbc.ru/rbcfreenews/65c575c09a79475a1f9b3704

aggression against Ukraine in February 2022[162]. In particular, the objectives of the aggressive attack were announced as follows: (1) destruction of the Kyiv regime[163], liquidation of armed groups recognised by the RF as terrorist or nationalist, such as Azov and others[164]; (2) purging supporters of Nazification and creating conditions for further denazification in peacetime[165]; (3) judicial persecution of war perpetrators who committed crimes against civilians in Donbas[166].

The policy focuses on specific citizens of Ukraine from the occupied Ukrainian territories or the hostilities zone who are being persecuted, namely:

- **Civilians:** Activists, local leaders and journalists accused of collaborating with the Ukrainian authorities or attempting to resist the occupation (even if the pretext for this is unrelated falsified charges of various common crimes), as well as public figures who promote narratives of Ukrainian identity, support for Ukraine's independence and integrity.
- **Military personnel:** Members of the Armed Services of Ukraine are being persecuted for their participation in an armed conflict in violation of international humanitarian law under the pretext of accusations of terrorism, membership in banned organisations or war crimes.

Role in defining policy objectives*:* The political leadership of the RF (including the leadership of law enforcement and security agencies) sets the goals of criminal prosecution and ensures their coherence between all institutions. The key actors in setting such goals are the President of the RF, the Security Council and senior government officials. Centralised guidance is provided by directives issued by the president and key security advisers.

Evidence: Public speeches, decrees and strategic documents that emphasise national security, the so-called fight against terrorism or the suppression of extremism.

Mechanism*:* The leadership of the country issues directives that serve as a basis for action, creating a common goal or plan. At the same time, the President appoints and annually holds the heads of the prosecution service and the Investigative Committee to accountability, while also approving their organisational structure and budgets. The President plays a central role in appointing judges, particularly those of higher courts, and exerts significant influence through the nomination process.

Policy instruments are tools that are used to implement policy objectives in practice, directly influence the structure and execution of the policy, and can enable or strengthen policy activities by providing resources, legitimacy, etc. In general, several key instruments used to organise and implement the policy of judicial persecution can be identified: regulatory, institutional, informational and financial.

Regulatory instruments: legislation and regulatory acts that provide the legal basis for policy actions.

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162 The aim of the special operation in Ukraine is denazification. URL: https://ria.ru/20220329/spetsoperatsiya-1780646577.html

163 Denazify, take Kiev, stop NATO – how the goals of the invasion of Ukraine have changed in the statements of Russian politicians and the military. URL: https://www.bbc.com/russian/news-61073700

164 What Russia should do to Ukraine. URL: https://ria.ru/20220403/ukraina-1781469605.html

165 See footnote No. 164.

166 Denazify, take Kiev, stop NATO – how the goals of the invasion of Ukraine have changed in the statements of Russian politicians and the military. URL: https://www.bbc.com/russian/news-61073700

Thus, policymakers rely on existing laws to legitimise their involvement in persecution, even if the laws themselves are discriminatory or unjust. These laws create a "regulatory shield" for criminal acts by presenting such judicial persecution as legitimate legal action. They directly allow for the justification and implementation of arbitrary arrests and illegal judicial processes on fabricated or politically motivated charges.

Key legal acts in this area are promoted by the President and Parliament, including in consultation with the Security Council.

Example: legislation on combating terrorism and extremism, which allows for an overly broad interpretation of such activities, is used to persecute civilians and justify collective action against this group. Similarly, Russian legislation introduced after the start of the full-scale invasion to punish "discrediting the SVO", disseminating false information about the Russian military, etc., is used to persecute these groups. Legislation and legal restrictions that effectively lead to the forced imposition of Russian citizenship on residents of the occupied territories require loyalty to the occupying authorities and allow persecution for crimes against Russian national security[167].

Institutional instruments: The bodies or officials responsible for implementing the policy (e.g. military units, intelligence services, judges, etc.). The relevant institutions effectively provide the hierarchical structure and coordination necessary for the effective operation and implementation of policies of judicial persecution.

Immediately after the occupation of certain territories of Ukraine, the Russian authorities created either their own law enforcement and judicial structures, subordinate to the bar (in the case of an attempted annexation of the territories) or fully controlled by them (in the period before the attempted annexation, but after the establishment of control, such as in the occupied territories of the East of Ukraine from 2014 to 2022), including to implement the policy of judicial persecution and control over the territories and the population there[168].

The Federal Security Service coordinates filtration measures aimed at civilians in the temporarily occupied territories (TOT). This includes the detention and coercion of individuals to cooperate or incriminate themselves, as well as the identification of resistance leaders or potential dissidents to the occupation and military actions of the Russian Federation. As a result, this process leads to detentions, arrests and further actions for personal prosecution in criminal proceedings. Subsequently, the Prosecutor's Office[169], law enforcement agencies, and the Investigative Committee ensure the prosecution of specific cases. Prosecutors, who take on cases and

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167 For more details, see Section I of this research.

168 Putin doubled payments to officials in new territories. Pravo.gov.ru, 17.10.2022. URL: https://pravo.ru/news/243436/
In the Kherson region, the Bar and Notary Chambers have been established. Pravo.gov.ru, 30.01.2023. URL: https://pravo.ru/news/245039/
The State Duma has approved the inclusion of the LDPR, the Kherson and Zaporizhzhia regions into the RF. Pravo.gov.ru, 03.10.2022. URL: https://pravo.ru/news/243196/
Families of officials killed in the DPR and LPR will be paid 5 million rubles. Pravo.gov.ru, 29.12.2022. URL: https://pravo.ru/news/244706/

169 https://pravo.ru/news/243197/ Putin increased the number of military prosecutors, Putin proposed candidates for prosecutors of the new regions. URL: http://publication.pravo.gov.ru/Document/View/0001202210030005, https://pravo.ru/news/244293/
Putin increased the IC staff to meet the needs of the new regions. URL: https://pravo.ru/news/244587/
And created new structure of Sledkom. URL: https://sledcom.ru/sk_russia/structure/mapregions/, https://kherson.sledcom.ru/, https://zaporozhye.sledcom.ru/, https://dnr.sledcom.ru/, https://lnr.sledcom.ru/, https://crim.sledcom.ru/

present politically motivated charges in courts, oversee cases where evidence is fabricated or obtained under coercion and, together with the FSB, ensure that courts follow the chosen tactics in cases.

Accordingly, courts in the RF or the occupied territories ensure that pre-determined sentences are passed, often behind closed doors, following the hidden or declared directives of the RF political and military leadership. The courts issue mostly harsh sentences based on fabricated evidence and forced confessions of the accused, in violation of most fair trial guarantees[170]. Additionally, the Russian Constitutional Court issues guidelines for the application of judicial practice in the context of the persecution of persons who disagree with the actions of the Russian authorities in unleashing an aggressive war in the territory of Ukraine[171].

After the deprivation of liberty (including sometimes not recorded procedurally) and/or sentencing, the institutional chain of implementation of the policies of judicial persecution also includes the Federal Penitentiary Service[172], which controls places of detention in the RF and the occupied territories, which often become places of torture, ill-treatment and coerced confessions, including for further use in trials.

At the same time, the Russian armed forces also play a role in this policy, cooperating with special services and law enforcement agencies to observe curfews in the occupied territories, conduct mass detentions and intimidate the local population, conduct raids in Ukrainian settlements to arrest suspected collaborators with the Ukrainian side, and, in particular, to capture and transfer Ukrainian prisoners of war for further trial.

Informational instruments: Propaganda, disinformation or public statements that shape negative narratives about persecuted persons and justify the criminal actions of the authorities. Extensive propaganda that emphasises the alleged danger and existential threat posed by detained and persecuted persons. In the implementation of the policy of judicial persecution, a network of state and private media at the national and regional levels, a network of propagandists and propaganda channels in various social networks and messengers controlled by the Russian authorities are involved. Information instruments contribute to the formation of general intentions of persecution, strengthening the legitimacy of criminal acts. For example, state media outlets show the persecuted Ukrainian civilians and military as a threat to national security, calling them "extremists" and "terrorists"[173].

Financial instruments: Budgetary allocations, financing mechanisms or confiscation of assets to support policy objectives, seizure and expropriation of Ukrainian public and private assets in the occupied territories, enterprises and infrastructure, including their further use to support the occupation authorities. Financial resources support the activities of institutions and individuals involved in policy implementation.

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170 For more details, see Section II of this research.

171 For example, the decisions of the Constitutional Court of the RF confirming the legality of the provisions of the Code of Administrative Offences establishing administrative liability for public actions aimed at discrediting the use of the Russian armed forces to protect the interests of Russia and its citizens, and to maintain international peace and security. These include public calls to obstruct the use of the armed forces for these purposes, discrediting the activities of Russian state bodies abroad in these contexts, or undermining support for volunteer formations, etc.

172 The Ministry of Justice, the Federal Bailiff Service and Federal Penitentiary Service have established divisions in new territories. URL: https://pravo.ru/news/243648/

173 For more details, see Section IV of this research.

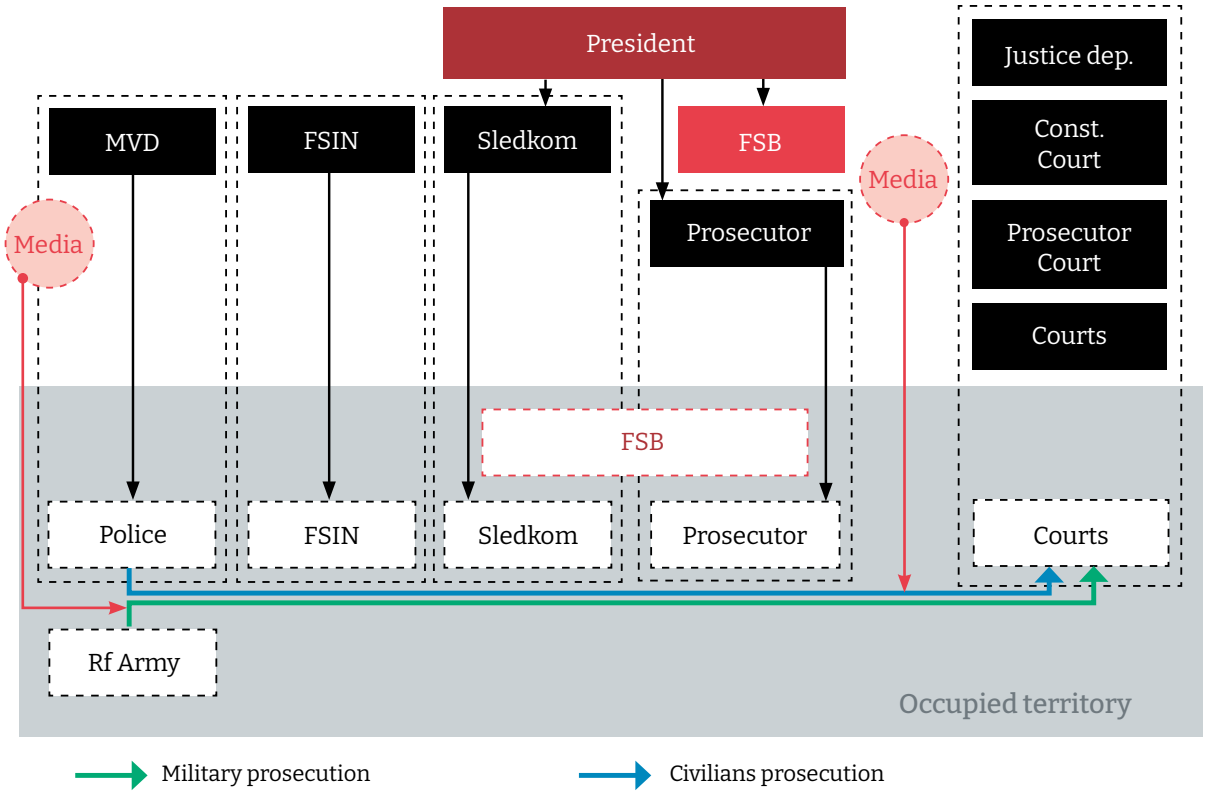
At the same time, the following parameters and the general context of the living conditions created by the Russian Federation in the occupied territories are also used in the implementation of the policy:

(1) "Soft" legal guidelines: Non-binding guidelines or policies that influence the behaviour of personnel or institutions and may be used to implicitly facilitate participation in criminal activities without direct orders. For example, the behaviour or inaction of heads of law enforcement agencies, various internal instructions or codes of ethics of institutions that directly or indirectly encourage actions that facilitate the implementation of a criminal plan. Imposing Russian norms and values to erode Ukrainian national identity. Encouraging cooperation with the occupation authorities through coercion or economic incentives, etc.

(2) *Staffing and institutional culture:* Recruitment, training and guidance of staff in line with policy objectives. Institutional culture contributes to the formation of common intentions, ensuring cohesion among those who implement policies, even without direct orders or coercion from management. For example, various educational programmes, trainings, administrative practices or information initiatives that normalise discriminatory practices or dehumanise Ukrainians underscore the existence of Ukrainian "extremism" or "Nazi ideology" to justify further criminal actions.

The policy of judicial persecution of Ukrainians through illegal prosecution in the courts of the RF and TOT demonstrates a coordinated system of repression, in which the policy goals are implemented through all the above-mentioned instruments - regulatory, institutional, financial and informational.

Graph 5.1. Networks implementing the policy of judicial persecution in Russia and the occupied territories



CASES ILLUSTRATING THE IMPLEMENTATION OF THE POLICY OF JUDICIAL PERSECUTION

The implementation of the policy of judicial persecution in the cases in the occupied regions of Ukraine, including Luhansk, Kherson, Zaporizhzhia and the Crimean peninsula, reflects the targeted and coordinated efforts of the Russian authorities to ensure Russian sovereignty, suppress resistance and control the population through a combination of legislative, institutional, financial and informational tools. Since February 2022, after the outbreak of a full-scale aggressive war, Russia has systematically extended its policy of judicial persecution to these territories as part of broader military and political operations.

The attempted annexation of the Luhansk, Kherson, and Zaporizhzhia regions in autumn 2022 was a turning point in the integration of these regions into the Russian administrative and legal system. This process included the introduction of Russian criminal law in these territories, which created a legal pretext and tools for judicial persecution. These changes were reinforced by the expansion of the Russian institutional presence – through the establishment of operations of the Russian judicial and law enforcement systems in those areas, or through the partial involvement of the already existing system from the Crimean Peninsula in carrying out persecutions, which allowed for a systematic approach to persecution.

The practical application of the policy of judicial persecution is evident in the numerous cases against Ukrainian civilians and military personnel in these territories. These cases demonstrate a consistent pattern of politically motivated judicial processes on charges of extremism, terrorism, high treason and war crimes. Arrests are often accompanied by prolonged detention and protracted judicial processes, which maximises psychological pressure on the accused.

For example, in the case of a civilian (M13) arrested in April 2022, the trial on the TOT did not start until April 2024, and the verdict was delivered in October 2024. Similarly, the case of another civilian (M4), arrested in September 2022, was brought to trial in the RF in December 2022, with the final judgment postponed until October 2024. The structured timing of these cases may also indirectly indicate the deliberate use of the judicial process as a tool of repression and pressure.

Russian institutions, including the FSB, the Investigative Committee, the prosecutor's office and the judiciary, play a key role in implementing this policy. The FSB carried out surveillance, arrests, fabricated charges, and operated filtration camps where detainees were screened and often coerced into confessions and self-incrimination. Prosecutors oversaw cases involving fabricated evidence and coerced confessions, ensuring that courts handed down pre-determined sentences. The judiciary operated under occupation control, often bypassing fair trial guarantees and handing down harsh sentences, as evidenced by the cases of military (M8) and civilian (M11).

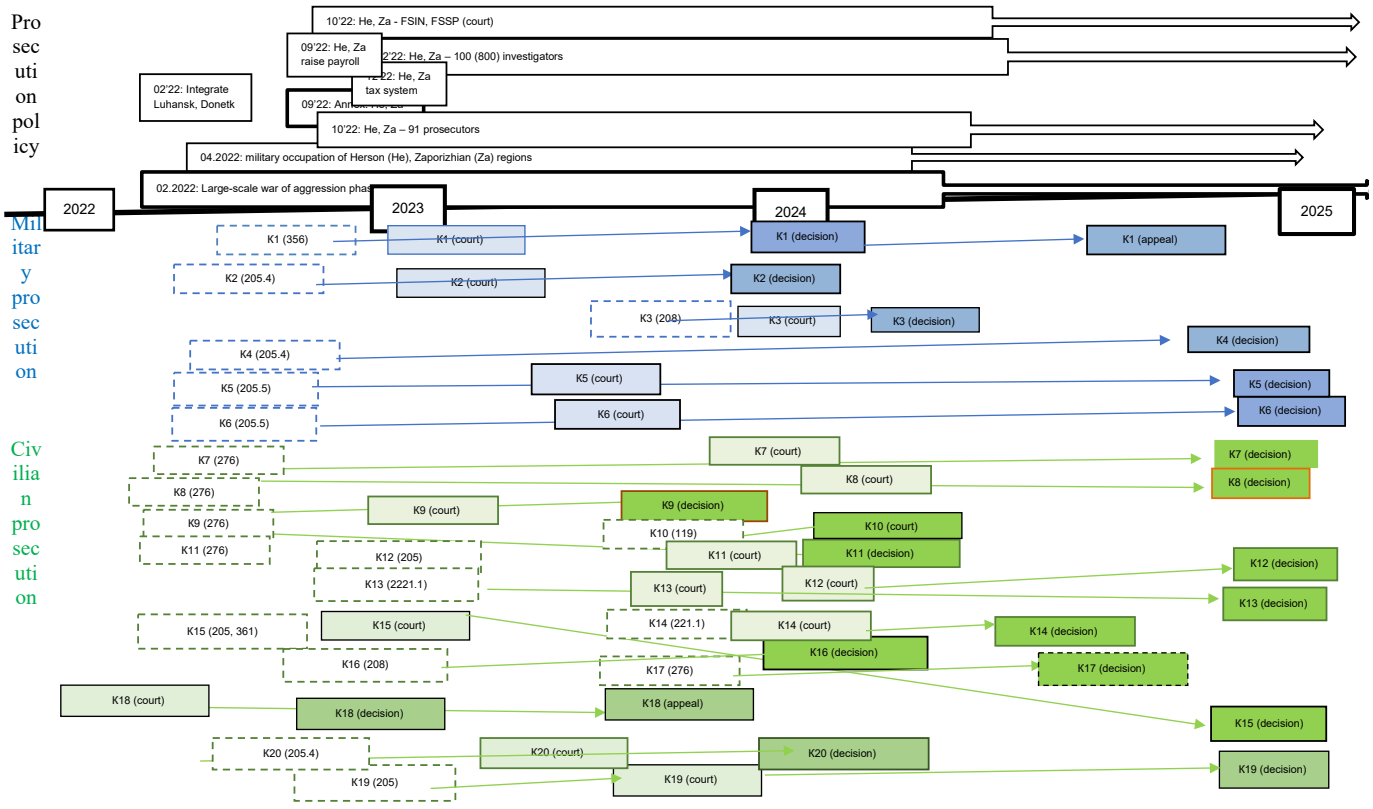
The informational instruments supporting this policy further illustrate its systemic nature. The propaganda campaigns carried out by state media and regime-affiliated propagandists and private media outlets dehumanised Ukrainian civilians and military personnel by portraying them as extremists and terrorists. These campaigns not only justified the criminal actions of

the Russian authorities in deploying a policy of judicial persecution, but also strengthened public support for such a policy through the demonstration of judicial processes and disinformation narratives.

The implementation of the policy of judicial persecution followed a structured schedule, reflecting its integration into the broader strategy of controlling the occupied territories. In 2022, the initial phase focused on establishing control mechanisms and initiating detentions and arrests. In 2023, the intermediate stage saw an increase in the number of judicial processes and institutional expansion, culminating in the delivery of judgments.

The targeted use of legal, institutional, financial and informational instruments underlines the calculated nature of the policy of judicial persecution in the occupied Ukrainian territories. It demonstrates the implementation of the goals of the Russian political leadership as part of a broader strategy to suppress resistance to the occupation, delegitimise Ukrainian sovereignty and control the civilian population.

Graph 5.2. Examples of the implementation of the policy of judicial persecution in certain occupied regions of Ukraine



SECTION VI.

LEGAL ASSESSMENT OF THE POLICY OF JUDICIAL PERSECUTION

The denial of the right to a fair trial is one of the lesser-known crimes in international criminal law (ICL), which has recently prominently featured in several conflicts worldwide, including Ukraine, Israel-Gaza and Mali. However, the crime has still received inadequate attention in the case law of contemporary international criminal courts and tribunals. The ICC recently dealt with the crime in the Al Hassan case, in which it convicted the defendant, among others, on the charge of passing of sentences without due process in the context of a non-international armed conflict (NIAC) in Mali[174]. There are notable differences between the crime of the **denial of a fair trial** committed in the context of an international armed conflict[175], (IAC) and the crime of **sentencing without due process** in the context of NIAC. Whereas the crime committed in IAC encompasses the denial of judicial guarantees more broadly, regardless of whether the sentence has been imposed, in NIAC, the war crime focuses on the very last stage of proceedings, which involves the passing of sentences or execution of one or more persons without due process.[176]

Historically, the war crime of **the denial of a fair trial** was first adjudged by the U.S. and Australian Military Courts in the aftermath of World War II. One of the most important precedents was laid down by the U.S. Military Court in the famed *Justice* case, in which 16 senior members of the Reich Ministry of Justice, prosecutors and judges were tried on the charges of war crimes and crimes against humanity for their "*conscious participation in a nationwide government-organised system of cruelty and injustice [...] perpetrated in the name of law by the authority of the Ministry of Justice, and through the instrumentality of the courts*"[177]. The Prosecutor's remark "*the dagger of the assassin was concealed beneath the robe of the jurist*" encapsulates the very essence of the case[178]. The Tribunal found that the courts were instrumentalised by the Nazis to inflict a reign of terror on the "*civilian population of the countries overrun and occupied by the Nazi regime's military forces*" through the judicial process that "*did not approach even a semblance of fair trial or justice*"[179]. The case signifies the degradation of the judicial system in the Nazi Germany that was used as a tool of persecution against its victims.

A series of trials concerning the denial of the right to a fair trial by the Japanese military against the U.S. prisoners of war took place in the Pacific. In *Sawada et al.*, four Japanese defendants, including two judges of the Japanese Military tribunal, stood trial for their role in denying

174 ICC, *Al Hassan* Trial Judgment, paras 1474-1525. As clarified in the Trial Judgment, all incidents relevant to this count fell into the two categories: (i) sentences passed without a previous judgment pronounced by a court; and (ii) sentences passed pursuant to a judgment pronounced by a court that was not regularly constituted, i.e. the court lacked the essential guarantees of independence and impartiality.

175 ICC Elements of Crimes, Art 8(2)(a)(vi) – War crime of denying a fair trial.

176 ICC Elements of Crimes, Art 8(2)(c)(iv) – War crime of sentencing or execution without due process.

177 *United States v Altsoetter et al.* (*The Justice Case*), Case No3, Military Tribunal III, 3 Nuremberg Subsequent Proceedings, p. 985.

178 See footnote No. 177.

179 See footnote No. 177, p. 1046.

the status of prisoners of war to the members of the U.S. armed forces who were tried on fraudulent/false charges and subsequently executed[180]. The trials were devoid of fundamental judicial guarantees, as the defendants were tried on fraudulent/false charges, were not afforded the right to counsel, were denied the opportunity to defend themselves, as well as were denied their right to interpretation of the proceedings into English[181].

The war crime of denying a fair trial constitutes an underlying act of grave breaches to the 1949 Geneva Conventions (GC IV) when committed in the context of IAC. Article 8(2)(a)(vi) of the Rome Statute (RS) defines the crime as "*wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial*". The ICC Elements of Crimes outline the *actus reus* of the crime as "*depriving one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, by the GC III and GC IV*".

A list of major judicial guarantees is enumerated in GC III and GC IV; however, the drafters of the RS were open to the interpretation of such guarantees broadly, including those that are not explicitly mentioned in the Geneva Conventions. Back in 2018, the Office of the Prosecutor of the ICC acknowledged the commission of the war crime of the denial of a fair trial in occupied Crimea in its research on preliminary activities. It noted the prosecution of at least 24 pro-Ukrainian activists and Crimean Tatars who were tried by Russian courts, which were not established under international humanitarian law (IHL), and subjected to judicial processes that lacked fundamental judicial guarantees[182].

As noted in this Research, the crime of the denial of a fair trial has been prevalent in Ukraine since 2014. Following the attempted annexation of Crimea, Russian occupying authorities used the judicial process to target civilians, specifically ethnic Ukrainians and Crimean Tatars, who were opposed or were perceived to be opposed to the Russian regime[183]. In violation of IHL, Russia completely dismantled the Ukrainian legal system in Crimea, replacing it with its own laws and legal practices[184].

The situation in the occupied territories of the East of Ukraine was even worse, as quasi-judicial bodies operated there, administering so-called "justice" with unlimited discretionary sentencing powers, including the death penalty. Following the full-scale Russian invasion on 24 February 2022 and the subsequent attempted annexation of four Ukrainian regions on 30 September 2022, the Russian legal system was illegally extended to all occupied territories.

From the very beginning of the aggression against Ukraine, trials have become a tool of the Russian authorities to persecute and subjugate the local population in the occupied territories and suppress any form of resistance and dissent. In addition to Ukrainian civilians, prisoners of war of the AFU who are captured by the RF are also massively targeted for judicial persecution, especially after 2022. They are often defiantly presented to the public as "dangerous Nazis" and falsely accused of serious crimes under Russian criminal law.

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180 *Trial of Lieutenant-General Shigeru Sawada and Three Others*, United States Military Commission, Shanghai, 27th February 1946 – 15th April 1946, p. 1.

181 See footnote No. 180, p. 12.

182 International Criminal Court, Office of the Prosecutor, Report on Preliminary Investigation Activities (2018), 5 December 2018, para. 78. URL: https://www.icc-cpi.int/news/report-preliminary-examination-activities-2018-ukraine

183 ECtHR, Ukraine v Russia (Crimea), Grand Chamber, Applications Nos 20958/14 and 38334/18, para. 387.

184 See footnote No. 183.

The Russian judicial system under the Putin regime has deteriorated significantly, resembling key aspects of the post-WWII famed Justice Case[185]. This degradation manifests in the use of the judicial system and the law as tools of persecution against ethnic Ukrainians and Crimean Tatars who oppose or are perceived to oppose the Russian regime. Anti-terrorist and anti-extremist laws have been weaponized as part of this campaign of persecution. Victims have been arrested without charges, unlawfully detained - often held incommunicado - and subjected to torture and inhuman treatment during detention. They are then subjected to sham judicial processes. During these trials, victims face accusations of crimes they did not commit, are denied the opportunity to present or examine evidence, and are often prevented from choosing their own defense counsel or, in some cases, denied legal representation altogether. These proceedings are frequently conducted in secret, with no public record, further undermining any semblance of fairness or justice.

The research has identified several patterns and trends that confirm the existence of systemic and widespread practice of abuse of the judicial process by the RF, both concerning Ukrainian civilians and prisoners of war. Numerous violations of fair trial guarantees have been documented, which can be divided into two main categories: violations of institutional guarantees of justice (absence of independence and impartiality of the judiciary) and serious procedural violations during individual trials.

Thus, based on the results of the analysis in this research, it can be concluded that **the denial of a fair trial in the context of the war between Ukraine and Russia has a double qualification: as a war crime and as a crime of persecution, which constitutes a crime against humanity**.

VIOLATIONS OF PROCEDURAL GUARANTEES[186]

The research has identified systemic problems with the ability of Russian courts to provide fair trial guarantees in cases of the prosecution of Ukrainian civilians and prisoners of war. Systemic non-compliance and sometimes the complete absence of fundamental fair trial guarantees in this category of cases only exacerbates the numerous procedural violations that occur during these trials. In particular, it concerns the violation of the following rights.

- **The right of the accused to be promptly informed of the offences with which he/she is charged** (Art. 104 GC III, Art. 71(2) GC IV, Art. 75(4)(a) AP I)

Content of the Law. GC III and IV stipulate that the accused must be notified of the changes without delay and must be informed of the reasons behind his arrest in order to prepare a defence. Both Conventions lay out specific particulars that the accused has to be notified of, and these must be notified in a language that he understands. Art 71 (2) GC IV emphasises the importance of bringing the person to trial "as rapidly as possible", specifically in the context of occupation, which is often linked to delays in the investigation and prolonged time spent under arrest

185 United States v Altsoetter et al. (The Justice Case), Case No. 3, Military Tribunal III, 3 Nuremberg Subsequent Proceedings.

186 The author provides a legal assessment based on the norms and principles of international humanitarian law.

pending trial.[187]. Regardless of whether the defendant is a civilian or PoW, the Occupying Power is obliged to inform the Protecting Power of the proceedings, which it initiated against protected persons at least three weeks prior to the opening of the trial[188]. The three-week time limit is the absolute minimum required for persons facing trial to prepare their defence[189]. Notwithstanding such detailed procedural notification requirements in both Conventions, it is acknowledged that parties to most IAC fail to appoint respective Protecting Powers. Similarly, Art 75(4)(a) AP I guarantees the right of the accused to be informed without delay of the "particulars of the offence" against him[190].

Examples of guarantee application in the context of the research[191]. The defendants, whether Ukrainian prisoners of war or civilians, are not always informed of the details of the offences they are charged with. In one of the cases analysed, the defendant was not aware of the charges against him/her until the beginning of the trial. The interrogation, which took place during the so-called "pre-trial investigation" stage, had nothing to do with the charges against him/her[192].

- **The rights and means of defence, such as the right to be assisted by a qualified lawyer chosen freely and by a competent interpreter** (Art. 99(3) GC III, Art. 105 GC III, Art. 72 GC IV, Art. 74 GC IV, Art. 75(4)(a) and (g) of the AP I)[193]

Content of the Law. GC III guarantees the right for a prisoner of war to present his defence, which includes the right to be assisted by a qualified and freely chosen lawyer, as well as a competent interpreter. A PoW cannot be tried by a court that lacks the procedure affording the accused the rights and means of defence, as stipulated in Art 105 GC III[194]. The provision emphasizes the accused's right to freely choose his defence counsel. The Detaining Power may only appoint a competent defence counsel if the PoW or the Protecting Power fails to make a choice. The rules regarding the appointment of a defence counsel prioritise a freely chosen lawyer to safeguard the defendant's ability to mount an effective defence, which is intrinsically linked to his trust in the chosen legal representative[195]. The right to defence encompasses both the necessary time and facilities to prepare defence. Defence counsel cannot be hindered from visiting the accused or interviewing him in private in preparation for the trial.

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187 ICRC Commentary of 1958, Art 72(3) GC IV. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-71/commentary/1958?activeTab=

188 ICRC Commentary of 1958, Art 72(3) GC IV. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-71/commentary/1958?activeTab=

189 ICRC Commentary of 2020, Art 104 GC III, para. 4058. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-104/commentary/2020?activeTab=

190 ICRC Commentary of 1987, Art 75(4)(a) AP I, para. 3097. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

191 Hereinafter, "in the context of the research" is used in the sense of the results of the analysis of specific cases and materials studied by the expert group as part of the research.

192 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

193 The observance of this guarantee in the context of the right to a fair trial (Article 6 ECHR) is also analysed in Section II (Paragraphs 7.1-7.5) of this research.

194 ICRC Commentary of 2020, Art 99 (3) GC III, paras 3976-3978. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-99/commentary/2020?activeTab=

195 ICRC Commentary of 2020, Art 105 GC III, para. 4085. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-105/commentary/2020?activeTab=

Art 72 and 74 GC IV mirror fundamental guarantees concerning rights and means of defence enumerated in GC III. The wording of Art 72 GC IV implies that a defendant may use all means of defence, including the calling and examination of witnesses, production of documents or other written evidence, etc.[196]. The defendant has the right to be represented and assisted by a qualified lawyer of his choosing. The defence lawyer must be given "all the facilities and freedom of action necessary for preparing the defence", which include the inspection of case evidence, regular visits and interviews with his/her client in private, contact with witnesses in a case, etc.[197]. Whereas compliance with judicial guarantees may prove to be challenging during an occupation, they must be observed in all circumstances[198]. The fundamental guarantee underlying the right to defence is also reflected in Art 75(4)(a) AP I[199].

Examples of guarantee application in the context of the research: Defendants often had no say with respect to the choice of a defence counsel, which is formally appointed by a Russian state or occupying authorities. Civilians who were often abducted by FSB agents in occupied territories have no access to a lawyer when they are subjected to questioning by investigators, and many victims are unaware of the reasons they had been brought in for questioning. Once a defence counsel is appointed when the criminal case is underway, a defendant either has no or limited interaction with his defence counsel. State-appointed defence counsels do not undertake any meaningful role in defending the legal interests of their clients. In some rare cases when defence counsels – solicited and paid by defendants' family or friends – attempted to defend the interests of their clients through raising relevant objections in court, these requests were overwhelmingly rejected by judges[200].

For example, in one case against a Ukrainian prisoner of war, the accused person learned that she had a lawyer only the day before the court hearing in the TOT court. Prior to the hearing, the defence counsel requested time for a private conversation with the defendant, during which he advised him to "confess and show remorse". When the case was further appealed to a court in Russia, a new defence counsel, found by the defendant's family and friends, appealed the verdict on the grounds that the defendant had incriminated himself with crimes he had not committed, as he had not been physically present at the scene of the alleged crime. The defence counsel was unable to review the case file and arrange a confidential meeting with his client. However, the Court of Appeal rejected all the defence arguments and upheld the verdict. The defendant was repeatedly prevented from communicating with his defence counsel when he tried to seek legal assistance in filing a cassation appeal[201].

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196 ICRC Commentary of 1958, Art 72 GC IV. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-72/commentary/1958?activeTab=

197 See footnote No. 196.

198 See footnote No. 196.

199 ICRC Commentary of 1987, Art 75(4)(a) AP I. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

200 Hereinafter, for examples of violations of procedural standards in the analysed cases (in the Ukrainian context), see Section II for more details.
Specific references to sources and cases of relevant examples are not provided in accordance with the Research Methodology to protect the personal data of victims of the policy of judicial persecution and persons who contributed to the collection and transmission of materials for the research.

201 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

- **The principle of individual criminal responsibility** (Art. 87 (1) GC III, Art. 33 (1) GC IV, Art. 75(4)(b) AP I)

Content of the Law. The principle of individual criminal responsibility is a bedrock of criminal law, which entails that a person is individually liable for the crime(s) that he/she committed. It signifies the personal nature of criminal responsibility and the impossibility of imposing penalties on "persons who have themselves not committed the acts complained of"[202]. The belligerents only retain the right to punish individuals who committed hostile acts per penal legislation and procedure laid down in Art 64 GC IV in order to safeguard their legitimate interests and security[203]. Similarly, Art 75 (4)(b) AP I outlaws all convictions and punishment which are not based on individual criminal responsibility[204].

Examples of guarantee application in the context of the research. Defendants – both Ukrainian PoW and civilians – are typically charged with the crime(s) that they had **not** committed[205]. Defendants incriminate themselves under torture or threats of further torture. They are often forced to sign documents that they were not allowed to read beforehand or sign blank sheets of paper under death threats. The signed documents include their "confessions" to having committed serious crimes under Russian law, which are further used for criminal proceedings. The signed blank sheets of paper are used for producing incriminating documents, which become part of criminal case files. In many instances, defendants are asked to "come up" with the crime(s) they had committed. This was confirmed by one of the recently freed soldiers from the Azov Battalion, who was taken as a prisoner of war by Russian forces following their forced surrender in the aftermath of the fierce fighting at Azovstal[206]. Another recently released PoW recounts how he was forced to make up the "crimes" that he had committed. He agreed to fictitious criminal charges against him, but asked for the charges not to include any "corpses"[207]. Another pattern concerning civilian defendants is that FSB agents plant explosives in their personal belongings. This "evidence" is then used to initiate criminal proceedings against the defendants. In one of the cases studied, explosives were placed in the personal belongings of the defendant. Although the defendant denied the charge of possession of explosives, this was used as the main evidence based on which she was convicted. In another case, a civilian was charged with possession of explosives to prepare a terrorist attack in response to the DPR's "reunification" with Russia[208].

- **The principle of nullum crimen sine lege (i.e. no crime without law)** (Art. 99(1) GC III, Art. 67 GC IV, Art. 75(4)(c) AP I)

Content of the Law. The principle of legality entails that a person's guilt can only be established based on criminal laws that were in force at the time the act was committed. The principle

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202 ICRC Commentary of 1958, Art 33 (1) GC IV. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-33/commentary/1958?activeTab=

203 See footnote No. 202.

204 ICRC Commentary of 1987, Art 75(4)(b) AP I. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

205 Interview with former prisoners of war fighters of the Azov battalion after their return (fighter with the call sign "Pako"). – min. 27:40-32:22. YouTube channel "Ramina". URL: https://www.youtube.com/watch?v=FrKJq-F9MF0

206 See footnote No. 205.

207 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

208 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

of legality relating to criminal proceedings involving prisoners of war is embedded in Art 87(1) together with Art 99 (1) GC III. The principle is twofold: (1) no one may be held liable for act or omission that did not constitute a criminal offence under national or international law at the time of its commission (*nullum crimen sine lege*); and (2) it is prohibited to impose a penalty, which was not provided under national or international law, at the time the offence was committed (*nulla poena sine lege*)[209]. To put it differently, there can be no crime and no punishment in the absence of laws establishing the conduct as criminal and punishable, and such laws may not apply retroactively. The principle of legality requires the strict construction of a crime and the prohibition of analogy[210]. It aims at "*limiting the risk of arbitrary and abusive action by the Detaining Power*"[211]. The violation of the principle of legality in itself may constitute the grave breach of depriving a PoW of a fair and regular trial[212].

The Occupying Power is equally bound by the principle of legality as stipulated in Art 67 GC IV. Similarly, the provision aims to limit the "possibility of arbitrary action by the Occupying Power", which has to ensure that "penal jurisdiction is exercised on a sound basis of universally recognised principles"[213]. Article 67 GC IV explicitly refers to the rule that the penalty has to be proportionate to the offence. The incorporation of this part was due to abuses during WWII marked by the imposition of unjustifiably high sentences, including the death penalty, for rather minor offences[214]. In addition, Art 75(4)(c) AP I reiterates the principle legality as one of the fundamental judicial guarantees both in domestic and international law[215].

Examples of guarantee application in the context of the research. The defendants were usually tried on bogus charges, which included serious crimes under Russian criminal law, such as terrorism, crimes against the state and law enforcement agencies (e.g. sabotage, espionage, treason, extremism, etc.), as well as crimes against the person (e.g. murder, kidnapping), etc. In some of the cases studied, prisoners of war were tried on charges of war crimes (e.g., cruel treatment of civilians, use of prohibited means and methods of warfare). The alleged "crimes" attributed to the defendants were committed before their capture outside the territory of the Russian Federation. By referring to its national legislation to open criminal proceedings for "crimes" that preceded the capture of prisoners of war, the RF violates IHL, as its national legislation was not applicable at the time of the so-called "crimes"[216]. Given the seriousness of the criminal charges – both against civilians and prisoners of war – the defendants were sentenced to lengthy prison terms and illegally transferred to serve their sentences in high-security prisons both in the TOT and in Russia.

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209 ICRC Commentary of 2020, Art 99 (1), para 3953. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-99/commentary/2020#_Toc42465450
See also: Art 87 (1), para. 3661. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-87/commentary/2020?activeTab=

210 ICRC Commentary of 2020, Art 99 (1), para 3954. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-99/commentary/2020#_Toc42465450

211 ICRC Commentary of 2020, Art 99 (1), para 3958. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-99/commentary/2020#_Toc42465450

212 ICRC Commentary of 2020, Art 99 (1), para 3955. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-99/commentary/2020#_Toc42465450

213 ICRC Commentary of 1958, Art 67 GC IV. URL: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-67/commentary/1958?activeTab=

214 See footnote No. 213.

215 ICRC Commentary of 1987, Art 75(4)(c) AP I, paras 3101-3106. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

216 See footnote No. 211.

- **The presumption of innocence** (Art. 75(4)(d) AP I)[217]

Content of the Law. The presumption of innocence is a fundamental principle of criminal law, which signifies that "*it is not the responsibility of the accused to prove that he is innocent, but that of the accuser to prove he is guilty*"[218].

Examples of guarantee application in the context of the research. The analysed cases demonstrate a blatant violation of the presumption of innocence. This is evidenced by the arrogant behaviour of Russian investigators, prosecutors and judges towards defendants during criminal proceedings, as well as the key role played by the Russian media in organising defamatory campaigns against both Ukrainian prisoners of war and civilians before and during their trial[219]. During trials, Russian media often portray defendants as "terrorists", "extremists", and "killers of innocent civilians". For example, Amnesty International reported on a smear campaign in the Russian media involving one defendant who was portrayed "as a villain intent on killing civilians"[220].

- **The right of the accused to be present at his/her trial** (Art. 75(4)(e) AP I)[221]

Content of the Law. The presence of the accused at his trial is a necessary fair trial safeguard. The principle underscores the importance of the defendant being present at the sessions where the prosecution presents its case and oral arguments are heard[222]. This fundamental guarantee ensures that the defendant is able to hear and confront witness testimony and raise objections throughout the trial. The principle is not incompatible with the possibility of conducting trials in absentia, provided that all procedural safeguards are observed and the law of the state permits such trials[223].

Examples of guarantee application in the context of the research. Although defendants are generally present during their trial, however, they cannot exercise their right to confront witness testimony or raise objections throughout the trial. A former PoW described the court hearing as a "spectacle", during which judges, prosecutor and defence counsel perform their choreographed roles. The defendant was instructed on what to say by his defence counsel, while the prosecutor appeared disinterested, playing games on his phone[224]. Defendants are often held in a cage or a glass box during court hearings to inflict maximum humiliation and project the image of dangerous criminals to the general public. There have also been reported cases of appeal proceedings taking place via video-link.

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217 The observance of this guarantee in the context of the right to a fair trial (Article 6 ECHR) is also analysed in Section II (Paragraphs 3.1-3.8) of this research.

218 ICRC Commentary of 1987, Art 75 (4)(d) AP I, para. 3108. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

219 For more details, see Section IV.

220 Amnesty International, Ukraine: Russia court upholds 13-year sentence against Ukrainian human rights defendant Maksym Butkevych. URL: https://www.amnesty.org/en/latest/news/2023/08/ukraine-russian-court-upholds-13-year-sentence-against-ukrainian-human-rights-defender-maksym-butkevych/

221 The observance of this guarantee in the context of the right to a fair trial (Article 6 ECHR) is also analysed in Section II (Paragraph 7.4) of this research.

222 ICRC Commentary of 1987, Art 75 (4)(e) AP I, para. 3110. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

223 ICRC Commentary of 1987, Art 75 (4)(e) AP I, para. 3109. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

224 Interview with former prisoners of war fighters of the Azov battalion after their return (fighter with the call sign "Pako"). – min. 27:40-32:22. YouTube channel "Ramina". URL: https://www.youtube.com/watch?v=FrKJq-F9MF0

- **The right of the accused not to testify against himself/herself or to confess guilt** (Art. 75(4)(f) AP I)[225]

Content of the Law. This procedural guarantee protects against the use of any illegal and questionable practices to extract a confession that may be used in trial proceedings to demonstrate the guilt of the accused. The Geneva Conventions aim to protect victims of war from becoming targets of brutality, including torture and other forms of ill-treatment, to extract confessions[226].

Examples of guarantee application in the context of the research. The general pattern of the cases studied is the widespread and systematic use of "interrogations" of Ukrainian civilians and prisoners of war, during which they were subjected to torture and inhuman treatment in order to extract confessions. In one case, the defendant testified that during the interrogation, an FSB agent beat, strangled and threatened her in an attempt to obtain information about her alleged links to the Security Service of Ukraine[227]. The defendant was held in unsanitary conditions during pre-trial detention, with no access to a toilet and receiving food only once a day. Prisoners of war are subjected to particularly ill-treatment during interrogation, as they are repeatedly tortured to extract confessions[228].

- **The right of the accused to have the judgment pronounced publicly** (Art. 75(4)(i) AP I)[229]

Content of the Law. One of the key constituents of a fair trial is the public pronouncement of judgment. In some circumstances, the case may be heard in camera, however, the judgment must be made in public, unless it is prejudicial to the defendant (e.g. a juvenile offender on trial)[230].

Examples of guarantee application in the context of the research. The vast majority of court hearings in such cases in the TOT in the East of Ukraine were held in camera. With a few exceptions, most criminal proceedings in other occupied territories or the RF were also conducted in camera. In one case, a civilian was charged with high treason for transferring a small amount of money to a Ukrainian charitable organisation. The Russian court held the hearing in camera and sentenced the individual to 12 years in a maximum security prison. Two other cases, in which the defendants were charged with espionage, were also heard behind closed doors[231]. All defendants received lengthy prison terms in strict-regime colonies.

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225 The observance of this guarantee in the context of the right to a fair trial (Article 6 ECHR) is also analysed in Section II (Paragraphs 3.3-3.4) of this research.

226 ICRC Commentary of 1987, Art 75 (4)(f) AP I, para. 3112. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=
See also: Art 17 GC III; Art 31 GC IV.

227 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

228 See footnote No. 224.

229 The observance of this guarantee in the context of the right to a fair trial (Article 6 ECHR) is also analysed in Section II (Paragraphs 2.1-2.4) of this research.

230 ICRC Commentary of 1987, Art 75 (4)(i) AP I, para. 3118. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

231 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

- **The right of the accused to be informed of his rights of appeal** (Art. 106 GC III, Art. 73 GC IV, Art. 75(4)(j) AP I)[232]

Content of the Law. The fundamental guarantee ensures that a convicted person may resort to an appeal. Concerning the mention of "other remedies", this extends both to a pardon and reprieve. In some jurisdictions, judgments of military courts need to be confirmed by a "superior military authority"[233].

Examples of guarantee application in the context of the research. The right to appeal is a mere formality. Many convicted persons decide not to appeal, fearing that a lengthy "trial" could negatively affect their chances of being included in the next prisoner exchange. However, appeals are usually ineffective, as higher courts effectively uphold lower court verdicts. In one case, a representative of the Investigative Committee of the Russian Federation tried to dissuade a convicted person from filing an appeal, saying directly that it was "useless". Despite the fact that the convicted person did file an appeal, the appellate court in the territory of the RF upheld the sentence of more than 10 years of imprisonment, which was handed down by a court in TOT. In the same case, the Supreme Court of the RF upheld the verdict and the appeal ruling in cassation proceedings. In another case, after the appeal was filed, the judge dismissed the defence's request to supplement the case file with information on the circumstances of the appellant's abduction that led to the initiation of criminal proceedings, as well as to examine the relevant material evidence. The Court of Appeal symbolically reduced the term of imprisonment by only one month[234].

DENIAL OF THE RIGHT TO A FAIR TRIAL AS A CRIME OF PERSECUTION

The crime of persecution is an underlying act of crimes against humanity, which is firmly entrenched in customary and treaty law. The crime was prosecuted and adjudged for the first time by the International Military Tribunal at Nuremberg together with other underlying acts, such as murder, extermination, enslavement, deportation and other inhumane acts[235]. However, persecution was not a standalone crime, meaning that it was only possible to adjudge the crime if it was committed in execution, or in connection with war crimes or crimes against peace. In practical terms, the war crimes nexus excluded from the scope of judicial review the persecutory conduct of Nazis against Jews before the outbreak of the war.

The nexus requirement was omitted in the definition of the crime when it was embedded within the jurisdiction of the ad hoc tribunals. The ICTY acknowledged the lack of clarity concerning what acts may fall within the definition of the crime of persecution, which it viewed

232 The observance of this guarantee in the context of the right to a fair trial is also analysed in Section II (Paragraph 7.6) of this research.

233 ICRC Commentary of 1987, Art 75 (4)(j) AP I, para. 3121. URL: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75/commentary/1987?activeTab=

234 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

235 IMT, Judgment of 1 October 1946, in The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Part 22 (22nd August ,1946 to 1st October, 1946), pp. 463-466 (Persecution of Jews).

as creating tensions with the principle of legality[236]. It defined the crime of persecution as "*an act or omission which [...] discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law*"[237]. The ICTY Appeals Chamber in Kvočka emphasised that the acts of persecution, either considered in combination or separately, must reach the same level of gravity as other enumerated acts of crimes against humanity[238]. In that particular case, the Appeals Chamber endorsed the legal qualification of the acts of harassment, humiliation and psychological abuse as persecution, which, although not listed as underlying crimes against humanity, nonetheless reached the degree of crimes against humanity[239]. This important funding underscores that persecution does not always have to be tantamount to other underlying crimes against humanity, such as murder, torture, rape etc., as it may consist of other sufficiently serious discriminatory acts that infringe upon fundamental rights.

The crime of persecution is not a standalone crime in the Rome Statute of the ICC, as it must be committed in connection with any other underlying act of crimes against humanity, or *any crime* within the jurisdiction of the Court. As noted in the ICC Commentary, the definition of persecution in the Rome Statute is defined narrower than in customary international law, which does not require the proof of such a link[240]. For the purposes of the research, the expert group was guided by the stricter definition of the crime of persecution as laid down in Article 7(1)(h) of the Rome Statute in light of Ukraine's recent accession to the Rome Statute of the ICC as of 1 January 2025.

Thus, in the context of the Russian-Ukrainian war, the denial of the right to a fair trial, which is often combined with unlawful deprivation of liberty, torture and other forms of inhuman treatment (according to research and numerous reports by international organisations[241]), may constitute a crime of persecution under crimes against humanity if committed as part of a widespread or systematic attack against civilians[242] and accompanied by discriminatory intent.

Aspect of persecutory dimension of the denial of the right to fair trial prior to Russia's full-scale invasion

Crimea. In Crimea, the forcibly imposed Russian legal system and Russian laws have been used as an instrument of persecution against ethnic Ukrainians and Crimean Tatars who were opposed or were perceived to be opposed to the Russian regime as of 2014. In Ukraine v Russia (re Crimea)"[243] the ECtHR confirmed that "*acts of persecution had not been directed at random individuals, but at particular groups consisting either of Ukrainian activists and journalists, or of*

236 ICTY, *Kordić* Trial Judgment, para. 192.

237 ICTY, *Kvočka* Appeal Judgment, para. 320.

238 See footnote No. 237.

239 ICTY, *Kvočka* Appeal Judgment, paras 322-325

240 Cassese, A., Gaeta, P., Jones, J. R., & Eser, A. (2002). The Rome statute of the International Criminal Court: A Commentary (Volume 1), p. 376.

241 For more details, see Annex 5. "Reports of International Organisations on the Judicial Persecution of Ukrainian Civilians and Prisoners of War in Courts Controlled by the RF".

242 Although international criminal law considers the crime of persecution exclusively against civilians, in Section III of this research, the manifestations of bias and discrimination in the practice of Russian-controlled courts were studied both in relation to Ukrainian civilians and prisoners of war.

243 ECtHR, Ukraine v Russia (Crimea), Grand Chamber, Applications Nos 20958/14 and 38334/18. URL: https://hudoc.echr.coe.int/ukr?i=001-235139

Crimean Tatars […], and who had been perceived as being supporters of the State sovereignty and integrity of Ukraine".[244]. It found that "*the judicial system in Crimea after the "Accession Treaty" cannot be regarded as "established by law" within the meaning of Article 6 of the Convention*" and therefore, it was unnecessary to examine separately independence and impartiality of individual judges[245]. Targeted civilians were detained and put through the judicial process, during which their fundamental procedural rights were violated[246]. In many instances, defendants were kept in solitary confinement during pre-trial detention with limited contact with their families and the outside world; hindered from preparing effective defence as the judges appointed by the Occupying Power dismissed any requests coming from the defence; and tried on bogus terrorist or extremist charges that entailed lengthy sentences. The prosecution often built their cases by using anonymous witnesses[247], whereas the appeal process did not yield any results.

Occupied territories of parts of the Donetsk and Luhansk regions. In the period from 2014 to 2022, quasi-legal and quasi-judicial systems were used against any person considered disloyal to the authorities of the so-called "DPR" and "LPR"[248]. Both Ukrainian civilians and prisoners of war have been subjected to the pretence of a judicial process. The trials do not have any semblance of a fair trial and are marred by serious procedural violations: lengthy periods in pre-trial detention without any charges, extracting confessions under torture, the denial of due process, impossibility to choose a defence counsel, no examination of evidence, and sentencing persons to the death penalty. Most criminal proceedings have taken place behind closed doors, while defendants were denied any contact with the outside world. Obtaining information about criminal proceedings in the DPR/LPR was nearly impossible.

Aspect of persecutory dimension of the denial of the right to a fair trial after the start of Russia's full-scale invasion

All occupied (and subsequently annexed) territories. Following the purported annexation of the Donbas, Kherson and Zaporizhzhia regions[249], Russia introduced its own legal system and laws into occupied territories. Russian occupying authorities have followed similar patterns, as in Crimea, by using the pretence of a judicial process as a tool of repression against real or perceived opponents of the Russian regime. The DPR/LPR laws and judicial practices were dismantled and substituted with Russian laws and practices. The Russian judicial system under the current regime has deteriorated significantly, resembling the systematic denial of justice and the degradation of the legal system as described in the famed Justice Case[250]. This degradation man-

244 See footnote No. 243, para. 1358.

245 See footnote No. 243, paras 1019-1020.

246 In support of its claims of persecution through judicial process, the Ukrainian government presented a number of key cases involving Ukrainian civilians in Crimea, including "case of 26 February 2024" concerning the leadership of Crimean Tatars, cases of "the Crimean Four", cases against Muslims, cases of so-called "terrorists", "saboteurs", "spies" etc. See ECtHR, Ukraine v Russia (Crimea), Grand Chamber, Applications Nos 20958/14 and 38334/18 (see Part B, Facts).

247 E.g., ECtHR, Ukraine v Russia (Crimea), Grand Chamber, Applications Nos 20958/14 and 38334/18, para. 414 (case of Oleksandr Kostenko).

248 For more information on the establishment of quasi-legal and quasi-judicial systems in these TOT, see Section I of this research.

249 Russian Federal Constitutional Laws of 4 October 2022 No. 5-FCL, No. 6-FCL, No. 7-FCL and No. 8-FCL.

250 Nuremberg Trials of Nazi Judges.

ifests in the use of the judicial system and the law as a tool of persecution against ethnic Ukrainians who oppose or are perceived to oppose the Russian regime. Anti-terrorist, anti-extremist, and other criminal law provisions in the CC of the RF have been weaponized as part of this policy of judicial persecution[251]. Civilians are arrested without charge, unlawfully detained – often incommunicado – and subjected to torture and inhuman treatment during unlawful detention in order to extract confessions that are later used as "evidence" in criminal proceedings. They are then subjected to trials in which they are charged with crimes they did not commit, denied the opportunity to present or examine evidence, and often not allowed to choose their own defence counsel, and in some cases denied legal representation altogether[252]. These trials are often held behind closed doors, without public record and often with coverage in Russian-controlled media to create a negative and accusatory narrative bias around the accused[253] that further undermines any semblance of fairness or justice.

Contextual elements

Crimes against humanity under the Rome Statute of the ICC must be accompanied by contextual elements in addition to the constitutive elements (actus reus and mens rea) of underlying offences. Persecution constitutes a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population and committed with knowledge of the attack.

Contextual elements of crimes against humanity derive from the chapeau of Article 7(1) of the Rome Statute and the definition of the attack, encompassing the following legal elements:

(i) An attack directed at any civilian population;

(ii) A State or organisational policy;

(iii) An attack of a widespread or systematic nature;

(iv) Nexus between the individual act and the attack; and

(v) Knowledge of the attack.[254]

Attacks against the civilian population. The term "attack directed against any civilian population" provided for in Article 7(2)(a) of the Rome Statute is understood as "*a course of conduct involving the multiple commission of acts referred to in Paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack*"[255]. The "*attack*" does not need to be necessarily military in nature, as it may involve any form of violence against a civilian population[256]. The case law of the ICC has construed "civilian population" in line with the definition of civilian population as laid down in Article 50(1)-(2) of AP I that reads:

251 See Section I of this research for more details.

252 See Section II of this research for more details.

253 See Section IV of this research for more details.

254 ICC, Katanga (ICC-01/04-01/07), Judgment pursuant to Article 74 of the Statute, Trial Chamber II, 7 March 2014, paras 1094-1100 (*Katanga* Art 74 Judgment); *Bemba* (ICC-01/05-01/08), Judgment pursuant to Article 74 of the Statute, Trial Chamber III, 21 March 2016, paras 148-169 (*Bemba* Art 74 Judgment).

255 ICC Elements of Crime, Art 7, Intro, para 3.

256 See footnote No. 255.

"*the civilian population comprises all persons who are civilians*"[257]. The civilian population must be the primary target and not the incidental victim of the attack[258].

This research provides evidence that the RF and the occupation authorities, in particular law enforcement agencies and courts, deliberately target Ukrainian civilians in the occupied territories who are deemed "hostile", "dangerous" or "disloyal" to the Russian regime or the occupation authorities, subjecting them to sham trials combined with illegal detention, torture and other forms of inhuman treatment. The research is based on a variety of sources describing illegal criminal proceedings against Ukrainian civilians on discriminatory grounds, including procedural documents (e.g. indictments, verdicts, appeal decisions, etc.), trial monitoring results, testimonies of released victims of persecution, and other information from open sources, etc.[259].

State policy. The "policy" element, within the meaning of article 7(2)(a) of the Statute, "*refers to the fact that a State or organisation intends to carry out an attack against a civilian population, whether through action or deliberate failure to take action*"[260]. The policy does not have to be formalized[261]. The Russian government – through its military, occupation authorities and affiliated militia groups – pursues a coordinated state policy aimed at quelling any form of resistance and protest in the occupied territories of Ukraine by terrorizing the Ukrainian civilian population, which is achieved through unlawful judicial processes, which are often accompanied/preceded by unlawful detentions, torture and ill-treatment, enforced disappearances and other serious violations of international humanitarian law[262].

Widespread or systematic attack. The attack must be "widespread or systematic", which means that the acts of violence are not spontaneous or isolated[263]. The two terms are disjunctive, not cumulative, meaning that it suffices to demonstrate the existence of one dimension of the attack. The case law construes the term "widespread" through the prism of "the large-scale nature of the attack and the number of victims". The term "systematic" signifies the organised nature of the acts of violence and the improbability of their random occurrence[264].

The evidence presented in the research demonstrates that the prosecution for denial of the right to a fair trial was carried out in the context of both a widespread and systematic attack on the civilian population. The findings of the research are based on at least dozens of leading cases containing the most well-documented criminal proceedings against Ukrainian civilians conducted in Russian-controlled courts. The research demonstrates that the judicial process was used as a tactic to persecute civilians in all occupied territories.

In addition, there are discernible patterns in the conduct of Russian authorities, including law enforcement agencies and courts, concerning the deprivation of fair trial. These patterns pertain to 1) categories of civilians who have been targeted on discriminatory grounds; 2) extended periods of unlawful detention accompanied by intense "interrogations"; 3) methods of

257 *Katanga* Art 74 Judgment, para. 1102; *Bemba* Art 74 Judgment, para. 152.
258 *Katanga* Art 74 Judgment, para. 1104 (referring to ICTY *Kunarac* Appeal Judgment), para 91.
259 See Section II and Section III of this research for more details.
260 *Katanga* Art 74 Judgment, para. 1108.
261 See footnote No. 260.
262 See Section V of this research for more details.
263 *Katanga* Art 74 Judgment, para. 1123.
264 See footnote No. 263.

torture and ill-treatment used to extract confessions in committing serious crimes under Russian law; (3) the use of fabricated evidence in criminal trials; (4) denial of the rights and means of defence; (5) the absence of any serious attempt to engage with the examination of evidence on he part of judges; and (6) the formalistic access to the right to appeal that does not yield any results. All these patterns combined demonstrate the systematic dimension of the attack pursued by Russian authorities against the civilian population in occupied territories. The attack was carried out in a coordinated and organised fashion.

Nexus. A sufficient link must be demonstrated between the act falling within the ambit of Article 7(1) of the Rome Statute and the attack. Isolated acts that differ in their context and circumstances from other acts that form part of an attack fall outside the scope of Article 7(1) of the Rome Statute[265]. Persecution through the denial of fair trial has been committed by Russian authorities since the beginning of the war in 2014 and intensified following the full-scale invasion of Ukraine in light of Russia's purported annexation of more Ukrainian territories.

Knowledge. The perpetrator must know that the his/her act in question is part of a widespread or systematic attack against the civilian population. However, this should not be interpreted as requiring proof that the perpetrator had knowledge of all of the characteristics of the attack or the precise details of the plan or policy of the State or organisation[266]. The perpetrator's motive is irrelevant to the proof of knowledge. It suffices to establish the perpetrator's knowledge that his/her act formed part of the attack[267]. Perpetrators of persecution, through the denial of a fair trial, include a wide range of Russian investigators, prosecutors and judges. They acted in the knowledge of the attack and that their acts formed part of it. The question of *mens rea* of individual perpetrators is to be dealt with by the ICC when individual suspects have been identified.

Constitutive elements of the crime of persecution

The ICC Elements of Crimes lay down the following constitutive elements of persecution as an underlying crime against humanity:

1. *The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.*
2. *The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.*
3. *Such targeting was based on political, racial, national, ethnic, cultural, religious, sex as defined in Article 7, Paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.*
4. *The conduct was committed in connection with any act referred to in Article 7, Paragraph 1, of the Statute or any crime within the jurisdiction of the Court.*[268].

265 *Katanga* Art 74 Judgment, para. 1124; *Bemba* Art 74 Judgment, para. 165.
266 ICC Elements of Crime, Art 7, Intro, para. 2.
267 *Katanga* Art 74 Judgment, para. 1125; *Bemba* Art 74 Judgment, para. 167.
268 ICC Elements of Crime, Art 7 (1) (h) (Crime against humanity of persecution).

Fundamental rights. The Trial Judgment in Al Hassan lists several fundamental rights the infringement of which may satisfy the requirement in Art 7(1)(h) of the Rome Statute, inter alia, "*the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment, the right not to be subjected to arbitrary detention, the right to freedom of expression, the right to freedom of assembly and association, freedom of movement, the right to private property, the right not to be held in slavery or servitude, and the right to education*"[269]. It further notes that the deprivation "can be of varying severity ranging from "killing to a limitation on the type of professions open to the targeted group"[270]. Another important point of clarification is that "the act of persecution need not be physical", meaning that "*discriminatory orders, policies, decisions or other regulations, provided they infringe on basic rights and reach the necessary level of gravity, can form underlying acts of persecution*"[271]. The right to a fair trial is a fundamental right, which is a bedrock of criminal proceedings and is a lifeblood of the entire judicial system. Therefore, the denial of the right to a fair trial in its seriousness may potentially fulfil the legal elements of the crime of persecution. As argued in the research, the denial of a fair trial concerning civilians who were singled out based on their nationality, ethnicity and real or perceived political opinions has taken place in various forms in occupied territories and mainland Russia from the beginning of the Russo-Ukrainian war in 2014. The denial of a fair trial is rarely a standalone violation; it is often accompanied by violations of the right not to be subjected to torture or cruel, inhuman or degrading treatment and the right not to be subjected to arbitrary detention.

Identifiable group or collectivity. Perpetrators must have targeted victims because of the identity of the group or targeted the group or collectivity as such. As clarified in *Al Hassan*, it suffices to demonstrate that the group or collectivity, including its members, can be identified based on specific criteria, which may include neutral features such as geography[272]. In case the persecutory conduct targets the group or collectivity as such, the deprivation of fundamental rights is directed against the individual members of the group. The identification of the group does not have to be premised on discriminatory grounds[273]. Applying this broad formulation to the context of the Russo-Ukrainian war, one may conclude that the population in occupied territories qualifies as an identifiable group, which was targeted based on national, ethnic and/or (real or perceived) political grounds.

Discriminatory grounds. The ICC defines the crime of persecution through the targeting of victims on broadly specified discriminatory grounds, such as "*political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law*". To prove this element, it is sufficient to demonstrate the presence of one discriminatory ground; however, "*a combination of more than one may equally form the basis for the discrimination*"[274]. In the context of the research, persecuted persons were often singled out on several discriminatory grounds. For example, a Ukrainian human rights defender who criticised the Russian regime could be singled out by the Russian occupation authorities based on both nationality and political grounds. In many cases, the political views of the persecuted persons

269 *Al Hassan* Art 74 Judgment, Art. 74, para. 1201.
270 *Al Hassan* Art 74 Judgment, Art. 74, para. 1202.
271 *Al Hassan* Art 74 Judgment, Art. 74, para. 1202.
272 *Al Hassan* Art 74 Judgment, Art. 74.
273 *Al Hassan* Art 74 Judgment, Art. 74.
274 *Al Hassan* Art 74 Judgment, Art. 74, para. 1207.

were speculated, even if they did not express any political views, because of their Ukrainian nationality or ethnicity[275].

Gravity. It is important to bear in mind that the denial of the right to a fair trial must be serious in the sense that it satisfied the necessary gravity threshold for crimes against humanity. Not every denial of a human right may constitute a crime against humanity, and to reach the level of gravity requires the act or omission to be a severe deprivation of fundamental rights.[276]. When assessing whether violations amount to a severe deprivation of fundamental rights, both "*the number of fundamental rights implicated and the nature of the deprivation are also relevant considerations*"[277].

Nexus. As specified above, the crime of persecution is not a standalone crime, as it must be committed in connection with any other underlying act of crimes against humanity or any other crime within the jurisdiction of the ICC. However, the connection requirement does not imply that "*the act of persecution equates to an act under Article 7(1) of the Statute or any other crime under the jurisdiction of the Court*". This means that "*there need only be a 'connection' in the sense of link to, or interrelated with*"[278]. This interpretation of the connection requirement was intended by the drafter of the Rome Statute to ensure that "*persecution would retain its character as a separate crime*" and "*would not be merely an auxiliary offence or aggravating factor*"[279]. In the context of the research, persecution includes a range of crimes against humanity and war crimes, including arbitrary detention, torture or inhuman treatment, and denial of the right to a fair trial. The nexus requirement is established concerning the predicate acts under Article 7(1) of the Rome Statute and other war crimes within the ICC's jurisdiction.

Mens rea. The crime of persecution is a specific intent crime, which is accompanied by discriminatory intent that is intent to discriminate against the targeted persons on any of the grounds enumerated in Article 7(1)(h) of the Rome Statute[280]. This act or omission must discriminate: a discriminatory intention is not sufficient; the act or omission must have discriminatory consequences. An act is discriminatory when a victim is targeted because of the victim's membership in a group defined by the perpetrator on specific grounds[281]. The specific intent may be inferred from "*the general behaviour of the perpetrator as well as the circumstances surrounding the commission of the crime*"[282].

Complementarity

The International Criminal Court, which has jurisdiction over Ukraine, operates based on the principle of complementarity. In other words, the ICC will only exercise its jurisdiction if national authorities are unwilling or unable to properly investigate or prosecute crimes that fall within its jurisdiction. While the term "complementarity" is not explicitly mentioned in the text

275 See Section V of this research for more details.
276 *Al Hassan* Art 74 Judgment, Art. 74, para. 1203.
277 *Al Hassan* Art 74 Judgment, Art. 74, para.1205.
278 *Al Hassan* Art 74 Judgment, Art. 74, para. 1210.
279 *Al Hassan* Art 74 Judgment, Art. 74, para. 1209.
280 *Al Hassan* Art 74 Judgment, Art. 74, para.1212 (citing in support Ongwen Trial Judgment, para. 2739).
281 ICTY Karadzic Trial Judgment, para. 498.
282 *Al Hassan* Art 74 Judgment, Art. 74, para. 1212 (citing in support Ongwen Trial Judgment, para. 2739).

of the Rome Statute[283], complementarity related issues are addressed in Article 17(1)(a)-(b) of the Rome Statute, which determines the admissibility of case(s) before the ICC. The case is inadmissible in the ICC if (1) the case is being investigated or prosecuted by a State which has jurisdiction over it, unless it is unwilling or unable genuinely to carry out the investigation or prosecution; or (2) if the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute. The assessment of unwillingness and/or inability will only arise if there are ongoing national investigations or prosecutions. Domestic inaction (i.e. the absence of national proceedings) is sufficient to render the case admissible before the ICC[284].

The potential cases involving the war crime of denial of a fair trial and the crime against humanity of persecution through judicial means would satisfy the complementarity test as laid down in Article 17 of the Rome Statute due to 1) the *inability* of the Ukrainian authorities to genuinely investigate or prosecute alleged crimes; and 2) the *complete inaction* of the Russian authorities to investigate or prosecute the commission of alleged crimes. Therefore, the intervention of the ICC is crucial to close the impunity gap for these crimes, which have been committed as part of the Russian state policy of repression on a widespread and systematic basis as of 2014 directed against both Ukrainian civilians in occupied territories and Ukrainian prisoners of war.

Inability

Notwithstanding the opening by Ukrainian law enforcement agencies of criminal proceedings under Article 438 (violation of the laws and customs of war) of the Criminal Code of Ukraine regarding the war crime of denial of the right to a fair trial[285], it can still be concluded that the Ukrainian authorities are unable to properly prosecute crimes committed in the occupied territories and Russia. One of the main factors hindering the ability of Ukrainian authorities to investigate and prosecute is the absence of access to the occupied territories, some of which have been under Russia's effective control since 2014, while other areas – since 2022 Russia's full-scale invasion of Ukraine. In practical terms, this means that Ukrainian national authorities cannot carry out necessary investigative steps in the occupied territories, such as questioning suspects and/or witnesses or collecting evidence. Another major challenge in investigating and prosecuting the war crime of denying the right to a fair trial is the difficulty of accessing crucial documentary evidence related to criminal proceedings against victims. This includes copies of indictments, judgments, and notices of appeal to higher-instance courts. In most cases, such evidence – along with first-hand accounts of the trials – only becomes available after the release of Ukrainian civilians and prisoners of war (PoWs) during prisoner exchanges between Russia and Ukraine.

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283 The only reference can be found in the preamble to the Rome Statute, which reads that the ICC "shall be complementary to national proceedings".

284 *Katanga & Chui*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07- 1497, 25 September 2009 (Katanga Admissibility Judgment), para. 78.

285 The Prosecutor's Office registered 92 criminal cases on Russia's violation of the right to a fair trial, MIHR, 04.07.2024. URL: https://mipl.org.ua/prokuratura-zareyestruvala-92-kryminalni-spravy-shhodo-porushennya-rosiyeyu-prava-na-spravedlyvyj-sud/

In addition, according to the official responses of the Ukrainian regional prosecutor's offices (with the exception of the prosecutor's office of the ARC and Sevastopol), no criminal proceedings have been initiated against Ukrainian civilians and prisoners of war for denial of the right to a fair trial[286]. This may be explained by the absence of knowledge on the part of prosecutors that the involvement of protected persons in sham judicial processes may constitute a serious violation of GC III and GC IV, as well as the absence of experience in prosecuting such crimes and processing relevant evidence. However, as of 20 February 2014, the Ukrainian prosecutor's office had opened 34 criminal proceedings for denial of the right to a fair trial under Article 438 of the CC of Ukraine. Four indictments have been filed with Ukrainian courts for alleged crimes committed before Russia's full-scale invasion of Ukraine, and eight indictments have been filed for alleged crimes committed after 24 February 2022[287]. To date, no verdicts have been rendered by Ukrainian courts for the war crime of denying a fair trial[288].

Inaction

Russian authorities have repeatedly failed to act on numerous requests submitted by families of prisoners of war and civilians who remain in captivity for extended periods without any judicial process[289]. In rare instances, Russian authorities have acknowledged that victims were detained for "opposing the Special Military Operation" under the new provisions of the Russian Criminal Code, although they lack jurisdiction to prosecute and adjudge cases under Russian law against nationals of Ukraine in occupied territories. More often, Russian authorities deny any knowledge of persons in their custody[290].

Furthermore, Russian courts appear entirely paralysed when defendants invoke protections under GC III and GC IV. Courts overwhelmingly reject the application of IHL in trials involving Ukrainian civilians and prisoners of war[291]. Recognising the relevance of IHL would be tantamount to recognising the ongoing war between Russia and Ukraine, an admission that carries serious consequences in Russia, where merely referring to the conflict as a "war" can lead to criminal prosecution for discrediting the Russian army.

Actors

The war crime of denying a fair trial and persecution as a crime against humanity involves multiple actors who fulfil various elements of *actus reus* of the crime, including:

- **Low-level perpetrators:** Russian FSB officers who carry out unlawful arrests, detentions or abductions of civilians; Russian investigators who conduct "interrogations" of Ukrain-

286 Reply of the Luhansk Regional Prosecutor's Office to the Head of War Crimes Documentation Unit at the Human Rights NGO ZMINA, 10 October 2024 (on file); Reply of the Donetsk Regional Prosecutor's Office to the Head of War Crimes Documentation Unit at the Human Rights NGO ZMINA, 10 October 2024 (on file).

287 Reply of the Prosecutor's Office of the ARC and Sevastopol to the Head of the War Crimes Documentation Department of the Human Rights Centre ZMINA of 27 September 2024 (held by the initiators of the research).

288 Reply of the Prosecutor's Office of the ARC and Sevastopol to the Head of the War Crimes Documentation Department of the Human Rights Centre ZMINA of 27 September 2024 (held by the initiators of the research).

289 See Section I of this research for more details.

290 Data from the cases analysed in the course of the research and the cases provided for analysis by the Prosecutor's Office of the ARC and Sevastopol.

291 See Section I of this research for more details.

ian civilians and prisoners of war, often accompanied by torture and other forms of inhuman treatment; Russian prosecutors who take cases of Ukrainian civilians and prisoners of war to Russian courts (both military and general jurisdiction courts) on bogus charges and use fabricated evidence to build case files; Russian judges who adjudge cases involving Ukrainian prisoners of war or civilians which are marred by serious violations of procedural guarantees; and officers of the Federal Penitentiary Service who enforce sentences.

- **Mid-level perpetrators:** id- to senior-ranking FSB officers, senior investigators or prosecutors, heads of investigative or prosecutorial divisions, judges of higher instance courts who uncritically rubberstamp the decision of lower instance courts, and senior officers of the Federal Penitentiary Service supervising the enforcement of sentences and authorising violence, including torture and other forms of inhuman treatment, against convicted persons.
- **Senior perpetrators:** Those who deliberately oversee, implement and condone the policy of repression and persecution against Ukrainian civilians and prisoners of war. These include the President of the Russian Federation, the Director of the FSB, the Chairperson of the Russian Investigative Committee (IC), the Prosecutor General, the Chairperson of the Supreme Court of the Russian Federation, and the Director of the Federal Penitentiary Service[292].

The available evidence suggests there are reasonable grounds to believe that all these perpetrators have committed the war crime of denying a fair trial together with the crime against humanity of persecution, directly, jointly with others and/or through others under Article 25 (3) (a) of the Rome Statute.

The research emphasises the widespread nature of these crimes and the multi-level structure of actors involved in their commission. This also includes other actors (accomplices) who facilitate the commission of these crimes (e.g., Russian deputies who pass laws that will be used as a tool of oppression and persecution; representatives of the Russian media and "influencers" who conduct smear campaigns against the Ukrainian defendants, portraying them as "traitors", "spies", "terrorists" or "extremists", etc.).

Though the Office of the Prosecutor of the ICC has prioritized the investigation of torture and other forms of inhuman treatment in places of unlawful detention in the Situation of Ukraine[293], it is crucial that the Office of the Prosecutor also recognises the denial of the right to a fair trial as a continuation of these violent crimes. Investigators, prosecutors and judges are just as guilty as those who physically torture persecuted persons, as these trials often result in lengthy imprisonments, which legitimises further violence against convicts serving their sentences in strict-regime colonies in various parts of Russia or in the territories it occupies.

Although Ukrainian authorities have initiated some cases against Russian senior of-

292 In the future, it is possible to personally identify each of the subjects, in particular, depending on the circumstances of a particular case, and on the basis of a detailed description of the development and implementation of the policy of judicial persecution contained in this research.

293 Office of the Prosecutor General of Ukraine, Press Release, ICC Team of Prosecutors Toured Torture Chambers Setup by Russian Forces During The Occupation of the Kharkiv Region (13 Sep 2024). URL: https://www.gp.gov.ua/ua/posts/komanda-mks-v-suprovodi-prokuroriv-oglyanula-kativni-oblastovani-rosiiskimi-viiskovimi-pid-cas-okupaciyi-xarkivshhini

ficials in absentia (e.g. SBU case against the Head of IC)[294], this does not render the potential cases against Russian senior officials before the ICC inadmissible. That said, it is imperative for Ukrainian authorities to strengthen domestic expertise in prosecuting the war crime of denying a fair trial committed by mid-level and low-level perpetrators by effectively utilising *in absentia* proceedings under Ukrainian domestic law. Following the adoption of implementing legislation in connection with the ratification of the Rome Statute[295], the Ukrainian authorities now have an additional toolkit to properly qualify, further investigate and prosecute those responsible for the policy of judicial persecution of Ukrainian civilians in Russian courts as a crime against humanity.

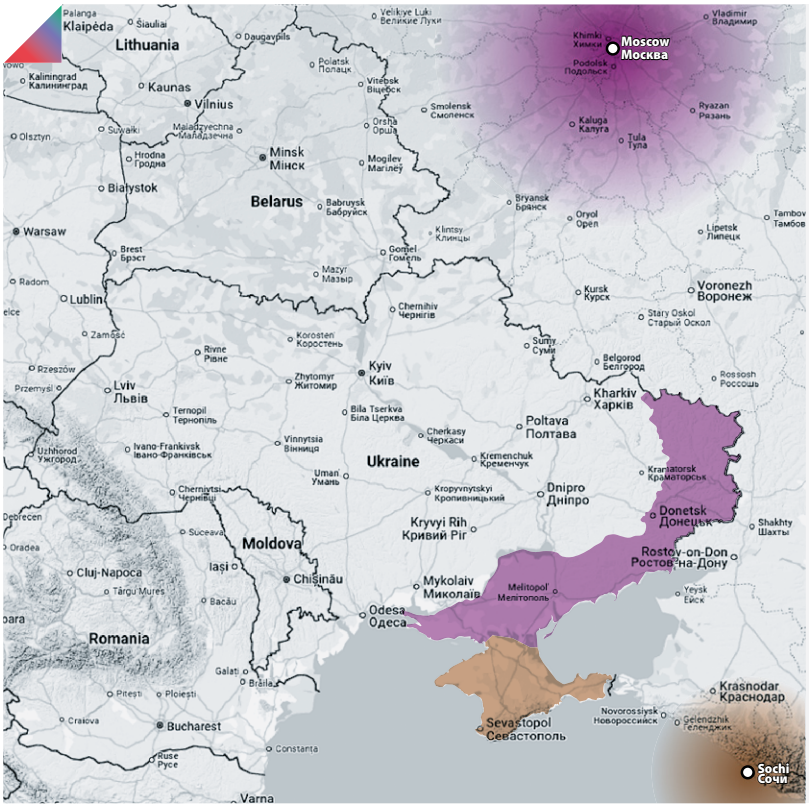
294 SSU Press Release, SSU announced a notice of suspicions to the Head of RIC who enables mass repressions in occupied territories (11 Feb 2023). URL: https://t.me/SBUkr/7094

295 Law 4012-IX dated 9 October 2024, Art 442 (1) – Crimes against humanity. URL: https://zakon.rada.gov.ua/laws/show/4012-20#Text

ANNEXES

Annex 1.

Infographics “Jurisdiction of the appellate and cassation courts of general jurisdiction of the Russian Federation”



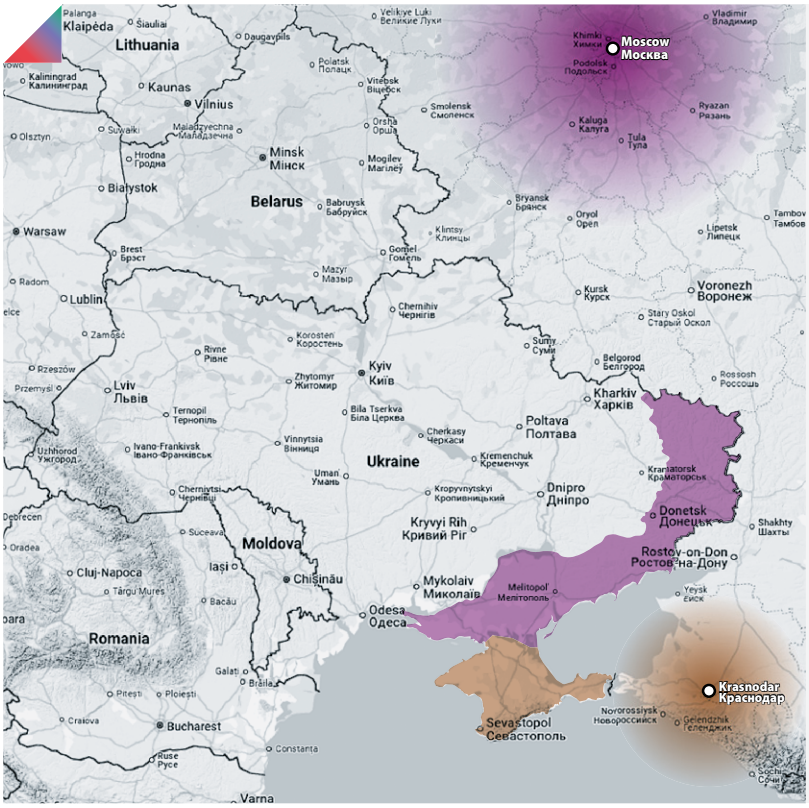
First Court of Appeal of General Jurisdiction

COVERS: occupied territories of certain districts of Donetsk, Luhansk, Zaporizhzhia and Kherson regions

Third Court of Appeals of General Jurisdiction

COVERS: occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol

The material was prepared on the basis of the Federal Constitutional Law of 07.02.2011 No. 1-FKZ “On Courts of General Jurisdiction”



Second Court of Cassation of General Jurisdiction

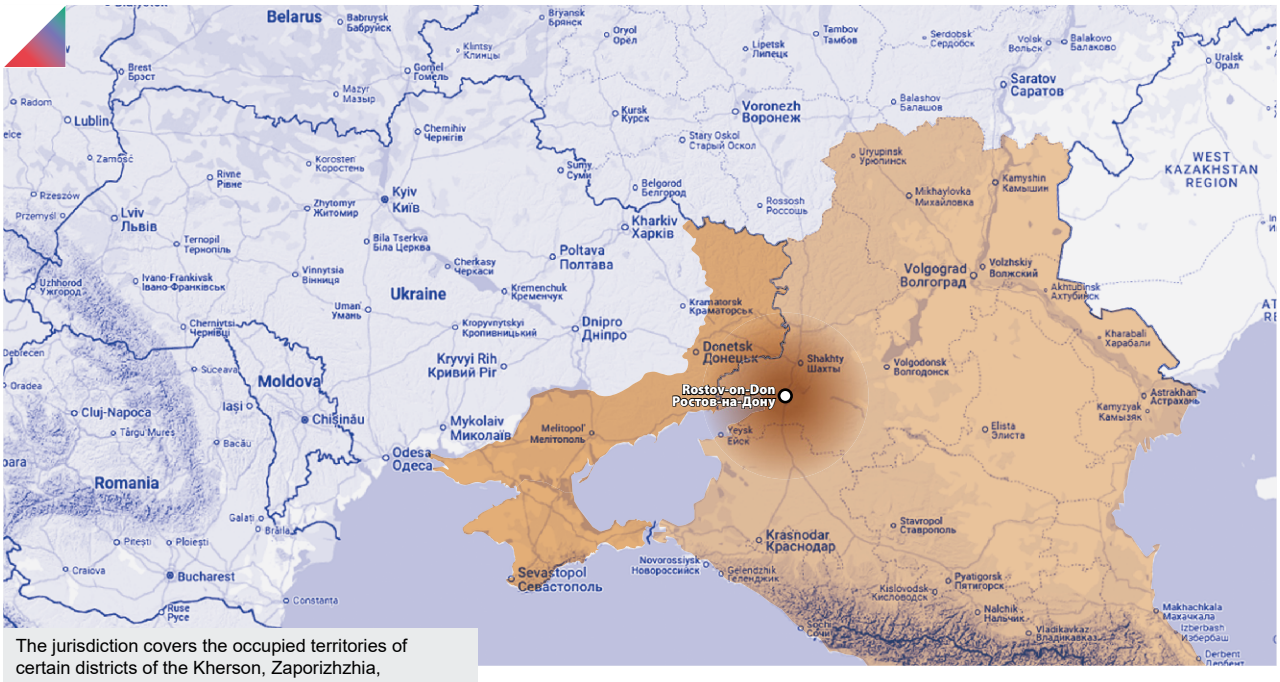
COVERS: occupied territories of certain districts of Donetsk, Luhansk, Zaporizhia and Kherson regions

Fourth Court of Cassation of General Jurisdiction

COVERS: occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol

The material was prepared on the basis of the Federal Constitutional Law of 07.02.2011 No. 1-FKZ "On Courts of General Jurisdiction in the Russian Federation" (Article 23.1)

Infographics “Jurisdiction of the Southern District Military Court”



The jurisdiction covers the occupied territories of certain districts of the Kherson, Zaporizhzhia, Donetsk and Luhansk regions, as well as the Autonomous Republic of Crimea.

The material was prepared on the basis of Federal Law No. 345-FZ of December 27, 2009 “On the Territorial Jurisdiction of District (Naval) Military Courts” (Article 1).

Annex 2.

List of Ukrainian organisations, including Ukrainian military formations, recognised as terrorists by decisions of Russian courts

Ukrainian security and defence units recognised as terrorists by Russian federal courts[296]				
Name of the organisation	Judicial authority	Date of decision	Case number	Date of entry into force
Ukrainian paramilitary nationalist association "Azov" ("Azov" battalion, "Azov" regiment)	Supreme Court of the RF	02.08.2022	AKPI 22-411S	10.09.2022
Ukrainian paramilitary association "Freedom of Russia Legion"[297]	Supreme Court of the RF	16.03.2023	AKPI 23-101S	25.04.2023
Terrorist organisation "Aidar"	Southern District Military Court	25.09.2023	1-247/2023	22.11.2023
Nationalist organisation "Russian Volunteer Corps"	Second Western District Military Court	16.11.2023	2-255/2023	02.12.2023
Terrorist organisation "Georgian Legion"	Southern District Military Court	18.04.2024	no number	04.05.2024
Terrorist organisation "Dnipro-1" ("Dnipro-1" battalion, "Dnipro-1" regiment)	Southern District Military Court	14.12.2023	no number	25.06.2024
"Crimean Tatar Volunteer Battalion named after Noman Chelebidzhikhan"	Supreme Court of the RF	01.06.2022	AKPI 22-303S	05.07.2022

296 Data taken from the official website of the National Anti-Terrorist Committee of the Russian Federation. URL: http://nac.gov.ru/terroristicheskie-i-ekstremistskie-organizacii-i-materialy.html

297 "We publish the Supreme Court's decision to ban the "Legion "Freedom of Russia". First Section". URL: https://dept.one/story/zapret-legiona-sr/

Annex 3.

Criteria for analysing a court judgment

1. The presence of objective elements (6.objective element):

- *Assess whether the judgment contains references to objective elements* (e.g. facts, evidence, testimony, expert opinions, physical evidence, documents, forensic examinations and other material evidence). Were these objective elements obtained in compliance with proper legal procedures (e.g., supply chain, proper authorisation)?
- Is there evidence to support key claims?
- *Classification:* Not present, partially present, or fully present.
- *Guiding principles:*
  - *Not present:* The judgment lacks objective facts and evidence.
  - *Partially present:* Some objective elements are mentioned, but not sufficiently analysed or are incomplete.
  - *Fully present:* All relevant objective elements have been thoroughly analysed and well justified.
- *Example:* Highlight references to forensic evidence, material facts or documents. Draw attention to procedural deficiencies in the collection or presentation of evidence, if any exists.

2. The presence of subjective elements (7.subjective_element):

- *Determine whether the judgment discusses subjective elements* (e.g. intent, motives, state of mind, witness testimony, intent inferred from actions and circumstantial evidence). Does the decision state whether the intent of the accused was voluntary or involuntary? Are there any contradictions in the defendant's testimony, and how are they resolved? Was a defence lawyer present at critical stages (e.g. during the giving of testimony)?
- *Classification:* Not present, partially present, or fully present.
- *Guiding principles:*
  - *Not present:* No mention of intentions, motives or mental state.
  - *Partially present:* Subjective elements are mentioned, but there is no comprehensive analysis.
  - *Fully present:* Comprehensively analyses subjective elements alongside objective evidence.
- *Example:* Look for detailed discussions of intent or motive. Pay attention to any gaps in the assessment or justification of intent or motive.

3. The punishment demanded by the prosecutor (8.punishment_prosecutor):

- *Assess whether the verdict mentions the sentence requested by the prosecution and the charges of the public prosecutor.*
- *Classification:* Not mentioned, briefly mentioned, or thoroughly checked.
- *Guiding principles:*
  - *Not mentioned:* No reference is made to the prosecutor's request for punishment.
  - *Briefly mentioned:* Mentioned, but lacking in detailed analysis.
  - *Thoroughly checked:* A thorough assessment that links the punishment to legal principles and the specifics of the case.
- *Example:* Identify explicit requests for punishment and their context.

4. Review of the severity of a judicial punishment (9.punishment_court):

- *Assess whether the judgment reconsiders the severity of the punishment* (e.g. proportionality of the offence, mitigating/aggravating circumstances). Indicate the sentence imposed by the judge. Were mitigating circumstances, such as procedural flaws or inconsistencies in the evidence, taken into account? Is the sentence proportionate to the proven role of the defendant? How are contradictions in testimony or evidence resolved?
- *Classification:* Not reviewed, briefly reviewed, or thoroughly reviewed.
- *Example:* Highlight the discussion of mitigating or aggravating circumstances.

5. The verdict contains political statements (10.court_politics):

- *Check whether the judgment contains political statements or references.*
- *Classification:* Absent, peripheral or dominant.
- *Guiding principles:*
  - *Absent:* No political commentary.
  - *Peripheral:* A limited number of political references that do not dominate the argument.
  - *Dominant:* Political commentary is common and has a significant impact on the argument.
- *Example:* Identify political ideologies, state policies or related references. Determine whether the political context influences the interpretation of intent or causation.

6. Assessments of the accused's opinions (11.bias_towards_the_accused's_opinion):

- *Assess whether the judgment reflects bias in the assessment of the defendant's views.* Are the defence arguments thoroughly considered in the decision? Are defence motions dismissed without procedural justification?
- *Classification:* No bias, slight bias or significant bias.
- *Example:* Look for language that indicates impartiality or bias.

7. The judgment contains legally insignificant information (12.court_insignificant_information):

- *Determine whether the text does not contain immaterial legal information.* Does the judgment thoroughly consider the defence arguments? Are defence claims rejected without procedural justification?
- *Classification:* None, limited irrelevance or material irrelevance.
- *Example:* Identify extraneous details that are not relevant to the main issues. Highlight cases where irrelevant information may distract from the main legal issues.

8. Shortcomings of legal analysis:

- **Objective element of the crime (Actus Reus) (13.1.incorrect_actusreus):**
  - *Assess the shortcomings in the description of the physical action of the crime.* Is the description of the physical actions of the crime consistent with the evidence?
  - *Classification:* None, minor deficiencies or major deficiencies.
  - *Example:* Identify inconsistencies in the descriptions of physical actions.
- **Subjective element of the crime (Mens Rea) (13.2.incorrect_mensrea):**
  - *Assess deficiencies in the description of intent or mental state.* Was the intent of the accused established with sufficient certainty? Were there any procedural gaps in establishing intent (e.g., the absence of a lawyer)?
  - *Classification:* None, minor deficiencies or major deficiencies.
  - *Example:* Identify weaknesses in the assessment of intentions.
- **Causation (13.3.incorrect_causation):**
  - *Assess the deficiencies in the link between actions and results.* Does the judgment establish a clear link between the defendant's actions and the alleged harm? Is there sufficient evidence to support key allegations, especially regarding intent and causation?
  - *Classification:* None, minor deficiencies or major deficiencies.
  - *Example:* Look for deficiencies in causation.

9. Discriminatory grounds (14.discriminatory_grounds):

- *Determine whether the court decision reflects discriminatory signs* (e.g. race, ethnicity, nationality, sex). Are there any patterns of bias in the assessment of evidence or sentencing?
- *Classification:* Absent, implicit or explicit.
- *Example:* Identify discriminatory language or biased attitudes.

10. Texts from the prosecutor's indictment (15.prosecutor_text):

- *Assess whether the judgment is based on the text of the prosecutor's indictment. Is the reference to the text of the indictment adequately substantiated, or does it indicate a lack of independent argumentation?*
- *Classification:* Absent, limited use or widespread use.
- *Example:* Highlight repetitive texts from the indictments.

11. Compliance with ECHR standards on fair trial (16.fair_trial):

- *Assess compliance with ECHR standards (e.g. impartiality, due process).* Were procedural guarantees, such as the right to legal representation, respected at all stages? Were all procedural rights respected (e.g., right to legal representation, right to challenge evidence)?
- *Were the defence arguments considered comprehensively?*
- *Classification:* Not applicable, partially applicable, or fully applicable.
- *Example:* Look for references to procedural justice.

12. Political nature of the persecution (17.political_persecution):

- *Determine whether the charge reflects a political character or motive. Assess whether the prosecution's actions meet fair trial standards.*
- *Classification:* Absent, moderate or severe.
- *Example:* Identify political influence or motives.

Annex 4.

Information on the media studied

Agency	Logo	Estimated reach / number of readers	Focus on Ukraine and the war
FSB		< 1 million monthly visits	High
RT		90-100 million monthly visits	High
RIA Novosti		70-80 million monthly visits	High
Radio Sputnik		10-15 million monthly listeners	High
TASS		40-50 million monthly visits	High
Vesti.ru		30-40 million monthly visits	High
RG (Russkaya Gazeta)		15-20 million monthly visits	High
Vesti-K		5-10 million monthly visits	High
Ukraina.ru		5-10 million monthly visits	High
RAPSI		< 1 million monthly visits	High
Gazeta.ru		30-40 million monthly visits	High
Rossaprimavera		< 1 million monthly visits	High
Tsargrad TV		5-10 million monthly visits	High
Zavtra		<500,000 monthly visits	High
RBC		60-70 million monthly visits	High
Kommersant		30-40 million monthly visits	High
NewsFrol		<500,000 monthly visits	Low
Pravda.ru		< 1 million monthly visits	High

Politnavigator		< 1 million monthly visits	High
Bloknot-Donetsk		< 1 million monthly visits	High
Interfax		30-40 million monthly visits	Moderate
Interfax-Russia		5-10 million monthly visits	Moderate
Lenta.ru		40-50 million monthly visits	Moderate
AiF (Argumenty i Fakty)		20-30 million monthly visits	Moderate
Rambler News		15-20 million monthly visits	Low
Ura.news		5-10 million monthly visits	Moderate
Regnum		5-10 million monthly visits	High
Crimea News		< 1 million monthly visits	High
Antifashist		<500,000 monthly visits	High
Izvestia		20-30 million monthly visits	High
Dzen.ru		<500,000 monthly visits	High
Novoros inform		<100,000 monthly visits	High
Kianews		<200,000 monthly visits	High
Rostov City Info Agency		<100,000 monthly visits	High
BezFormata		<200,000 monthly visits	High

Annex 5.

Reports of international organisations on the judicial persecution of Ukrainian civilians and prisoners of war in Russian-controlled courts

TREATMENT OF PRISONERS OF WAR AND UPDATE ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(1 June to 31 August 2024)[298]

B. UKRAINIAN POWS HELD BY THE RUSSIAN FEDERATION

27. Since March 2023, OHCHR has conducted confidential interviews with **169 Ukrainian POWs (all men),**16 and 5 male retained medical personnel, 17 after their release from captivity and initial medical and psychological assistance was provided by Ukrainian authorities. Most of the interviewees had been held in multiple locations, which enabled OHCHR to record and analyze 708 instances of internment (out of which 274 occurred since March 2023). OHCHR has also interviewed family members, lawyers, state authorities and other relevant interlocutors and reviewed video and photo materials.

28. **OHCHR findings show that Russian authorities have subjected Ukrainian POWs to torture, ill-treatment and inhumane conditions in a widespread and systematic manner.** Almost all individuals interviewed since March 2023 (169 of 174) when OHCHR issued a dedicated report on the treatment of POWs gave consistent and detailed accounts of having been subjected to torture or ill-treatment during their captivity. Out of 165 POWs who remained in internment after 1 March 2023, 132 reported that violations had occurred or continued after March 2023, indicating the continuation of previously established patterns.

33. Interrogations: **139 of those interviewed reported being subjected to acts of torture or ill-treatment during questioning by Russian authorities, often facing a series of interrogations in multiple locations. Interrogations were typically aimed at obtaining information or eliciting confessions or testimonies, including about the commission of alleged war crimes.** POWs reported that such mistreatment occurred during interrogations conducted by the Federal Security Service (FSB, by Russian acronym), Russian armed forces, Russian Federal Penitentiary Services (FSIN, by Russian acronym), and, to a lesser extent, the Investigative Committee of the Russian Federation (Investigative Committee), and prosecutors.

46. **Procedural safeguards and minimum standards, which play a crucial role in preventing torture and ill-treatment, were frequently not, or ineffectively, implemented**. POWs' access to the outside world, particularly through communication, was either denied or severely restricted and delayed. Only a few POWs were able to have phone calls with their families during the period of internment, sometimes because individual guards. [...]

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298 Treatment of prisoners of war and update on the human rights situation in Ukraine (1 June to 31 August 2024): report. *OHCHR*. URL: https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/Ukraine-OHCHR-40th-periodic-report.pdf

47. Since the start of the full-scale invasion of Ukraine, **the Russian Federation has denied OHCHR access to Ukrainian POWs held under its control**. **Most interviewees (134 POWs) said that they had not been visited by independent monitors during captivity.** In the few cases when visits took place, POWs were mostly unable to hold confidential interviews with the monitors. In one facility in the Russian Federation, several interviewees indicated that the administration hid a large group of POWs while affording the remaining prisoners better treatment before a visit by independent monitors.

48. Prosecutors from the Russian Federation visited facilities regularly. **However, 59 interviewees stated that POWs did not dare make any complaints because of warnings received from guards, amid an overall climate of fear.** They also pointed out that prosecutors could observe the poor conditions in the facilities, but that they did not meaningfully engage with the POWs. The POWs also said that they did not notice any changes in treatment or conditions after such visits.

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(1 March – 31 May 2024)[299]

PROSECUTION OF UKRAINIAN SERVICEMEMBERS

82. Between 1 March and 31 May, Russian-appointed courts in occupied territory convicted at least 24 Ukrainian POWs for various crimes, including ill-treatment of civilians, (attempted) murder, and intentional destruction of property, and sentenced them to prison terms, including life imprisonment. **Accounts from released Ukrainian POWs indicated the widespread use of torture to extract confessions in criminal cases related to the conflict in Ukraine. OHCHR did not document any acquittals of Ukrainian POWs tried during the reporting period.**

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(1 December 2023 – 29 February 2024)[300]

RIGHT TO FAIR TRIAL

42. In the reporting period, OHCHR interviewed 60 Ukrainian POWs (all men) who had been recently released from Russian captivity during POW exchanges between Ukraine and the Russian Federation. Those interviewed spent between a few weeks and 22 months in captivity, and many were held in multiple facilities in both the occupied territory and the Russian Federation.

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299 Report on the human rights situation in Ukraine (1 March – 31 May 2024). *OHCHR*. URL: https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/24-07-02-OHCHR-39th-periodic-report-Ukraine.pdf

300 Report on the human rights situation in Ukraine (1 December 2023 – 29 February 2024). *OHCHR*. URL: https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-december-2023-29-february-2024

43. **The POWs provided credible and detailed accounts consistent with previous OHCHR conclusions that torture and ill-treatment of Ukrainian POWs in Russian internment is widespread and routine and that POWs are held in conditions that are not in line with IHL requirements.**

44. **Fifty-eight of the 60 POWs interviewed by OHCHR provided detailed accounts of how Russian servicemen or officials tortured or ill-treated them during their captivity.** The most common methods of torture included beatings, electric shocks, threats of execution, mock executions, and positional torture. In one case, a Ukrainian POW described being captured by Russian armed forces in November 2023 in the Zaporizhzhia region and brought to a shed in a private household, where three Russian servicemen interrogated and tortured him to extract information of a military nature. The perpetrators kicked him in the face and torso with such force that his ribs were broken, suffocated him with a plastic bag, and threatened to execute him and cut off his ear while pressing a knife against it.

58. During the reporting period, Russian-appointed courts in occupied territory and the Russian Federation convicted at least **76 Ukrainian POWs** for various crimes and sentenced them to between 12 years and life in prison. For example, on 7 February 2024, a Russian-appointed court in the Donetsk region convicted 33 male Ukrainian POWs on charges of indiscriminate shelling whilst defending Mariupol city, which killed one civilian, injured another, and damaged property. This represented the largest mass conviction of POWs in an occupied territory documented by OHCHR. Sentences imposed ranged from 27 to 29 years imprisonment. As of 29 February 2024, OHCHR was aware of at least 42 other Ukrainian POWs being prosecuted or tried on various charges by Russian authorities. **Convictions in such trials widely relied on confessions and testimonies reportedly obtained under torture or ill-treatment. Thirty-one out of 60 POWs OHCHR interviewed provided consistent accounts of being tortured in captivity to force them to confess to war crimes or testify against other Ukrainian servicemen. They also told OHCHR that they saw signs of torture or ill-treatment on their cellmates after interrogations.**

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(1 February to 31 July 2023)[301]

VII. ADMINISTRATION OF JUSTICE AND ACCOUNTABILITY

A. Prosecution of conflict-related crimes

120. During the reporting period, OHCHR documented that the Southern Military District Court in Rostov-on-Don, in the Russian Federation, convicted one Ukrainian POW. Courts in the occupied parts of the Donetsk and Luhansk regions **convicted 36 Ukrainian POWs**. The defendants in these cases were sentenced to terms ranging from 12 to 22 years, with three men receiving life sentences. All the POWs sentenced in Donetsk and Luhansk were convicted on criminal charges of terrorism or attempted seizure of power based on alleged actions such as attacks on

301 Report on the human rights situation in Ukraine (1 February to 31 July 2023). *OHCHR*. URL: https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2023

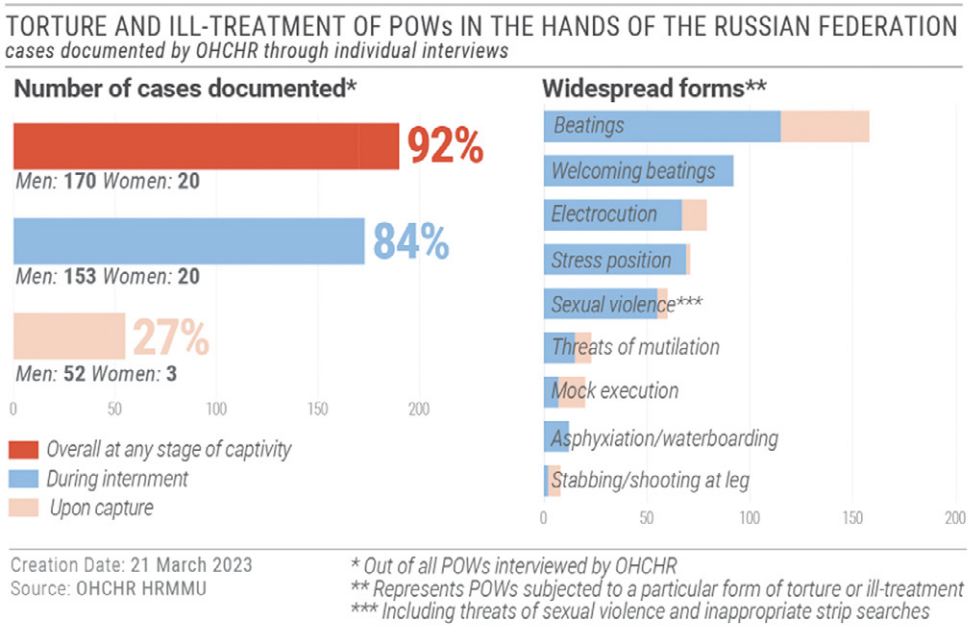
civilians or civilian objects, or killings of civilians. **However, the majority were essentially tried for mere participation in hostilities.** As of 31 July, 38 more Ukrainian POWs (28 men, 9 women, and 1 person whose sex is unknown) were being tried on similar charges in Rostov-on-Don.

121. In April 2022, five Ukrainian men from Melitopol, Zaporizhzhia region, were tortured in detention by Russian armed forces who forced them to confess to planning an attack on a Russian military convoy. As of 31 July 2023, their case was pending criminal trial in Rostov-on-Don. According to their relatives and lawyers, upon taking control of the city, Russian authorities detained the men in early April 2022, but refused to acknowledge their detention until 20 April 2022, when they were officially arrested in Crimea on terrorism charges. OHCHR recalls that IHL requires the occupying Power to respect the laws in force in the country, including the criminal laws, with the exception that they may be repealed or suspended by the occupying Power in cases where they constitute a threat to its security or an obstacle to the application of IHL. IHL also requires that the occupying Power continues the functioning of the local courts in respect of all offences covered by the said criminal laws.

TREATMENT OF PRISONERS OF WAR AND PERSONS HORS DE COMBAT IN THE CONTEXT OF THE ARMED ATTACK BY THE RUSSIAN FEDERATION AGAINST UKRAINE

(24 February 2022 – 23 February 2023)[302]

58. **One hundred seventy-three Ukrainian POWs (153 men and 20 women) interviewed were subjected to torture or other forms of ill-treatment** while interned by the Russian Federation, in breach of article 13 of the Third Geneva Convention. Their accounts revealed widespread use of torture or other ill-treatment both **to extract military information or testimony for tribunals in occupied territory** and to intimidate and humiliate POWs. [...]



302 Treatment of prisoners of war and persons hors de combat in the context of the armed attack by the Russian Federation on Ukraine (24 February 2022 – 23 February 2023): report. OHCHR. URL: https://www.ohchr.org/en/documents/country-reports/ohchr-report-treatment-prisoners-war-and-persons-hors-de-combat-context

C. TRIALS OF POWS

[…]

82. OHCHR interviewed eleven Ukrainian POWs who faced criminal prosecution **for conduct amounting to mere participation in the hostilities**. Furthermore, **68 interviewed** POWs **were tortured to provide testimonies against other servicepersons** in violation of Article 17 of the Third Geneva Convention, which prohibits physical or mental torture, or any other form of coercion, to secure information of any kind.

83. OHCHR interviewed 10 men and 1 woman POWs who **were indicted, tried and/or sentenced in Donetsk by so-called "courts" of Russian-affiliated armed groups for conduct that amounted to mere participation in hostilities**. Under international law, combatants enjoy combatant immunity and cannot be prosecuted for mere participation in hostilities, or for lawful acts of war committed in the course of the armed conflict, even if such acts would otherwise constitute an offense under domestic law.

84. **All the POWs interviewed** reported being **tortured or otherwise ill-treated before or during interrogations** by so-called "prosecutors" of Russian-affiliated armed groups, **either to compel them to confess or to sign records of interrogations which included statements they had not made. Five of them were compelled to waive their rights to legal counsel during the investigation because no lawyers were available.**

85. Three POWs interviewed by OHCHR were **tried in camera** by a so-called "court" which lacked essential guarantees of lawfulness, independence and impartiality. One of the POWs **was not brought for hearings in his "trial" and was sentenced to death**. POWs tried in Donetsk complained that the "judges" were blatantly biased against them, cherry-picking parts of their testimony in order to find them guilty. Moreover, four POWs complained that their lawyers did not provide any legal assistance and only advised them to plead guilty. One POW also reported that his legal aid lawyer contacted his relatives and demanded USD 5,000 for filing an appeal against a death sentence imposed against him. Another POW who did not speak Russian well was provided with the text of his **indictment in Russian**, although he requested its **translation into English**. […] OHCHR is concerned that the POWs were not validly sentenced according to IHL, particularly where they confessed under duress and their rights to a defence were violated. OHCHR recalls that wilfully depriving a POW of the right to a fair and regular trial constitutes a grave breach of the Third Geneva Convention.

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(1 February to 31 July 2022)[303]

C. TORTURE AND ILL-TREATMENT

49. OHCHR documented widespread practices of torture or ill-treatment of civilian detainees by Russian armed forces and law enforcement bodies, as well as Russian-affiliated armed groups. Of 38 released civilians (34 men, 4 women) interviewed by OHCHR, **33 individuals reported having various forms of torture or ill-treatment inflicted on them while in detention, in order to force them to confess to having cooperated with the Ukrainian armed forces, to force them to cooperate with Russian armed forces or affiliated armed groups, or simply to intimidate them.**

Prisoners of war in the power of the Russian Federation

63. OHCHR documented patterns of mistreatment of prisoners of war detained by the Russian armed forces and affiliated armed groups during all periods of their internment. OHCHR verified that, out of 35 interviewed, 27 servicemen of the Ukrainian armed forces were subjected to torture by Russian armed forces and law enforcement bodies, as well as affiliated armed groups. Victims described being punched, kicked, beaten with police batons and wooden hammers, electrocuted, threatened with execution or sexual violence, and shot in the legs. **Perpetrators tortured victims to extract military information, securing confessions of war crimes, forcing them to testify against other prisoners of war, or as a form of punishment for participating in the hostilities.**

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE IN CONFLICT-RELATED CRIMINAL CASES IN UKRAINE

(April 2014 – April 2020)[304]

VI. HUMAN RIGHTS CONCERNS IN ARMED GROUP-CONTROLLED TERRITORY

The entire section deserves the attention of experts, as it contains a wide range of violations of the right to a fair trial in the courts of the so-called "republics". Below are a few paragraphs that relate to coerced confessions to reinforce our allegations of intimidation and torture of individuals to coerce them into incriminating themselves.

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303 Report on the human rights situation in Ukraine (1 February to 31 July 2022). *OHCHR*. URL: https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pd

304 Human rights in the context of the administration of justice in conflict-related criminal cases in Ukraine April (2014 – April 2020): report. OHCHR. URL: https://www.ohchr.org/sites/default/files/2022-08/Ukraine-admin-justice-conflict-related-cases-ukr.pdf
See also Human Rights in the Administration of Justice in Conflict. Related Criminal Cases in Ukraine (April 2014 – April 2020). *OHCHR*. URL: https://www.ohchr.org/sites/default/files/2022-08/Ukraine-admin-justice-conflict-related-cases-en.pdf

C. RIGHT NOT TO BE COMPELLED TO TESTIFY

112. OHCHR is concerned about consistent reports of **torture and ill-treatment used to obtain "confessions"** from detainees, which are then used in conflict-related "trials" [...]

113. OHCHR found that torture and intimidation of conflict-related detainees usually occurred during apprehension and administrative detention, when detainees were held incommunicado. Among the perpetrators were members of the "ministries of state security", "police", and armed groups of self-proclaimed "republics". OHCHR documented cases where detainees were **beaten, suffocated, deprived of food, water, toilet** or sleep, and **subjected to electric shocks, positional torture, mock executions** and other forms of torture. Documented patterns of intimidation included threats of execution, torture and sexual violence, often also against relatives of detainees, and threats of additional "charges" of grave crimes. In particular, the existence of the **death penalty under the "criminal code" of the "Donetsk People's Republic"**, has allowed the "prosecution" to intimidate detainees with threats of additional charges that carry the death penalty.

114. OHCHR found that forced confessions obtained during administrative detention were recorded in writing or on video and then formalised into "records of interrogations" after the initiation of "criminal proceedings". **Detainees signed the "records" and did not withdraw their testimony in fear of further torture or ill-treatment or threats made previously.**

115. The frameworks of both self-proclaimed "republics" neither oblige "judges" to take measures to investigate allegations of torture and ill-treatment during pre-trial investigations nor provide an independent body tasked to "investigate" such allegations. Furthermore, OHCHR **was informed that "courts" often used confessions obtained during the "investigation" even when the defendants subsequently withdrew them during "trials"**.

VII. HUMAN RIGHTS CONCERNS IN CONFLICT-RELATED CRIMINAL PROCEEDINGS IN CRIMEA

The entire section deserves the attention of experts, as it contains a wide range of violations of the right to a fair trial in the occupied Crimea. Below are a few paragraphs for a more comprehensive understanding.

A. RETROACTIVE APPLICATION OF CRIMINAL LAWS

141. According to international humanitarian law, protected persons shall not be arrested, prosecuted or convicted by the occupying Power for acts committed or for opinions expressed before the occupation, except for breaches of the laws and customs of war. The courts shall apply only those provisions of law which were applicable at the time of the offence, and which are following general principles of law, in particular, the principle that the penalty shall be proportionate to the offence. [...] **OHCHR has documented conflict-related cases concerning 29 individuals (24 men and 5 women) who were convicted in Crimea pursuant to the laws of the Russian Federation for acts committed before the occupation began.**

[...]

B. Right to a fair trial

[…]

151. OHCHR documented a pattern whereby **defendants arrested on charges of sabotage or terrorism would be convicted of other charges based on questionable evidence, such as retracted confessions and contested witness testimony of arresting officers**. Analysis of judgments in these cases also demonstrates that the initial sabotage and terrorism charges were brought against defendants in the absence of any physical evidence. In these cases, courts failed to examine the reasons for the initial arrest, as well as to ascertain whether the new charges were not used solely in order to justify the defendants' arbitrary detention.

In two emblematic cases, Ukrainian citizens arrested under accusations of being part of Ukrainian sabotage groups sent to Crimea to commit terrorist acts were convicted of other charges and sentenced to prison terms. On 18 May 2017, one of the defendants was sentenced to three years of imprisonment on drug-related charges. He stated in court that **the Federal Security Service (FSB) had tortured him and forced to self-incriminate on camera, which was presented as evidence.** He also complained that the drugs found in his car had been planted by the FSB. **No investigation was conducted to verify his claims regarding the forced confession or the evidence being planted.**

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(16 November 2015 – 15 February 2016)[305]

57. During the reporting period, OHCHR documented several cases of summary **executions committed** by members of the armed groups in 2014 and 2015. In August 2014, a member of the "special committee" of the Vostok battalion of the "Donetsk People's Republic" disappeared after being detained by his battalion at the "Izolyatsia" Platform for Cultural Initiatives in Donetsk. In May 2015, his body was found decapitated in a reservoir in Donetsk. In another case, between 1 and 15 April 2015, in the town of Dokuchaivsk, Donetsk region, members of the "Donetsk People's Republic" allegedly summarily **executed a man whom they accused of attacking one of their checkpoints**. The victim's wife identified his body and noted signs of torture.

80. **In the "Donetsk People's Republic", a parallel "judicial system**" has been operational since 2014, **largely composed of people with no relevant competence**. Most professional judges left the territories controlled by the armed groups after the Government relocated all courts, prosecution offices and notary services to territory under its control in November 2014.

81. In addition, a parallel "legislative framework" has been developed, mixing Ukrainian legislation and decrees issued by the "Donetsk People's republic" or "Luhansk People's republic". In December 2015, the OSCE Special Monitoring Mission to Ukraine issued a report on "Access

305 Report on the human rights situation in Ukraine (16 November 2015 to 15 February 2016). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016_Ukrainian.pdf
See also Report on the human rights situation in Ukraine (16 November 2015 to 15 February 2016). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf

to Justice and the Conflict in Ukraine" describing **the parallel structures as relying on an uncertain, ad hoc and non-transparent legal framework, subject to constant change, shortages of professional staff, and in certain instances, lack of operational capacity.**

82. In early February 2016, a "court" of the "Donetsk People's Republic" "sentenced" Ukrainian serviceman Yevhen Chudnetsov to 30 years of deprivation of liberty for "**attempting to violently change the constitutional order**"[306]. OHCHR calls for his release and that of other captives "sentenced" by parallel, illegal bodies or all other captives of the armed groups.

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(16 February – 15 May 2016)[307]

67. In the context of an armed conflict, only an impartial and regularly constituted court may pass judgment on an accused person. **Unfair trials cannot provide justice to victims of serious human rights abuses and violations of international humanitarian law**, and further contribute to the lack of rule of law and accountability **that has come to characterize the armed group-controlled areas.**

C. DUE PROCESS AND FAIR TRIAL RIGHTS

189. OHCHR has been following legal proceedings involving Andrii Kolomiiets, a Maidan activist arrested in the Russian Federation on 15 May 2015, and transferred to Crimea (Simferopol), where he has been held in custody since 13 August 2015. A Ukrainian citizen from the region of Kyiv, he is accused of murder or attempted murder of a law enforcement officer during the Maidan protests in Kyiv and of possession of drugs. If found guilty, he risks a prison sentence of up to 20 years. During a court hearing on 30 March, Mr. Kolomiiets' lawyer stated his client had been tortured following his arrest, which was allegedly confirmed by a witness of the defence. The lawyer also claimed that the charges had been fabricated and that **Mr. Kolomiiets was forced to testify against Oleksandr Kostenko**.

190. The Kolomiiets case follows a pattern observed in the Kostenko case and the legal proceedings against the deputy head of the Mejlis and six other Crimean Tatars. **All have been convicted or indicted on the basis of legislation introduced after the March 2014 "referendum" for facts which occurred before that date. This raises serious concerns of compliance with the principle of legality, and particularly the retroactive application of the law**.

306 The authors' note - the constitutional order of the "DPR", i.e. a clear violation of the principle of nulla poena sine lege.

307 Report on the human rights situation in Ukraine (16 February – 15 May 2016). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_14th_HRMMU_Report_UKRANIAN.pdf
See also Report on the human rights situation in Ukraine (16 February to 15 May 2016). *OHCHR*. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(16 May – 15 August 2016)[308]

F. PARALLEL STRUCTURES IN ARMED GROUP-CONTROLLED AREAS

91. Parallel structures, including "courts", continued to develop and operate in the "Donetsk People's Republic" and "Luhansk People's Republic". OHCHR reiterates that these structures have no legal status under Ukrainian legislation and contradict the spirit of the Minsk Agreements. **Furthermore, such structures affect the inalienable rights of people living in territories controlled by armed groups, function in an arbitrary manner and present no mechanism for victims of this system to get protection or redress.**

92. The "Supreme Court" of the "Donetsk People's Republic" reported that from 1 January to 1 June, "courts of general jurisdiction" accepted 37,256 "cases", including 10,444 criminal ones. Also, according to the information reported by the "Prosecutor General's Office" of the "Luhansk People's Republic" 2,215 individuals were sentenced to various types of punishment, including imprisonment in the first half of 2016. **OHCHR has received regular complaints from relatives of people accused of alleged crimes committed before the outbreak of the armed conflict. Having spent several years in pre-trial detention without judgment, such detainees now face "trial" by "Donetsk People's Republic" "courts".**

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(16 August – 15 November 2016)[309]

B. HUMAN RIGHTS IMPACT OF ARMED GROUP STRUCTURES

75. OHCHR continued to monitor the human rights impact of what the armed groups refer to as "courts", "judges", and "prosecutors". **These structures do not comply with the right "to a fair and public hearing by a competent, independent and impartial tribunal established by law" as enshrined in Article 14 of the ICCPR.** OHCHR notes that both international human rights and humanitarian law incorporate a series of judicial guarantees, such as trial by an independent, impartial and regularly constituted court. These structures in the "Donetsk People's Republic" and "Luhansk People's Republic", prima facie, do not meet these requirements.

76. OHCHR attempted to monitor a "court hearing" on 4 October 2016 held by the "Donetsk People's Republic" to verify the fate and whereabouts of the accused but was denied access as **the "hearing" was closed to the public.**

308 Report on the human rights situation in Ukraine (16 May – 15 August 2016). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine15thReport_ukr.pdf

309 Report on the human rights situation in Ukraine (16 August – 15 November 2016). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UAReport16th_UKR.pdf

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(16 November 2016 – 15 February 2017)[310]

B. HUMAN RIGHTS IMPACT OF ARMED GROUP STRUCTURES

71. Interviews with civilians and military personnel detained by the armed groups in connection with the conflict during the reporting period indicate that their **right to defence counsel was not implemented in a timely and systematic manner**. The Prosecutor General's Office of the "Donetsk People's Republic" reported the "sentencing" of three civilians to 12 years' imprisonment, 73 of whom were found guilty of spying for the purpose of passing information to Government forces about armed group fortifications and checkpoints.

72. OHCHR is concerned that these "convictions" may amount **to the war crime of imposing criminal penalties without due process of law, as they are in violation of the prohibition of imposing penalties other than on the basis of a judgment rendered by a duly constituted court** capable of providing basic guarantees of independence and impartiality.

REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE

(16 February – 15 May 2017)[311]

D. HUMAN RIGHTS IMPACT OF ARMED GROUP STRUCTURES

98. **OHCHR collected credible accounts demonstrating a lack of effective remedy for victims of human rights abuses through parallel structures.**

VI. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA AND THE CITY OF SEVASTOPOL

A. ADMINISTRATION OF JUSTICE AND FAIR TRIAL RIGHTS

141. Crimean courts discontinued all judicial proceedings under Ukrainian law and **retroactively applied criminal legislation of the Russian Federation during the re-examination of individual cases, which contravenes the international humanitarian law** principle to continue using the penal laws in place before occupation.

310 Report on the human rights situation in Ukraine (16 November 2016 – 15 February 2017). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UAReport17th_UKR.pdf

311 Report on the human rights situation in Ukraine (16 February – 15 May 2017). OHCHR. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UAReport18th_UKR.pdf