

WAR CRIMES OF THE RUSSIAN FEDERATION AGAINST UKRAINE: PATHWAYS TO FAIR PUNISHMENT FOR THE PERPETRATORS

(investigations under Article 438 of the Criminal Code of Ukraine)



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This text is dedicated to the memory of all employees of law enforcement agencies who lost their lives in the line of duty, as well as to those whose daily work brings the accountability of war criminals closer.

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The content of this study is the sole responsibility of the authors and does not necessarily reflect the views of the individuals or institutions that contributed to its creation.

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ABBREVIATIONS

FLA	Free Legal Aid
VRU	Verkhovna Rada of Ukraine
SC	Supreme Court
NGOs	Non-Governmental Organizations
MID	Main Investigative Department
SBI	State Bureau of Investigation
URPTI	Unified Register of Pre-Trial Investigations
USRCD	Unified State Register of Court Decisions
ECtHR	European Court of Human Rights
RF AF	Armed Forces of the Russian Federation
CC of Ukraine	Criminal Code of Ukraine
CPC of Ukraine	Criminal Procedure Code of Ukraine
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
IHL	International Humanitarian Law
NatPol	National Police of Ukraine
OPG	Office of the Prosecutor General
Rome Statute	Rome Statute of the International Criminal Court
RF	Russian Federation
UHHRU	Ukrainian Helsinki Human Rights Union

INTRODUCTION

This publication presents the results of a study on the effectiveness of criminal prosecution for war crimes committed by the RF AF during the full-scale invasion of Ukraine, liability for which is envisaged under Article 438 of the CC of Ukraine.

The relevance of the study topic is determined by the fact that from the first days of the full-scale military invasion by the Russian Federation, Ukraine faced large-scale violations of international law by the aggressor state committed both against the civilian population and against military personnel.

A defining feature of the full-scale invasion by the RF is the unprecedented number of crimes committed by the RF AF, which have caused harm not only to individual persons but to virtually the entire territory of Ukraine.

According to data from the Office of the Prosecutor General, from the first day of the full-scale military invasion on February 24, 2022 through September 30, 2025, law enforcement agencies registered 185,231 criminal proceedings related to war crimes under Article 438 of the CC of Ukraine. Thus, on average, Ukrainian law enforcement agencies record approximately 140 new war crimes committed by the RF in Ukraine every day.

These include, first and foremost, shelling of civilian and critical infrastructure, displacement of the civilian population within and beyond the occupied Ukrainian territories, deportation of children, enforced disappearances, torture of civilians and military personnel, extrajudicial executions, sexual violence, etc.

According to information from the Office of the Prosecutor General, 253,382 individuals have been recognized as victims of war crimes in Ukraine.

Accordingly, since the beginning of the full-scale armed aggression of the Russian Federation against Ukraine, the Ukrainian law enforcement system has faced a significant burden, as the task of the criminal justice authorities is to document facts, collect evidence, and investigate war crimes committed in Ukraine.

Numerous instances of potential international crimes committed by Russian occupying forces, falling within the jurisdiction of the Rome Statute, have been documented in reports by international and national human rights bodies and organizations.

However, at the time of the full-scale invasion, Ukraine was not a party to the Rome Statute, and national legislation on criminal liability did not comply with the requirements of international criminal law.

Bringing Ukraine's criminal liability legislation into compliance with the requirements of international criminal law and implementing the latter into the national legal system became one of the urgent needs to ensure protection and justice for victims and to hold perpetrators accountable.

The processes of Ukraine's accession to the Rome Statute and the related amendments to the Criminal Code of Ukraine took place in 2024. On January 1, 2025, Ukraine became the 125th State Party to the ICC, having fully acceded to the Statute.

The study focused primarily on issues related to the capacity of the national law enforcement system to ensure effective investigation and to hold those responsible accountable for war crimes, including the human resources capacity of investigators, prosecutors, and defense lawyers; the availability of relevant experience and tools; the existence of problems in the legal qualification of crimes; and the need to amend existing criminal law provisions, etc.

During the study, the authors encountered certain limitations and challenges, in particular:

- Lack of access to criminal proceedings at the pre-trial investigation stage
- Lack of access to information from the URPTI

These circumstances affected the study's results, as access to the URPTI and to criminal case materials could have served as additional sources for drawing objective conclusions and recommendations.

Purpose and Methodology Description

The purpose of this study is to analyze the existing capacities, problems, and challenges faced by the Ukrainian law enforcement system in investigating and prosecuting for war crimes committed by the RF AF during the full-scale invasion of Ukraine, the responsibility for which is provided for under Article 438 of the CC of Ukraine.

Study Objectives:

- Obtain systematized empirical data on the compliance with the standards in cases related to the investigation of and prosecution for war crimes under Article 438 of the Criminal Code of Ukraine
- Identify systemic problems related to the investigation of and prosecution for war crimes under Article 438 of the CC of Ukraine during pre-trial proceedings
- Provide objective, systematized information on the status of criminal proceedings under Article 438 of the CC of Ukraine in the form of a public report
- Develop recommendations for improving the situation

To achieve these objectives, the authors of this study undertook the following actions:

- Obtaining official information from the state authorities by sending requests to the Office of the Prosecutor General and the National Police of Ukraine
- Analyzing media information, studies on certain topics, scholarly articles, and other open sources
- Reviewing decisions from the USRCD in cases under Article 438 of the CC of Ukraine
- Conducting surveys of 181 law enforcement personnel (64 prosecutors and 117 investigators) involved in investigating crimes under Article 438 of the CC of Ukraine, as well as 44 defense lawyers with relevant experience.

The study covers the period from February 24, 2022, to September 30, 2025.

Section 1. International and National Standards of Liability for War Crimes

1.1. International Standards for the Prosecution for War Crimes

War crimes constitute some of the most serious violations of international humanitarian law (IHL) and are subject to a universal prohibition enshrined in both customary and treaty-based international law. The system of accountability for these crimes has evolved through international judicial mechanisms – from the Nuremberg and Tokyo tribunals to modern international criminal courts and ad hoc tribunals.

War crimes are part of the so-called core international crimes, which also include genocide, crimes against humanity, and the crime of aggression (the so-called 'crime of crimes').

These crimes share common characteristics – they pose a threat to the entire international community, are not subject to statutes of limitation, and accountability for them must be unavoidable and cannot be justified by following orders or by the official status of the perpetrator.

Thus, war crimes are not considered in isolation but within the context of the overall system of international criminal justice, which is designed to ensure punishment for the gravest violations of international law committed during armed conflicts.

Under international law, a war crime is an act that constitutes a deliberate violation of generally accepted customs and rules of war. In other words, it is a breach of the regulatory provisions of international instruments that detail these concepts. The first international regulatory legal instrument in this field was the first Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, signed in 1864 by the representatives of 16 European countries. It laid the foundation for the development of international humanitarian law, regulation of hostilities, and the formalization of the concepts of 'laws of war' and 'war crimes'¹.

However, most scholars note that the concept of 'war crimes' historically emerged after World War II. The Charter of the International Military Tribunal at Nuremberg in 1945² first codified this term at the official level in Article 6, listing relevant acts, including violations of the laws and customs of war including murder, ill-treatment, or deportation of civilians in occupied territories; murder or ill-treatment of prisoners of war; killing of hostages; plunder of public or private property; wanton destruction of cities, towns or villages not justified by military necessity.³

Further development of international legal regulation in this field is associated with the 1949 Geneva Conventions and the 1977 Additional Protocols, which systematized and expanded provisions on the protection of victims of armed conflicts. These documents confirmed and detailed the elements of war crimes as serious violations of international humanitarian law.

Some elements of war crimes are also specified in other legal instruments, including: Article 28 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict⁴; Article 5 of the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques during Armed Attack⁵.

The most modern and comprehensive international instrument in this field is the Rome Statute of the International Criminal Court (ICC)⁶. According to Article 8 of the Rome Statute, war crimes are recognized as serious violations of IHL committed during international or non-international armed conflict, carried out as part of a plan, policy, or as part of large-scale commission of such crimes. These include, in particular, willful killings, torture, inhumane treatment, unlawful deportation, hostage-taking, attacks on civilians, and the use of prohibited means and methods of warfare.

A distinctive feature of war crimes is that the existence of an armed conflict is a necessary condition for their commission. This clearly distinguishes them from other types of international crimes, such as crimes against humanity or genocide. Under the Rome Statute, war crimes may be committed in the context of either international armed conflict (between two or more states) or non-international armed conflict (within a single state without external intervention).

Thus, the evolution of international humanitarian law has ensured the universalization of the concept of war crimes and created international legal mechanisms for holding perpetrators accountable, which today form the basis of the work of international and hybrid criminal tribunals.

Judicial practice is a key source of the development of international standards in the field of war crimes. The historical foundation was laid by the Nuremberg and Tokyo tribunals, which first introduced the principle of individual criminal responsibility for international crimes.

The establishment of international criminal tribunals was prompted by large-scale crimes against peace, humanity, war crimes, and acts of aggression committed during numerous wars and armed conflicts, in particular after World War II and during the conflicts in the former Yugoslavia.

As part of the international accountability system for those involved in such crimes, primarily political and military leaders, a number of specialized judicial bodies were created, including: International Military Tribunal at Nuremberg; International Military Tribunal for the Far East; International Criminal Tribunals for the former Yugoslavia and Rwanda; Special Court for Sierra Leone; Extraordinary Chambers in the Courts of Cambodia; Specialized Chambers and Prosecutor's Office for Kosovo; International Residual Mechanism for Criminal Tribunals; as well as UN Tribunals for Syria and Lebanon. After World War II, ad hoc war tribunals operated within the international relations system. The most famous of these are:

¹ <http://confuf.wunu.edu.ua/index.php/confuf/article/view/950/932>

² https://zakononline.ua/documents/show/140950_140950

³ Ivanochko, O. O. THE CONCEPT OF A WAR CRIME IN INTERNATIONAL AND NATIONAL LAW. Central Ukrainian Bulletin of Law and Public Administration. 2023, Issue 3. P. 28–37. [in Ukrainian] URL: <https://doi.org/10.32782/cuj-2023-3-4>

⁴ <https://ips.ligazakon.net/document/MU54K01U>

⁵ <https://ips.ligazakon.net/document/MU77K02U>

⁶ https://zakon.rada.gov.ua/laws/show/995_588#Text

- 1) **Nuremberg Trials** (1945-1946) established to prosecute the top leadership of Nazi Germany. Its jurisdiction covered crimes against peace (aggression), war crimes, and crimes against humanity. It was the first international court to introduce the principle of individual criminal responsibility for violations of international law⁷.
- 2) **Tokyo War Crimes Tribunal** (1946-1948) Tokyo established to prosecute Japanese military and political leadership for crimes committed during World War II. The court considered crimes against peace, war crimes, and crimes against humanity, similar to the Nuremberg Tribunal, but for crimes in the Asia-Pacific region⁸.
- 3) **International Criminal Tribunal for the former Yugoslavia** (ICTY, 1993-2017) established by UN Security Council Resolution No. 827 on May 25, 1993, in response to mass violations of IHL during conflicts in the former Yugoslavia. Its jurisdiction included war crimes, crimes against humanity, and genocide. The ICTY was the first tribunal created by the UN Security Council and it established important judicial practice regarding individual responsibility for international crimes, including prosecution of heads of state⁹.
- 4) **International Criminal Tribunal for Rwanda** (ICTR, 1994-2015) established by UN Security Council Resolution No. 955 on November 8, 1994, in response to the 1994 Rwandan genocide, during which over 800,000 people, mainly Tutsi, were killed. The tribunal had jurisdiction over genocide, crimes against humanity, and war crimes committed in Rwanda and neighboring states. The ICTR laid important foundations for recognizing sexual violence as a form of genocide and a crime against humanity¹⁰.

It is worth noting that, pursuant to UN Security Council Resolution 1966 (2010) of December 22, 2010, the activities of the International Criminal Tribunals for Rwanda and for the former Yugoslavia were terminated as of July 1, 2012, and July 1, 2013, respectively, and were succeeded by the International Residual Mechanism for Criminal Tribunals¹¹.

- 5) **Special Court for Sierra Leone** (2002-2013) established under UN Security Council Resolution No. 1315 (2000) and an agreement between the UN and the government of Sierra Leone signed in 2002. The court combined international and national elements, becoming the first 'hybrid' tribunal. Its mandate was to prosecute persons who bore the 'greatest responsibility' for serious violations of international humanitarian law and national law committed during the civil war of 1991-2002¹².

Other tribunals were also created to achieve justice and accountability, including¹³:

- Extraordinary Chambers in the Courts of Cambodia (established on June 6, 2006)
- Specialized Chambers and Prosecutor's Office for Kosovo (established on January 1, 2016)
- Independent International Commission of Inquiry on the Syrian Arab Republic tasked with collecting evidence of possible human rights violations and war crimes in Syria
- Special Tribunal for Lebanon tasked with addressing crimes related to political terrorism and killings in Lebanon.

These institutions have the legal nature of ad hoc courts, created to consider specific crimes committed within a defined territory, timeframe, or conflict. Some are hybrid, combining international and national justice elements integrated into the legal systems of individual states.

In 1998, the International Criminal Court (ICC) was established – the first permanent international criminal tribunal. Unlike previous ad hoc courts, the ICC exercises justice based on territorial, individual, universal jurisdiction, and jurisdiction over heads of state, military commanders, and the crime of aggression.

However, the ICC's ability to prosecute individuals is limited. It can only consider crimes committed on the territory of states that have ratified the Rome Statute or by nationals of such states, and the crimes must have occurred after the Statute came into force (post-2002). If a state is not a party to the Statute, ICC jurisdiction is possible only by UN Security Council referral, which is often blocked due to political considerations.

In the context of the Russian Federation's armed aggression against Ukraine, the ICC plays an important but limited role. While the ICC's jurisdiction covers war crimes, crimes against humanity, and genocide, its powers regarding the crime of aggression are restricted due to the 2010 Kampala Amendments to the Rome Statute¹⁴.

According to these amendments (Articles 8 bis, 15 bis, and 15 ter of the Rome Statute), the Court can exercise jurisdiction over the crime of aggression only if both the aggressor state and the state against which aggression is directed are parties to the Rome Statute or have specially accepted the Court's jurisdiction. Since the Russian Federation is not a party to the Rome Statute and does not recognize ICC jurisdiction, holding its top military and political leadership accountable for the crime of aggression at the ICC is currently impossible.

For this reason, Ukraine initiated the creation of a Special Tribunal for the Crime of Aggression against Ukraine. This initiative is supported by the European Union, the Council of Europe, the G7 countries, and several international human rights organizations. Work on establishing the tribunal has already begun under the aegis of the Council of Europe.

⁷ Makharynets, D. Ye. A RETROSPECTIVE ANALYSIS OF INTERNATIONAL CRIMINAL TRIBUNALS FROM THE MID-TWENTIETH TO THE EARLY TWENTY-FIRST CENTURY. Scientific Bulletin of the International Humanitarian University, Series: Jurisprudence. 2023, Issue 64. P. 140-144. [in Ukrainian] URL: <https://doi.org/10.32841/2307-1745.2023.64.26>.

⁸ Ibid.

⁹ Zharovska, I. M. International Ad Hoc Tribunals: A Historical and Legal Retrospective. [in Ukrainian] URL: <https://science.ipnu.ua/sites/default/files/journal-paper/2017/aug/5898/vnulpurn201684561.pdf>

¹⁰ Makharynets, D. Ye. A RETROSPECTIVE ANALYSIS OF INTERNATIONAL CRIMINAL TRIBUNALS FROM THE MID-TWENTIETH TO THE EARLY TWENTY-FIRST CENTURY. Scientific Bulletin of the International Humanitarian University, Series: Jurisprudence. 2023, Issue 64. P. 140-144. [in Ukrainian] URL: <https://doi.org/10.32841/2307-1745.2023.64.26>.

¹¹ Zharovska, I. M. International Ad Hoc Tribunals: A Historical and Legal Retrospective. [in Ukrainian] URL: <https://science.ipnu.ua/sites/default/files/journal-paper/2017/aug/5898/vnulpurn201684561.pdf>

¹² Ibid.

¹³ Makharynets, D. Ye. A RETROSPECTIVE ANALYSIS OF INTERNATIONAL CRIMINAL TRIBUNALS FROM THE MID-TWENTIETH TO THE EARLY TWENTY-FIRST CENTURY. Scientific Bulletin of the International Humanitarian University, Series: Jurisprudence. 2023, Issue 64. P. 140-144. [in Ukrainian] URL: <https://doi.org/10.32841/2307-1745.2023.64.26>.

¹⁴ https://zakon.rada.gov.ua/laws/show/995_004-10#Text

The tribunal is expected to focus on the crime of aggression as the 'parent crime', which underpinned subsequent war crimes and crimes against humanity committed in Ukraine. It is not excluded, however, that in judicial proceedings, the crime of aggression will be considered in connection with other international crimes, including war crimes committed by members of the Russian armed forces.

It should be understood that the scale of the aggression, the number of recorded war crimes, and the complexity of proving guilt mean that a significant portion of the burden of proof and prosecution will fall on the national justice system of Ukraine, in cooperation with international partners.

However, the creation of the ad hoc tribunal is not the only mechanism for ensuring international accountability. Universal jurisdiction serves as a support for the national systems.

The principle of universal jurisdiction allows states to investigate and prosecute individuals responsible for the gravest international crimes – genocide, crimes against humanity, war crimes, and torture – regardless of where they were committed, the nationality of the perpetrators, or that of the victims. This principle is applied as a mechanism of last resort, when other jurisdictional principles (territorial, personal, or protective) cannot be used.

Its implementation is based on national legislation but also has an international legal foundation, including Article 5 of the Convention Against Torture (1984), Articles 49, 50, 129, and 146 of the Geneva Conventions (1949), Article 85 of Additional Protocol I (1977), and Article 7 of the Protection of Diplomats Convention (1973)¹⁵.

Some states have expanded the scope of this principle. For example, Argentina allows prosecution for any crimes against international law; Norway applies it in cases provided for by international treaties; and Spain applies it to piracy, terrorism, counterfeiting, and drug trafficking¹⁶.

Thus, universal jurisdiction becomes an effective tool in combating impunity for international crimes, including those committed on the territory of Ukraine, when international institutions cannot fully cover criminal activity.

1.2. National Standards for the Prosecution for War Crimes

National standards for accountability for international crimes, including war crimes, in Ukraine are based on the Criminal Code of Ukraine¹⁷ and international instruments such as the 1949 Geneva Conventions¹⁸, the Rome Statute¹⁹, and other international legal instruments whose binding force has been approved by the Verkhovna Rada of Ukraine in accordance with Article 9 of the Constitution of Ukraine²⁰. These standards provide that war crimes constitute criminal offenses.

Ukraine is also a party to two international conventions on the non-applicability of statutes of limitations to international crimes: the 1968 United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, ratified by the Presidium of the Verkhovna Rada of the Ukrainian SSR in 1969²¹, and the 1974 European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes, ratified by the Verkhovna Rada of Ukraine in 2008²².

Criminal liability for war crimes, pursuant to Articles 6 and 8 of the CC of Ukraine, is borne by persons who committed criminal offenses on the territory of Ukraine, as well as by foreigners or stateless persons who do not permanently reside in Ukraine and who, outside the territory of Ukraine, committed any of the crimes provided for in Articles 437-439, 442, 442¹ of the Criminal Code of Ukraine.

On August 21, 2024, the Verkhovna Rada of Ukraine adopted a law ratifying the Rome Statute²³.

Ukraine became a full member of the ICC on January 1, 2025.

At the same time, by the Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court (dd. October 9, 2024, No. 4012-IX)²⁴, the provisions of the Rome Statute were essentially implemented into Ukraine's national legislation.

By this law, which entered into force on October 24, 2024, the provisions of Articles 437 (Crime of Aggression), 438 (War Crimes), and 442 (Genocide) were improved by renaming the articles and strengthening criminal liability. In addition, the Code was supplemented with a new Article 442¹ Crime against Humanity.

However, the vast majority of crimes committed as a result of the armed aggression of the Russian Federation against Ukraine are classified under Article 438 of the CC of Ukraine.

Prior to Ukraine's accession to the Rome Statute, war crimes in the Criminal Code of Ukraine were covered by the offense provided for in Article 438 Violation of the Laws and Customs of War.

¹⁷ <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

¹⁸ https://zakon.rada.gov.ua/laws/show/995_154

¹⁹ https://zakon.rada.gov.ua/laws/show/995_588#Text

²⁰ <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

²¹ https://zakononline.ua/documents/show/140217_529075

²² https://zakon.rada.gov.ua/laws/show/994_125#Text

²³ <https://www.rada.gov.ua/news/razom/252711.html>

²⁴ <https://zakon.rada.gov.ua/laws/show/4012-20#n33>

¹⁵ <https://truth-hounds.org/cases/voyenni-zlochyny-metodologiya-rozsliduvan-dlya-gromadskyh-organizacij/>

¹⁶ Ibid.

This offense included:

- Cruel treatment of prisoners of war or the civilian population, - Forced displacement of civilians for compulsory labor
- Looting of national values in the occupied territory
- Use of means and methods of warfare prohibited by international law
- **Other breaches of the laws and customs of war** stipulated in international treaties ratified by the Verkhovna Rada of Ukraine, including the issuance of orders to carry out such acts.

According to data from the OPG and the NatPol, between February 24, 2022, and October 25, 2024, law enforcement authorities registered 142,145 criminal proceedings under Article 438 (Violation of the Laws and Customs of War) of the CC of Ukraine, including 118,071 criminal proceedings investigated by investigators of the National Police of Ukraine (Annexes 1 and 2).

Following the ratification of the Rome Statute and the adoption of the implementing law²⁵, Article 438 of the CC of Ukraine was amended in ways that went beyond merely renaming the article 'War Crimes'. In particular, the qualifying element of war crimes under Part 2 of Article 438 «if they are combined with intentional murder» was reworded as follows: «if they resulted in the death of a person».

Furthermore, on June 17, 2025, by Law No. 4499-IX²⁶, amendments were introduced to Part 1 of Article 438 of the CC of Ukraine, pursuant to which a war crime also includes the unlawful displacement or deportation of a child, unjustified delay in the repatriation of a child, and the recruitment or use of a child to participate in an armed conflict or military (combat) actions.

Despite the positive amendments to Article 438 of the CC of Ukraine, which have brought it closer to international standards, experts also note the existence of certain problems related to the application of specific provisions of this article.

In particular, these problems concern the determination of qualifying elements of the article itself, as well as their combination with other provisions of the CC of Ukraine.

As noted above, Part 2 of Article 438 of the CC was amended by changing the wording from «if they are combined with intentional murder» to «if they resulted in the death of a person», which is significant for determining the subjective element of the crime. The previous version of the article explicitly indicated intentional murder as a mandatory element of the qualified offense, which implied exclusively intentional guilt with respect to the victim's death. The new version uses the broader wording «resulted in the death of a person», which does not specify the form of guilt regarding the consequence. The phrase «resulted in the death of a person» covers any causal link between the act and the victim's death. Accordingly, the new version allows for liability both for intentional murder in the context of war crimes

and for causing death through negligence, for example, as a result of the indiscriminate use of prohibited methods of warfare.²⁷

Another legislative innovation was the supplementation of Section VI of the General Part of the CC of Ukraine with Article 31-1, Criminal Liability of Military Commanders, Other Persons Effectively Acting as Military Commanders, and Other Superiors (Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto of October 9, 2024, No. 4012-IX).

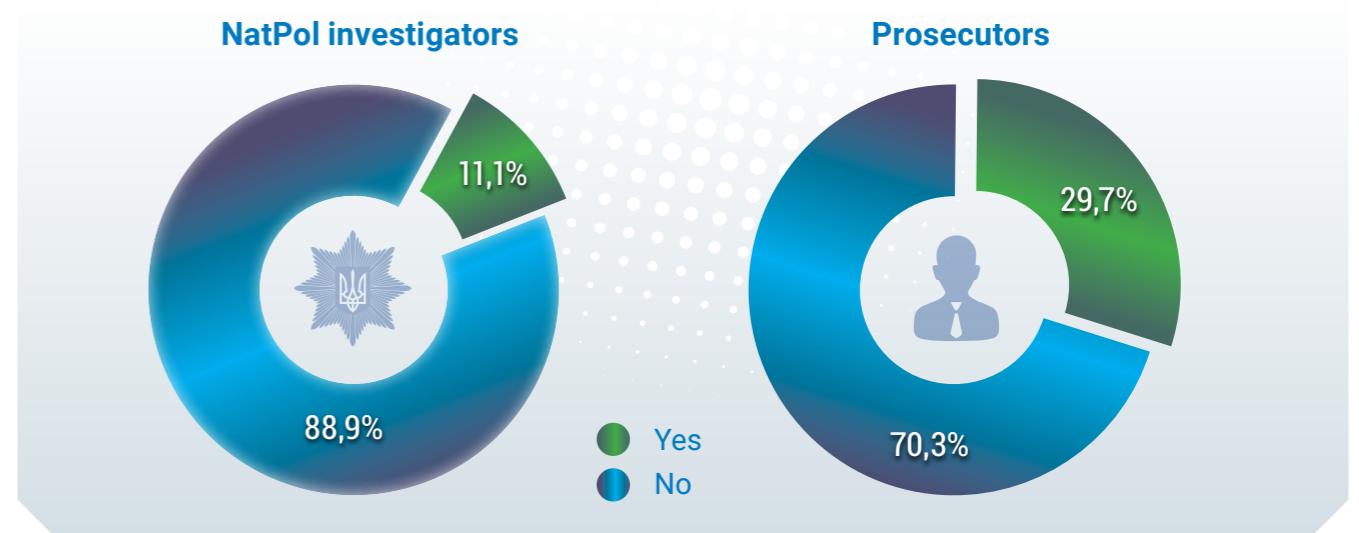
This article sparked lively debate among experts regarding the need to qualify the acts or omissions of a military commander not only under Article 31-1 of the CC of Ukraine, but also under Article 438 of the CC of Ukraine in cases where a war crime is committed by their subordinate.²⁸

Representatives of law enforcement agencies also note the existence of problems with the qualification of crimes under Article 438 of the CC of Ukraine.

Among 117 investigators involved in the investigation of war crimes who were surveyed, 11% indicated difficulties with qualification under this article. The proportion of prosecutors who perceive difficulties in qualifying crimes under Article 438 of the CC of Ukraine is significantly higher: 29.7% (out of 64 respondents).

Both investigators and prosecutors also note difficulties in distinguishing between war crimes and other offenses (for example, intentional murder, looting, or offenses under Articles 438 and 439 of the CC of Ukraine), which complicates prosecution.

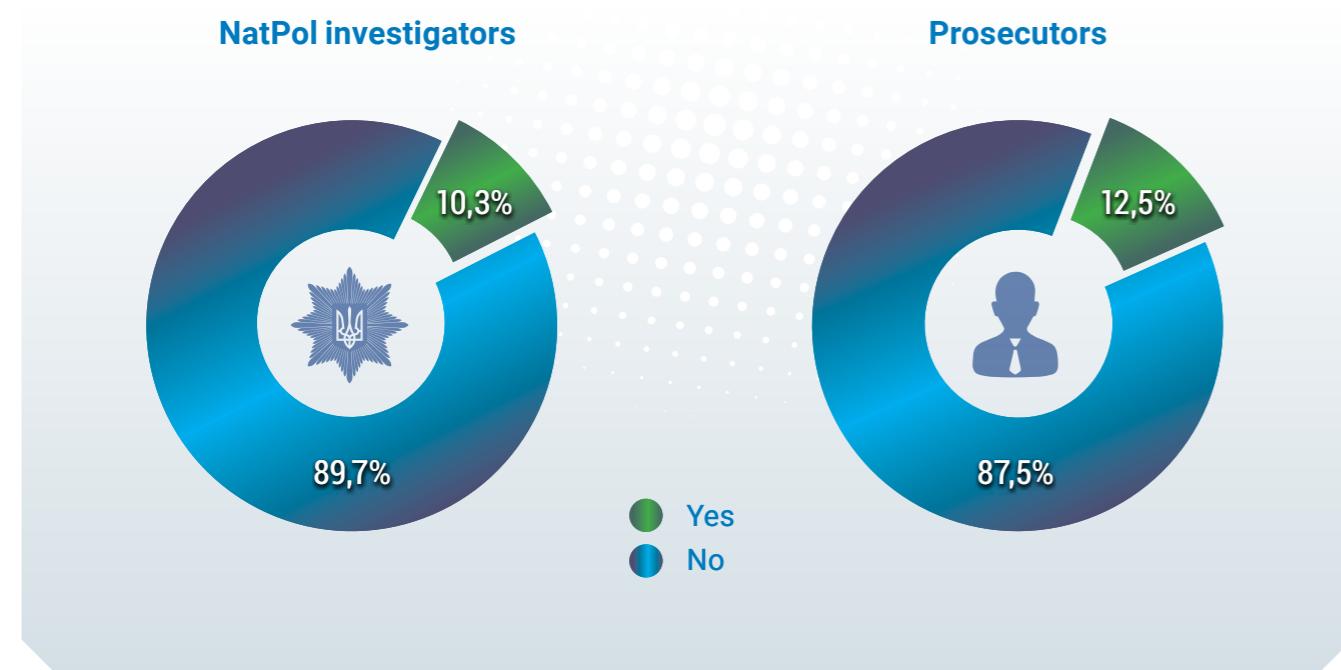
In response to the question: «Are there any difficulties in classifying crimes under Article 438 of the CC of Ukraine?» - Responses of National Police investigators and prosecutors were distributed as follows:



²⁷ http://www.lsej.org.ua/2_2025/79.pdf; https://www.helsinki.org.ua/wp-content/uploads/2024/05/Press_Med_Osvit_CoverA4-1-1.pdf

²⁸ <https://visnyk-juris-uzhnu.com/wp-content/uploads/2025/07/35-3.pdf>

In response to the question: «Are there any difficulties in distinguishing between war crimes and other offenses (for example, intentional murder, looting, or offenses under Articles 438 and 439 of the CC of Ukraine), which complicates prosecution?» - The following responses were received:



However, it is not possible to analyze the law enforcement practice under Article 438 of the CC of Ukraine, as information on the classification of proceedings by types of war crimes (crimes against life and health; damage to and destruction of civilian or critical infrastructure; attacks on housing; and other categories) is not aggregated by Ukrainian law enforcement authorities (Annexes 1 and 2).

It should be noted that, in practice, the OPG does collect statistical information by grouping criminal proceedings according to types of war crimes. For example, in response to a request from the Ukrainian Helsinki Human Rights Union as part the study 'Two Years at Gunpoint. Healthcare and Educational Institutions Russia Is at War With', the OPG provided information broken down by criminal proceedings investigated in connection with attacks on educational institutions and healthcare facilities.²⁹

The practice of collecting differentiated data is positive, as it makes it possible to reflect the actual scale of war crimes committed by the Russian Federation in Ukraine by category. The above initiative requires formal legal regulation, as the use of such data enables both state law enforcement authorities and human rights organizations to uphold the right of the State of Ukraine and victims of war crimes committed by the Russian Federation to justice.

Conclusions:

1. Despite the positive amendments to Article 438 of the CC of Ukraine, which have brought it closer to international standards, experts also note the existence of certain problems related to defining the qualifying elements of the article itself and their combination with other provisions of the CC of Ukraine.
2. There is no statutory regulation governing the recording of criminal proceedings in the URPTI by types of war crimes provided for in Article 438 of the CC of Ukraine or Article 8 of the Rome Statute, despite the fact that law enforcement authorities collect such data in practice.

²⁹ https://www.helsinki.org.ua/wp-content/uploads/2024/05/Press_Med_Osvit_CoverA4-1-1.pdf

Section 2. Pre-Trial Investigation of War Crimes: Practical Aspects and Challenges

2.1. Jurisdiction and Specialization

Jurisdiction

(The Criminal Procedure Code of Ukraine defines a pre-trial investigation as a stage of criminal proceedings that begins from the moment information about a criminal offense is entered into the Unified Register of Pre-Trial Investigations and ends with the closure of the criminal proceedings or the submission to court of an indictment, a motion for the application of compulsory medical or correctional measures, or a motion for exemption from criminal liability (Clause 5, Part 1, Article 3 of the CPC of Ukraine)³⁰.

Pursuant to the CPC of Ukraine (Article 216), pre-trial investigations in criminal proceedings are conducted by investigators of the National Police, security agencies, the State Bureau of Investigation, detectives of the Bureau of Economic Security of Ukraine, and the National Anti-Corruption Bureau of Ukraine.

OPG's website³¹ contains information indicating that war crimes committed by the Russian Federation in Ukraine are investigated by:

- National Police
- Security Service of Ukraine
- State Bureau of Investigation
- National Anti-Corruption Bureau

In turn, the Office of the Prosecutor General provides procedural guidance for investigations of war crimes. Prosecutorial authorities monitor compliance with laws and regulations during the documentation and investigation of war crimes by other law enforcement agencies and represent the prosecution in courts.

Prosecutors collect evidence of war crimes committed by Russia to ensure their proper documentation in accordance with international standards and practices. Such evidence may be presented in both Ukrainian and international courts.

However, Article 216 of the CPC of Ukraine clearly defines the jurisdiction of each of the aforementioned law enforcement agencies in conducting pre-trial investigations.³²

Thus, pursuant to Part 1 of Article 216 of the CPC of Ukraine, investigators of the National Police conduct pre-trial investigations of criminal offenses provided for by the Law of Ukraine on Criminal Liability, **except for those falling within the jurisdiction of other pre-trial investigation bodies.**

At the same time, under Part 2 of Article 216 of the CPC of Ukraine, investigative security bodies conduct pre-trial investigations of criminal offenses provided for in Articles 109, 110, 110², 111, 111¹, 111², 112, 113, 114, 114¹, 114², 201, 258-258⁶, 265¹, 305, 328, 329, 330, 332¹, 332², 333, 334, 359, 422, 435¹, 436, 436², **437, 438, 439, 440, 441, 442, 442¹**, 443, 444, 446, 447 of the Criminal Code of Ukraine.

Accordingly, the investigation of criminal offenses under Articles 437 (Crime of Aggression), 438 (War Crimes), 439 (Use of Weapons of Mass Destruction), 442 (Genocide), 442¹ Crime against Humanity falls, by jurisdiction, within the competence of investigators of the Security Service of Ukraine.

However, the provisions of Part 10 of Article 216 of the CPC of Ukraine empower the prosecutor exercising oversight over the pre-trial investigation to change jurisdiction.

Therefore, if during pre-trial investigation other criminal offenses are established that were committed by the person under investigation or by another person, provided that they are related to the criminal offenses committed by the person under investigation and do not fall within the jurisdiction of the body conducting the pre-trial investigation in the criminal proceedings, and provided that it is impossible to separate these materials into a separate proceeding, the supervising prosecutor determines the jurisdiction of all such criminal offenses by a reasoned decision³³.

It should be noted that such wording is quite broad in terms of interpretation, and the determination of jurisdiction may be significantly influenced by a subjective factor, i.e. the position of the prosecutor exercising oversight over the pre-trial investigation.

Given the lack of clear legislative certainty regarding detailed regulatory mechanisms for the prosecutor's classification of criminal proceedings depending on the competent investigative body, as well as the enormous workload placed on the investigators of the Security Service of Ukraine in investigating all war crimes, the decision of the Office of the Prosecutor General, the Security Service of Ukraine, and the National Police to apply Part 10 of Article 216 of the CPC of Ukraine appears both logical and legally permissible under the existing legal framework. For example, this applies in cases where the investigation of a criminal offense (the murder of a civilian by a Russian serviceman) is conducted simultaneously under Articles 438 and 115 of the CC of Ukraine.

Officials of the relevant structural units of the Office of the Prosecutor General and the National Police, authorized to conduct and provide procedural guidance for pre-trial investigations of war crimes committed by the Russian Federation in Ukraine, reported that jurisdiction in war crime cases is determined by prosecutors on a situational basis, without a clearly defined, legally established interagency allocation.

Accordingly, based on informal interagency arrangements, the Security Service of Ukraine, for example, investigates crimes related to missile attacks, UAVs, deportation of the civilian population, destruction of critical infrastructure, etc. The National Police investigate crimes related to the killing and injury of civilians, conflict-related sexual violence, and similar offenses.

³⁰ <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

³¹ <https://war.gp.gov.ua/crimes.html#>

³² <https://zakon.rada.gov.ua/laws/>

³³ <https://zakon.rada.gov.ua/laws/>

However, according to the results of a survey of 64 prosecutors involved in providing procedural guidance in war crime cases, the overwhelming majority (57.8% of respondents) indicated that the primary criterion for determining jurisdiction in this category of cases is the qualifying element of the crime. That is, where Article 438 of the CC of Ukraine applies, the case is investigated by the Security Service of Ukraine pursuant to Part 2 of Article 216 of the CPC of Ukraine.

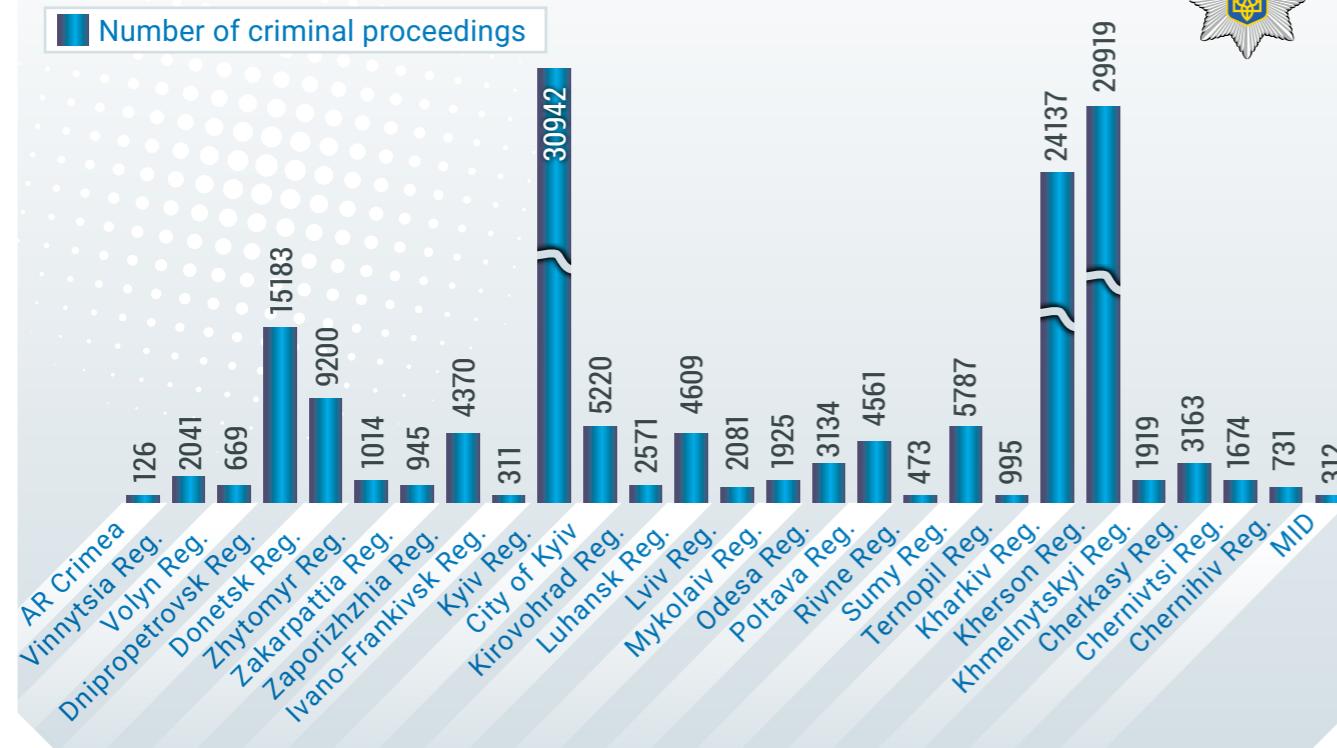
A total of 28.1% of prosecutors indicated that, when determining jurisdiction in war crime cases, they take into account the experience and expertise of the relevant law enforcement unit.

An additional 17.2% pointed to the number of cases already pending before a law enforcement body as a factor influencing the determination of jurisdiction.

In response to inquiries from the UHHRU, the Office of the Prosecutor General and the National Police reported that, according to data from the Unified Register of Pre-Trial Investigations (hereinafter referred to as the URPTI), during the period of martial law from February 24, 2022 to September 30, 2025, out of 185,231 criminal proceedings registered by law enforcement agencies, 158,012 proceedings were initiated by investigators of the National Police of Ukraine under Article 438 (War Crimes) of the CC of Ukraine (118,071 during the period from February 24, 2022 to October 25, 2024), accounting for 85% of all proceedings (Annexes 1, 2).

By region, criminal proceedings under Article 438 of the CC of Ukraine were registered by the National Police as follows: Autonomous Republic of Crimea – 126; Vinnytsia Region – 2,041; Volyn Region – 669; Dnipropetrovsk Region – 15,183; Donetsk Region – 9,200; Zhytomyr Region – 1,014; Zakarpattia Region – 945; Zaporizhzhia Region – 4,370; Ivano-Frankivsk Region – 311; Kyiv Region – 30,942; City of Kyiv – 5,220; Kirovohrad Region – 2,571; Luhansk Region – 4,609; Lviv Region – 2,081; Mykolaiv Region – 1,925; Odesa Region – 3,134; Poltava Region – 4,561; Rivne Region – 473; Sumy Region – 5,787; Ternopil Region – 995; Kharkiv Region – 24,137; Kherson Region – 29,919; Khmelnytskyi Region – 1,919; Cherkasy Region – 3,163; Chernivtsi Region – 1,674; Chernihiv Region – 731; and the MID – 312.

NUMBER OF CRIMINAL PROCEEDINGS UNDER ARTICLE 438 OF THE CC OF UKRAINE REGISTERED BY THE NATIONAL POLICE



By jurisdiction, criminal proceedings concerning the commission of 123,317 crimes were transferred to the Security Service of Ukraine, accounting for 66.5% of all proceedings.

Accordingly, in 33.5% of criminal proceedings under Article 438 of the CC of Ukraine, Part 10 of Article 216 of the CPC of Ukraine was likely applied, resulting in a change of jurisdiction.

As of September 30, 2025, pre-trial investigations conducted by National Police investigators were ongoing in 13,481 criminal proceedings (concerning 34,253 criminal offenses). At present, 29,478 individuals have been recognized as victims in these cases.

It is not possible to determine which specific types of war crimes provided for in Article 438 of the CC of Ukraine are investigated by NatPol investigators and which by investigators of the Security Service of Ukraine, since, according to information provided by NatPol in response to a request from the UHHRU, data on the distribution of these proceedings by categories of war crimes (crimes against life and health of the person; damage to or destruction of civilian or critical infrastructure; attacks on housing and other categories) are not aggregated by the MID (Annex 2).

Specialization of law enforcement agencies and organizational capacity in the field of war crimes investigations

According to the NatPol (Annex 2), the staffing structure of investigative units of the National Police of Ukraine provides for and includes specialized units for investigating crimes committed in the context of armed conflict, as well as separate specialized departments within the structure of the Main Investigative Department of the National Police of Ukraine.

According to the Office of the Prosecutor General (Annex 1), by orders of the Prosecutor General, specialized units (departments and divisions) to counter crimes committed in the context of armed conflict have been established within regional prosecutor's offices whose jurisdiction covers territories where the largest number of war crimes have been committed, as well as territories that have experienced temporary occupation.

Such specialized units have been established within 11 regional prosecutor's offices in the Dnipropetrovsk, Donetsk, Zaporizhzhia, Kyiv, Luhansk, Mykolaiv, Odesa, Sumy, Kharkiv, Kherson, and Chernihiv Regions, as well as within the prosecutor's offices of the Autonomous Republic of Crimea and the city of Sevastopol.

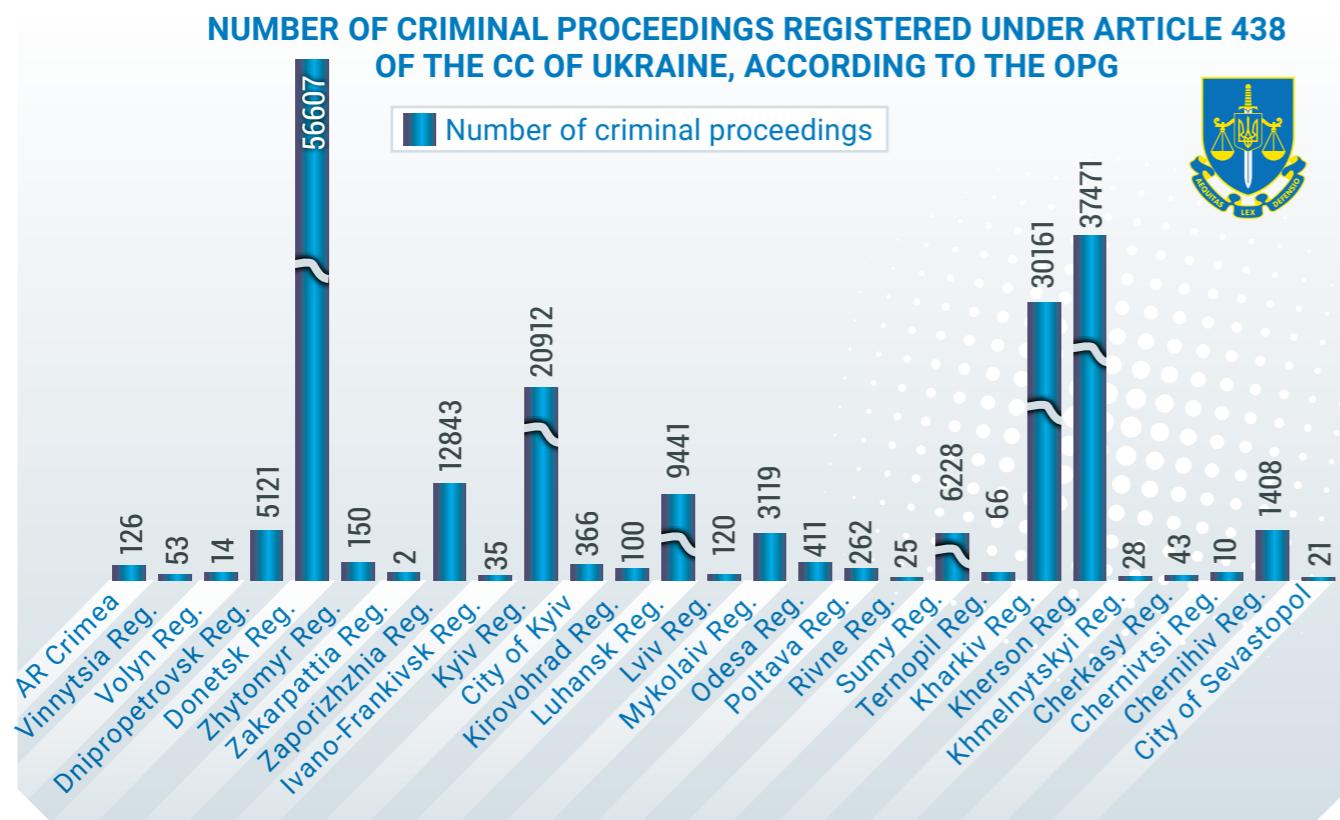
In addition, pursuant to a letter from the Prosecutor General, regional prosecutor's offices where specialized units have not been established have designated staff members responsible for organizing procedural supervision in criminal proceedings concerning crimes committed in the context of armed conflict, and for overseeing compliance with the law during pre-trial investigations in the form of procedural supervision in all criminal proceedings concerning criminal offenses provided for in Articles 436, 437, **438**, 439, 440, 442, and 447 of the CC of Ukraine.

At the same time, *it was not possible to obtain information on the organizational and staffing structure of investigative units of the National Police of Ukraine and prosecutorial bodies as part of this study*, since in response to a request from UHHRU the NatPol reported (Annex 2) that such data are not subject to disclosure, as they are not public and fall within the category of classified information (information with restricted access). In turn, the OPG noted (Annex 1) that, pursuant to the Prosecutor General's Order No. 129 of June 6, 2025, reporting on personnel work within the bodies of the Prosecutor's Office of Ukraine and the Instruction on its preparation were approved. The reports reflect key indicators characterizing the quantitative and qualitative composition of personnel, their transfers, incentives, etc. However, this reporting does not contain information on the specialization of prosecutors, including with regard to exercising procedural supervision in criminal proceedings concerning war crimes, nor on their number or the staffing levels of prosecutor's offices in this area.

Despite the absence of empirical data reflecting the number of law enforcement officials involved in the investigation of war crimes committed by the Russian Federation in Ukraine, it can be assumed that law enforcement officers face a significant workload due to the large number of recorded criminal offenses, a shortage of experienced specialists, dangerous working conditions, insufficient technical equipment, and the need to improve organizational processes, etc.

According to the OPG (Annex 1), from February 24, 2022 to September 30, 2025, law enforcement agencies registered 185,231 criminal offenses bearing the elements of the crime provided for in Article 438 of the CC of Ukraine, of which 142,145 were registered in the period from February 24, 2022 to October 25, 2024 (prior to the entry into force of amendments to the CC of Ukraine in connection with the ratification of the Rome Statute).

The distribution of registered criminal offenses under Article 438 of the CC of Ukraine by region is as follows:



According to the information from the OPG, as of September 30, 2025, pre-trial investigations were ongoing in 184,334 war crime cases.

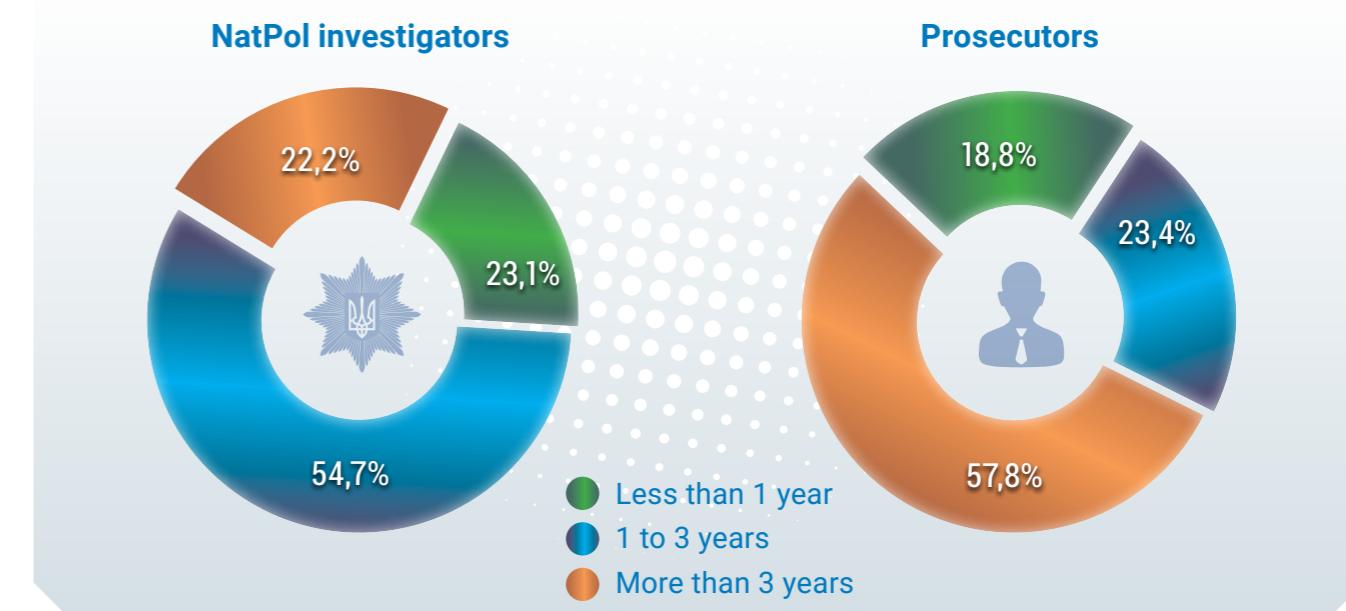
Given the significant volume of criminal proceedings under Article 438 of the CC of Ukraine, as well as the absence of information concerning the staffing capacity of personnel involved in the investigation of war crimes in the responses of the NatPol and the OPG to UHHRU's request, a survey of employees of the relevant specialized structural units of these law enforcement agencies was conducted (Annexes 4 and 5).

Investigators and prosecutors were asked questions concerning:

- Their work experience related to the investigation of war crimes
- Their assessment of this experience in terms of its sufficiency to ensure effective pre-trial investigation
- The adequacy of staffing levels in units investigating war crimes
- Whether the specialization of law enforcement personnel involved in the investigation of war crimes is justified
- The workload per investigator and prosecutor in terms of the number of war crime cases
- The availability of technical means and equipment for work (availability of a workstation, office equipment, vehicles, personal protective equipment, etc.)
- Factors affecting the effectiveness and duration of investigations

It should be noted that both National Police investigators and prosecutors positively assess the specialization in war crimes investigations introduced within the structural units of law enforcement agencies. Such specialization is considered justified by 83.8% of investigators and 85.9% of prosecutors who participated in the survey.

However, the survey demonstrated that the experience in investigating criminal offenses among NatPol investigators and prosecutors differs significantly.



A mere 22.2% of investigators have been working on war crimes investigations for more than three years. At the same time, 57.8% of prosecutors have more than three years of experience in exercising procedural supervision in war crime cases.

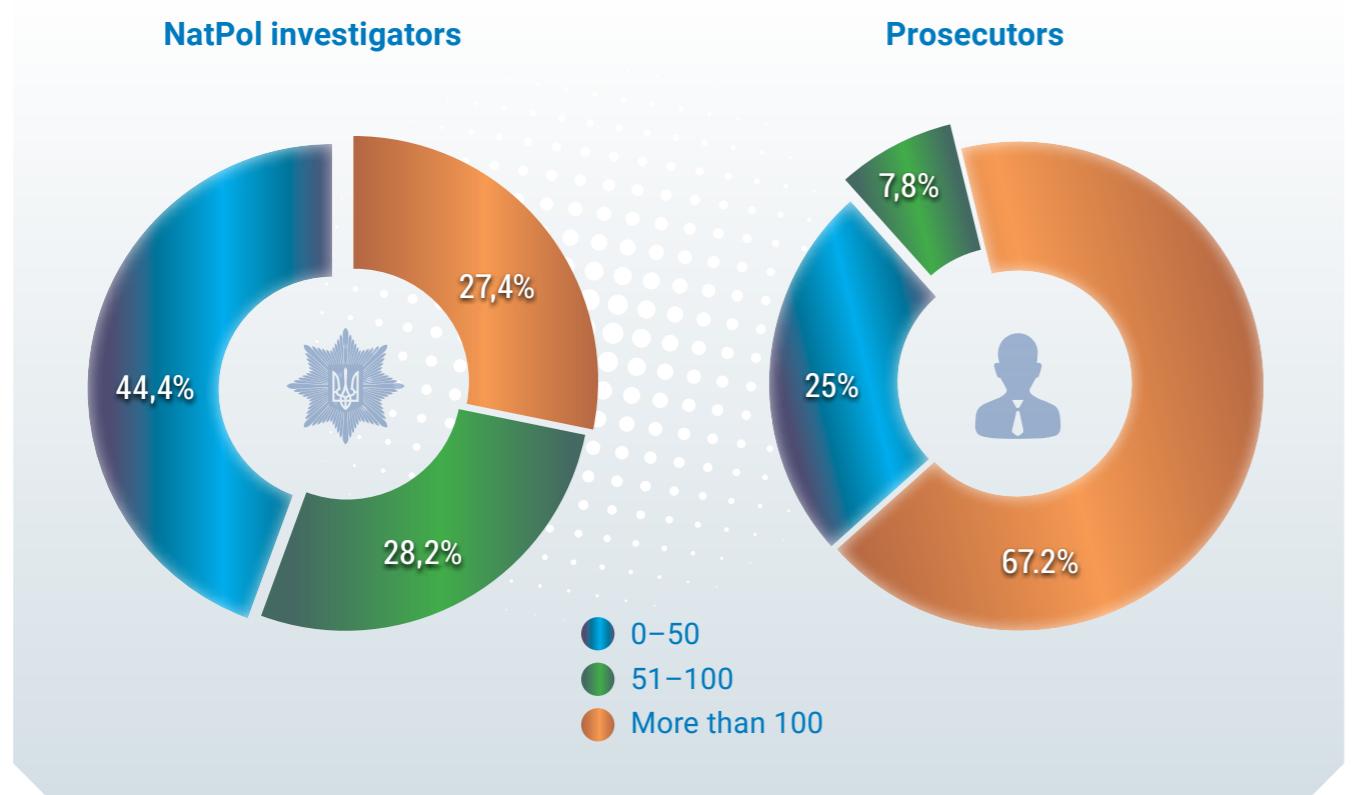
77.8% of investigators involved in war crimes investigations have less than three years of experience in this category of cases, including 23.1% with less than one year of experience. By contrast, the share of prosecutors with similar experience is 42.2% (including 18.8% with less than one year of experience).

This situation may negatively affect the quality and timeliness of investigations and the outcome of court proceedings, as noted by law enforcement officials themselves.

Thus, 32.2% of investigators and 26.6% of prosecutors consider their experience insufficient for conducting effective investigations of crimes under Article 438 of the CC of Ukraine.

Nearly half of the surveyed law enforcement representatives believe that staffing levels in units involved in the investigation of war crimes are insufficient: 41.9% of investigators and 46.9% of prosecutors, respectively.

The inadequacy of staffing levels is also evidenced by the workload borne by individual employees involved in investigation and procedural supervision.



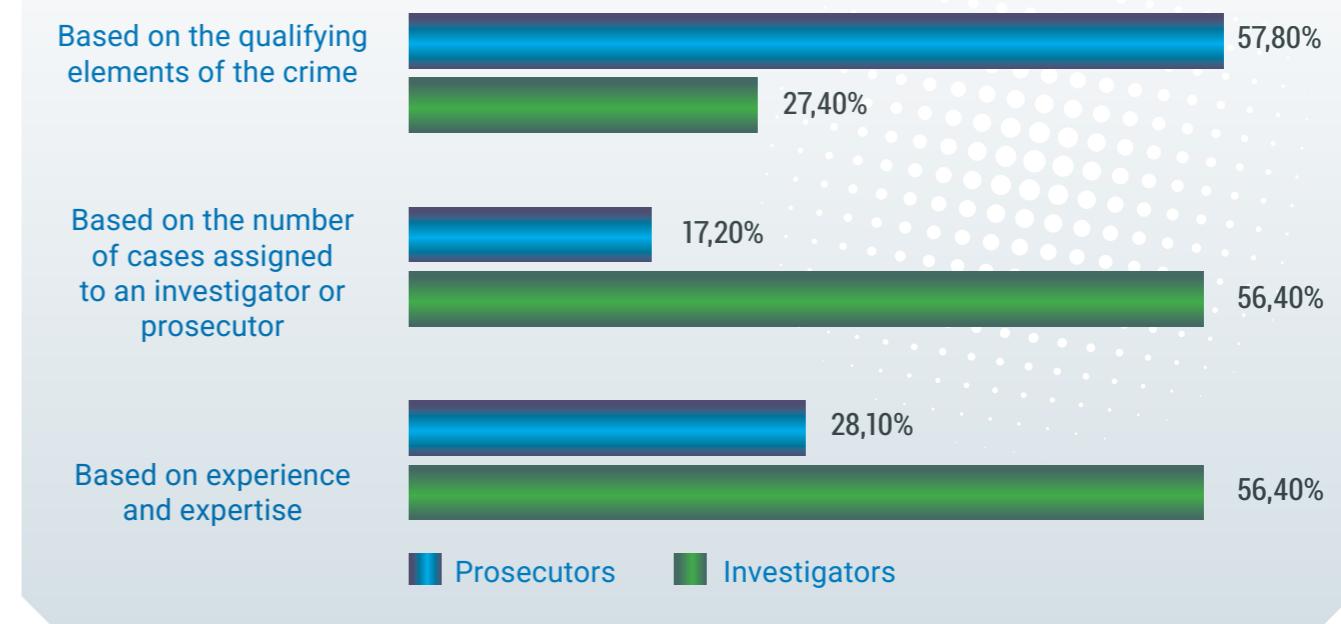
It should be noted that 67.2% of prosecutors exercise procedural supervision in more than 100 war crime cases, while only 27.4% of investigators have more than 100 cases in their caseload.

Such a disparity in workload between investigators and prosecutors is significant and inevitably affects the quality of procedural supervision in war crime cases.

Both investigators and prosecutors identified three main criteria according to which workload is distributed within structural units of law enforcement agencies:

- Based on experience and expertise (56.4% and 28.1% of responses)
- Based on the number of cases assigned to an investigator or prosecutor (56.4% and 17.2% of responses)
- Based on the qualifying elements of the crime (27.4% and 57.8% of responses).

Main criteria according to which workload is distributed within the structural unit of the law enforcement agency



This indicates inconsistency in approaches to the allocation of cases between investigators and prosecutors by their supervisors. While experience, expertise, and the number of cases are the main criteria for investigators, for prosecutors the determining criterion is the distribution of powers based on the qualifying elements of the crime under Article 438 of the CC of Ukraine.

It can also be assumed that the criteria identified as predominant for case allocation within National Police units may result in excessive workloads for more experienced investigators. Indeed, as the survey shows, a mere 22.2% of investigators have more than three years of experience investigating criminal proceedings under Article 438 of the CC of Ukraine.

Among the factors that may affect the effectiveness of investigations and procedural supervision in war crime cases, the availability or lack of necessary technical means and equipment is particularly significant. A total of 11.1% of investigators and 26.6% of prosecutors indicated a lack of technical resources in their work.

Investigators reported shortages of:

- Vehicles, including armored vehicles
- Desktop computers, laptops, and Virazh-tablets
- Portable printers, including mobile wireless printers enabling the printing of color photo tables immediately after conducting investigative actions on site
- Mobile lighting and power supply
- Permanent workstations and office space
- Personal protective equipment and first aid kits
- Appropriate training in safety measures during investigative actions
- Access to international databases Applications such as Palantyr, Nemesis, Clearview, etc.



Prosecutors reported shortages of:

- Vehicles
- Photo and video recording equipment
- Laptops
- Workstations
- Personal protective equipment
- Portable wireless printers
- Flash drives and scanning devices
- EcoFlow power stations and lighting equipment
- Service weapons
- Trainings, seminars, or any educational activities on the subject



«No personal protective equipment, no social guarantees, personal vehicles are used (official vehicles are available only to management), and office equipment is partially personally owned.»

«Overcrowding of staff, insufficient office space, lack of vehicles, complete absence of personal protective equipment; prosecutors are also internally displaced persons who have lost everything, so the lack of adequate housing conditions and the complete disregard of these needs significantly complicate their work.»

Thus, both investigators and prosecutors most commonly identify the lack of vehicles, including armored vehicles, individual workstations, office equipment, and personal protective equipment as the main obstacles to their work.

Communication between law enforcement agencies

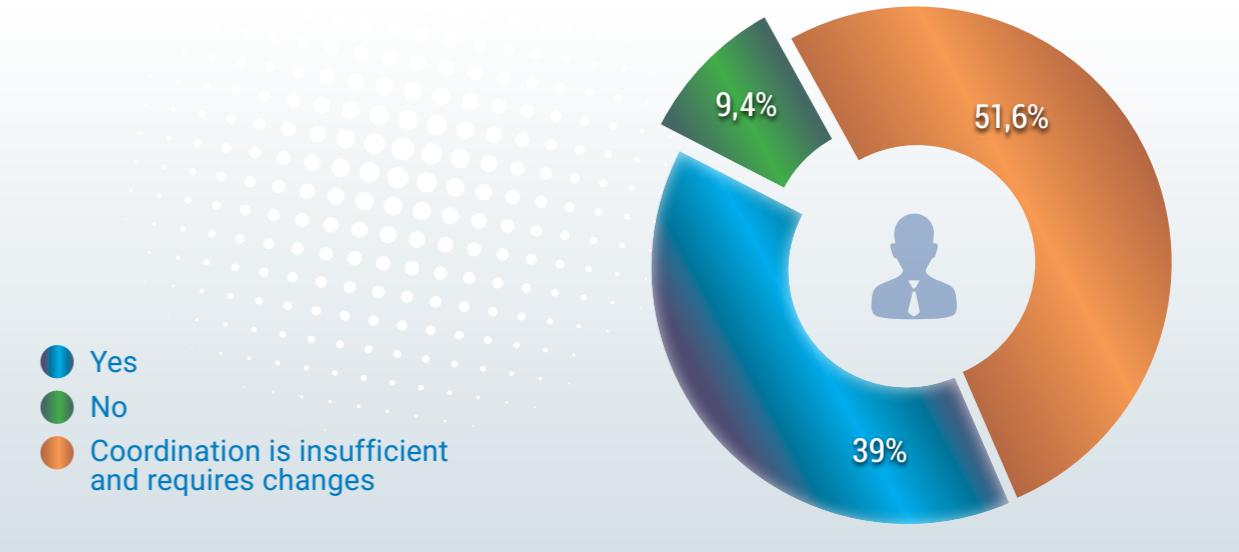
Communication between law enforcement agencies is essential for the investigation of war crimes, as it ensures information exchange (for example, data sharing between the police, prosecutor's office, and the Security Service of Ukraine), avoidance of duplication of actions (preventing situations where different units conduct the same investigative actions, which is inefficient and may undermine evidence collection), joint planning of activities (for example, planning investigative/search and, evidence-gathering and operational activities), and work co-ordination.

Effective communication enables the efficient collection of evidence, establishment of facts, and prosecution of perpetrators.

In recent years, numerous studies have focused on the issue of communication between law enforcement agencies, including in the context of war crime investigations, highlighting both its positive aspects and existing challenges. These studies are predominantly conducted from the perspective of police authorities.³⁴

This study proceeds on the assumption that, under the law, the prosecutor is responsible for procedural supervision, coordination of law enforcement activities, oversight of legality, and representation of the prosecution in court.

Accordingly, during the survey of prosecutors (Annex 4), respondents were asked whether, in their view, the existing mechanisms of interaction between law enforcement agencies (police units, the Security Service of Ukraine, and prosecutor's offices) involved in the investigation of war crimes are effective.



The overwhelming majority of prosecutors (61%) consider the existing interaction between law enforcement agencies to be ineffective (9.4%) or insufficient and in need of change (51.6%).

³⁴ <https://policeystika.dnuvs.ukr.education/index.php/policeystyka/article/view/200>

Conclusions:

1. Despite Article 216 of the CPC of Ukraine assigning jurisdiction over pre-trial investigations under Article 438 (War Crimes) of the CC of Ukraine to the Security Service of Ukraine, one-third of such cases are investigated by the National Police.
2. Due to insufficient legal regulation (the absence of relevant provisions in the CPC of Ukraine), jurisdiction in war crime cases is determined by prosecutors on a case-by-case basis, without a clear interagency distribution formally stipulated in law. The current CPC does not correspond to the realities of wartime and requires amendments.
3. The introduction of specialized structural units within law enforcement agencies to counter crimes committed in the context of armed conflict is a positive step toward holding perpetrators of war crimes accountable.
4. Staffing levels in units involved in the investigation of war crimes are insufficient, as indicated by nearly half of the surveyed law enforcement officers.
5. The vast majority of investigators and nearly half of prosecutors have less than three years of experience in investigating war crimes, which may negatively affect the quality and timeliness of investigations and the outcome of court proceedings.
6. The disparity in workload between investigators and prosecutors is significant and inevitably affects the quality of procedural supervision in war crime cases: 67.2% of prosecutors are in charge of procedural supervision in more than 100 war crime cases, while only 27.4% of investigators have more than 100 cases in their caseload.
7. A significant number of investigators and prosecutors encounter shortages of technical resources in their work, including the lack of vehicles (in particular armored vehicles), individual workstations, office equipment, and personal protective equipment.
8. The overwhelming majority of prosecutors consider the existing interaction between law enforcement agencies to be ineffective or insufficient and in need of change.

2.2. Challenges Arising During the Pre-Trial Investigation

Investigative actions and the collection of evidence

The core substantive tool of pre-trial investigation is the conduct of investigative actions.

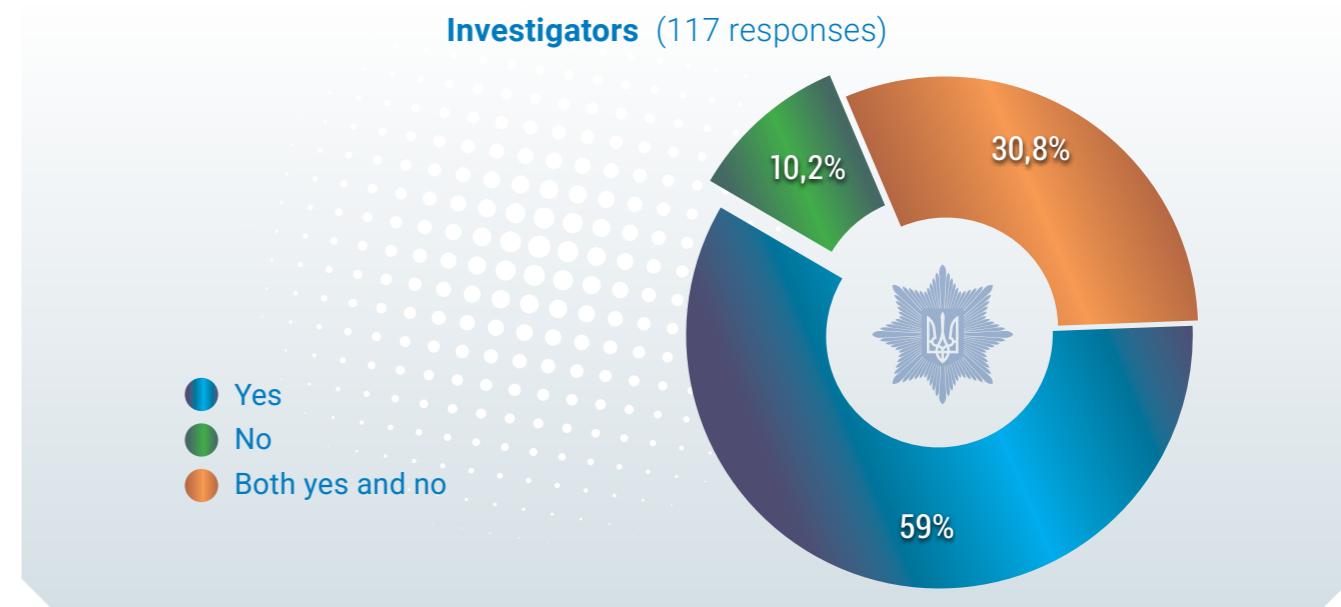
The definition, types, requirements, procedure for conducting investigative actions, and the range of persons involved therein are regulated by Chapter 20 of the CPC of Ukraine³⁵.

Pursuant to Article 223 of the CPC of Ukraine, investigative actions are actions aimed at obtaining (collecting) evidence or verifying evidence already obtained in a specific criminal proceeding.

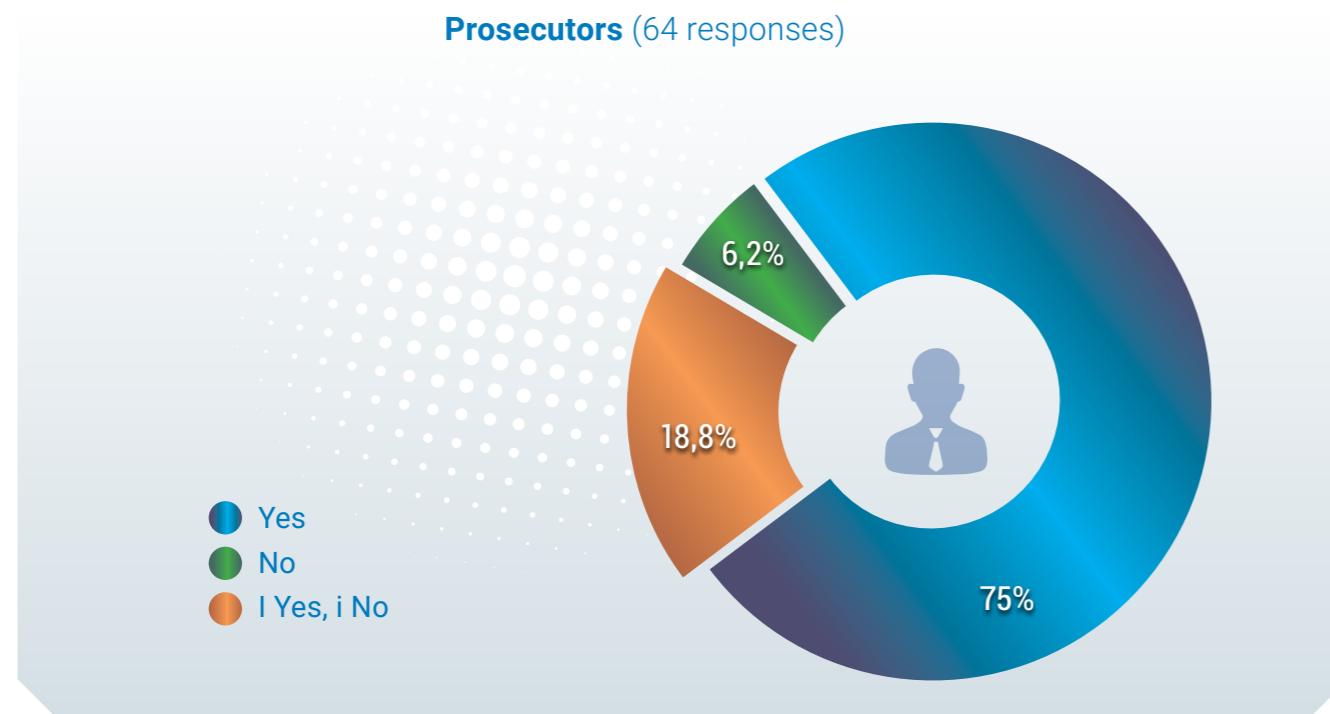
Given the specific nature of war crimes committed by the RF AF in Ukraine (such as cruel treatment of prisoners of war or civilians, the use of means and methods of warfare prohibited by international law, the unlawful displacement or deportation of a child, the unjustified delay in the repatriation of a child, the recruitment or use of a child to participate in an armed conflict or hostilities, shelling of civilian infrastructure, etc.), pre-trial investigations most often involve such investigative actions as interrogation, questioning, identification procedures (line-up), crime scene inspection, investigative experiments, and expert examinations.

However, the complexity of conducting investigative actions is aggravated by the fact that law enforcement officers are limited in their access to crime scenes and evidence due to the lack of access to such locations and evidence (victims and witnesses), as they may be located on the territory of the Russian Federation, in the temporarily occupied territories of Ukraine, in active combat zones, etc.

It should be noted that both investigators and prosecutors indicated, during the survey, that they experience difficulties in accessing crime scenes. This was reported by 59% of investigators and 75% prosecutors. An additional 30.8% of investigators and 18.8% of prosecutors indicated that access to crime scenes varies: being both accessible and inaccessible. A mere 10.3% of investigators and 6.3% of prosecutors reported that they had not encountered difficulties in accessing crime scenes.



³⁵ https://zakon.rada.gov.ua/laws/show/4651-17?find=1&text=%D1%81%D0%BB%D1%96%D0%B4%D1%87%D1%96+%D0%B4%D1%96%D1%97#w2_12



In addition, due to the continuous attacks across the entire territory of Ukraine, certain investigative actions are complicated not only due to the inability to access evidence, but also due to threats to the life and health of persons involved in evidence collection, including law enforcement officers.

There have been numerous cases of injury and death of law enforcement representatives during investigative actions in the course of pre-trial investigations of war crimes.

Observations indicate that the RF AF have chosen a method of warfare aimed at inflicting maximum harm on the civilian population, as well as on those carrying out rescue operations or promptly conducting investigative actions in the immediate aftermath of attacks.

In order to obstruct assistance to victims of shelling and missile attacks, the documentation of incidents, and the recording of crimes, perpetrators have increasingly carried out secondary strikes on the same civilian facility following an initial attack.

For example, on February 28, 2024, following shelling in the village of Khotin, Sumy District, Sumy Region, investigators were killed while documenting the consequences of an attack carried out the previous day and conducting a crime scene inspection alongside their colleagues.³⁶

Seven police officers, including investigators, were killed during an enemy missile strike on downtown Odesa on November 18, 2024.³⁷ In addition to them, a healthcare worker and two civilians were killed.



<https://www.instagram.com/p/DCmc5r-t2zc/>

On January 14, 2025, two police officers from Zaporizhzhia were killed in one of the villages of Bilozerka Territorial Community in Kherson Region. The police officers were neutralizing the warhead of an unexploded drone, which detonated. The law enforcement officers sustained fatal injuries.³⁸

In Kyiv, three State Emergency Service rescuers were killed on June 6, 2025, while responding to the consequences of enemy strikes. They were working under shelling in order to help people. Another nine emergency responders were injured.³⁹

³⁶ <https://univd.edu.ua/uk/news/18988>

³⁷ <https://www.youtube.com/watch>

³⁸ https://zaxid.net/dvoye_politseyskikh_zaginuli_pid_chas_zneshkodzhennya_nerozirvanogo_rosiyskogo_bpla_na_hersonshini_n1601747

³⁹ https://lb.ua/society/2025/06/06/680335_kiievi_pid_chas_liividatsii_ataki.html



https://t.me/Klymenko_MVS/1466⁴⁰

In this context, particular importance is attached to the need to strengthen the provision of personal protective equipment for all law enforcement representatives involved in rescue and investigative measures at crime scenes resulting from shelling of Ukrainian territory by the RF AF.

From the very clear of the full-scale military invasion of Ukraine by the Russian Federation, it was clear that the armed forces of the aggressor state flagrantly disregard the laws and customs of war established by the international law, which contains elements of war crimes.

In this regard, many human rights organizations have combined their efforts to collect data that would assist law enforcement agencies in investigating war crimes. First and foremost, this refers to initiatives and coalitions of civil society organizations such as Tribunal for Putin Initiative, 5 AM Coalition, and others.

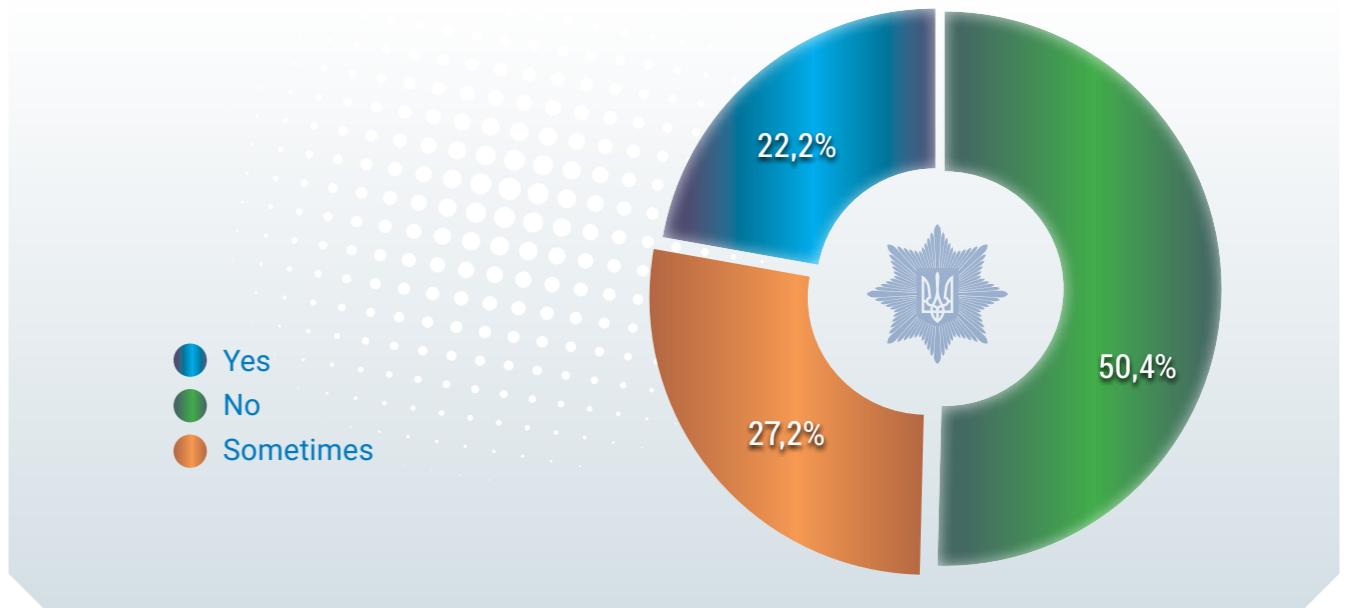
⁴⁰ <https://susplne.media/kyiv/1036071-hotiv-odruzitis-ale-ne-sudilosa-pro-zagiblih-ratuvalnikiv-u-kievi-rozgovili-druzi/>

This study examined whether *data collected through documentation activities by NGO initiatives and coalitions are used during pre-trial investigations*. If so, the question arises as to whether amendments to the CPC of Ukraine are necessary in order to determine the admissibility of evidence collected by NGOs in the course of documenting war crimes.

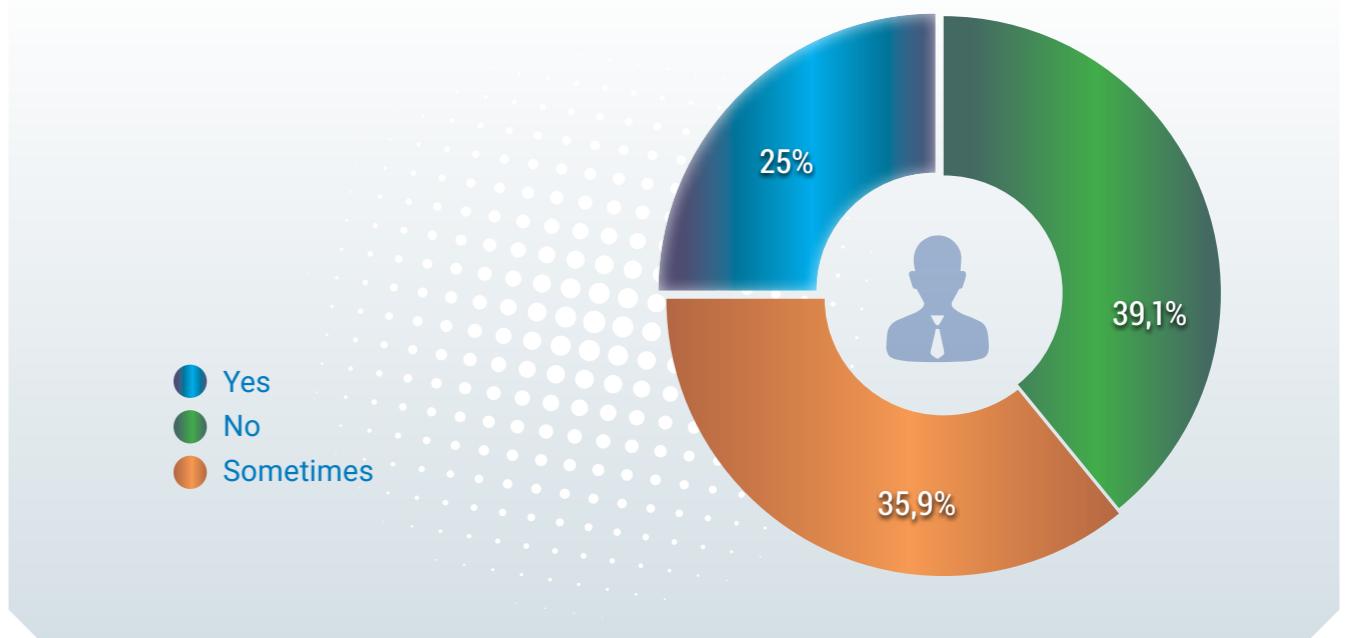
First, 11.1% of investigators and 9.4% of prosecutors indicated that data collected through NGO coalition documentation serve as a source for identifying war crimes and as grounds for initiating criminal proceedings.

Second, in response to the question: «*Are data collected through documentation by NGO coalitions (Tribunal for Putin, 5 AM Coalition, etc.) used during pre-trial investigations?*» - Almost half of investigators and prosecutors answered in the affirmative (taking into account 'yes' and 'sometimes' responses).

Investigators (117 responses)



Prosecutors (64 responses)



Accordingly, the question arises: *Is it necessary to amend the CPC of Ukraine in order to determine the admissibility of evidence collected by NGOs in the course of documentation activities carried out by non-state actors?*

The vast majority of law enforcement representatives consider such amendments necessary: 65.5% of investigators and 59.4% of prosecutors, respectively.

Thus, the involvement of human rights organizations in documenting war crimes is a positive factor that assists law enforcement agencies in detecting and investigating this category of cases; however, it requires legislative regulation within criminal procedural law.

On the time limits of pre-trial investigation and bringing perpetrators to justice (the in absentia factor)

The time limits for pre-trial investigation are regulated by Article 219 of the CPC of Ukraine⁴¹ and, until the beginning of 2024, were calculated from the moment information about a criminal offense was entered into the Unified Register of Pre-Trial Investigations until the day a person was notified of suspicion, and amounted to: Twelve months in criminal proceedings concerning a non-grave offense; Eighteen months in criminal proceedings concerning a grave or especially grave offense.

On January 1, 2024, the Law of Ukraine of December 8, 2023, On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialized Anti-Corruption Prosecutor's Office, entered into force.⁴²

This Law stipulates that the period of pre-trial investigation is calculated from the moment a person is notified of suspicion until the day an indictment is submitted to court, a motion is filed to apply compulsory medical or correctional measures, a motion is filed to release a person from criminal liability, a motion is filed to close criminal proceedings, or until the day a decision is made to close criminal proceedings.

The provisions of part one of Article 219 of the CPC, as amended by the Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialized Anti-Corruption Prosecutor's Office, apply to all criminal proceedings whose pre-trial investigation or court consideration had not been completed as of the date this Law On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialized Anti-Corruption Prosecutor's Office entered into force.

Thus, as of January 1, 2024, in criminal proceedings in which no person has been notified of suspicion ('fact-based' criminal proceedings), the time limits for pre-trial investigation are not calculated.⁴³

At the same time, pursuant to part three of Article 219 of the CPC of Ukraine, from the day a person is notified of suspicion, the pre-trial investigation must be completed:

- 1) Within seventy-two hours, in the event of notification of suspicion for a criminal offense or detention of a person in accordance with part four of Article 298-2 of the CPC of Ukraine
- 2) Within twenty days, in the event of notification of suspicion for a criminal offense where the suspect does not admit guilt or where additional investigative (search) actions are required, or where the criminal offense was committed by a minor
- 3) Within one month, in the event of notification of suspicion for a criminal offense if the person files a motion for an expert examination in the case provided for in part two of Article 298⁴ of this Code
- 4) Within two months from the day of notification of suspicion for the commission of a crime.

The period of pre-trial investigation may be extended in accordance with the procedure provided for in paragraph 4 of Chapter 24 of this Code.

If the pre-trial investigation of a crime cannot be completed within two months from the day a person is notified of suspicion, it may be extended in accordance with Articles 295-296 of the CPC of Ukraine:

- Up to three months from the day of notification of suspicion – by the head of the district prosecutor's office, the head of the regional prosecutor's office, or their first deputy or deputy, or a Deputy Prosecutor General
- Up to six months from the day of notification of suspicion for a non-grave crime – by an investigating judge upon a motion by the investigator approved by the head of the regional prosecutor's office or their first deputy or deputy, or by Deputy Prosecutors General
- Up to twelve months from the day of notification of suspicion for a grave or especially grave crime – by an investigating judge upon a motion by the investigator approved by the Prosecutor General or their deputies.⁴⁴

The final ground *for extending the period* of pre-trial investigation under part four of Article 294 of the CPC of Ukraine arises exclusively in cases where a person has been notified of suspicion of committing a grave or especially grave crime and the *pre-trial investigation cannot be completed due to the exceptional complexity of the proceedings*.⁴⁵

Thus, when extending the period of pre-trial investigation, it is necessary to prove that the grounds for such extension include the relevant complexity of the criminal proceedings.

⁴¹ <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

⁴² <https://zakon.rada.gov.ua/laws/show/3509-20#Text>

⁴³ https://jurliga.ligazakon.net/news/226444_stroki-dosudovogo-rozsluvannya-u-kriminalnikh-provadzhennya

⁴⁴ Tertyshnyk, V. M. Criminal Procedure Code of Ukraine. Scientific and Practical Commentary. 21st edition, revised and expanded. Kyiv: Alerta, 2024. P. 413. [in Ukrainian] ISBN 978-617-566-823-8 <https://knushop.com.ua/image/catalog/>

⁴⁵ <https://zakon.rada.gov.ua/laws/show/4651-17#n2631>

Article 28 of the CPC of Ukraine provides that the complexity of criminal proceedings, as a criterion for determining the reasonableness of procedural time limits, is determined taking into account the number of suspects, accused persons, and criminal offenses under investigation, the scope and specificity of procedural actions required for the pre-trial investigation, etc.

At the same time, the legislation does not contain any definition of special or exceptional complexity of criminal proceedings.

In this regard, it is reasonable to agree with certain expert opinions that the complexity of proceedings, including special and exceptional complexity, constitutes evaluative concepts that must be substantiated and proven by the prosecution when extending the period of pre-trial investigation.⁴⁶

Given the circumstances of the commission of crimes, as well as the particularities of access to certain investigative actions and evidence in war crime cases, we can assume that cases under Article 438 of the CC of Ukraine are complex to investigate and that the rules of Articles 219 and 294 of the CPC of Ukraine on extending pre-trial investigation time limits are applied to them.

This is confirmed by data provided by the Office of the Prosecutor General and the National Police in response to a request from UHHRU regarding the number of criminal proceedings initiated under Article 438 of the CC of Ukraine, the number of persons notified of suspicion for committing this offense, and the number of indictments submitted to court.

Thus, as noted above, according to the OPG (Annex 1), as of September 30, 2025, law enforcement agencies were conducting pre-trial investigations in a total of 184,334 criminal proceedings under Article 438 of the CC of Ukraine.

At the same time, as a result of investigations of war crimes, 446 indictments concerning 742 persons were submitted to court.

With regard to the remaining proceedings, pre-trial investigations are ongoing. Notices of suspicion for the commission of war crimes in these proceedings were served on 255 persons.

Meanwhile, according to the National Police (Annex 2), in 13,481 criminal proceedings (concerning 34,253 criminal offenses) in which pre-trial investigations were ongoing as of September 30, 2025, notices of suspicion for criminal offenses under Article 438 of the CC of Ukraine were served on 729 persons.

At the same time, pre-trial investigations were completed in 296 criminal proceedings, of which: 269 cases (concerning 424 criminal offenses) were referred to court (with respect to 401 persons), and 27 cases were closed on the grounds provided for in Article 284 of the CPC of Ukraine.

Pre-trial investigations were suspended on the basis of paragraph two of part one of Article 280 of the CPC of Ukraine, due to the search for suspects, in 74 criminal proceedings (concerning 581 criminal offenses).

The reasons for lengthy pre-trial investigation periods, as well as the significant disparity between the number of war crimes proceedings and the number of indictments referred to court, were examined in this study through a survey of law enforcement representatives.

Thus, among the reasons affecting the effectiveness and duration of pre-trial investigations in criminal proceedings under Article 438 of the CC of Ukraine, prosecutors identified the following:

What factors influence the efficiency and duration of case investigations?

64 responses



As can be seen, the most significant reasons, in the opinion of representatives of the prosecution authorities, are: difficulties in accessing evidence (85.9% of respondents), workload (71.9%), lack of access to suspects (60.9%), lengthy expert examinations (46.9%), and a shortage of specialists involved in investigations (34.4%).

Another 20% of respondents identified the following factors affecting the investigation of war crimes: lack of experienced experts/specialists to conduct necessary examinations or prepare conclusions (21.9%), deficiencies in legislation (20.3%), psychological/emotional exhaustion (20.3%), lack of experience in investigating war crimes (18.8%), and bureaucratic procedures (17.2%).

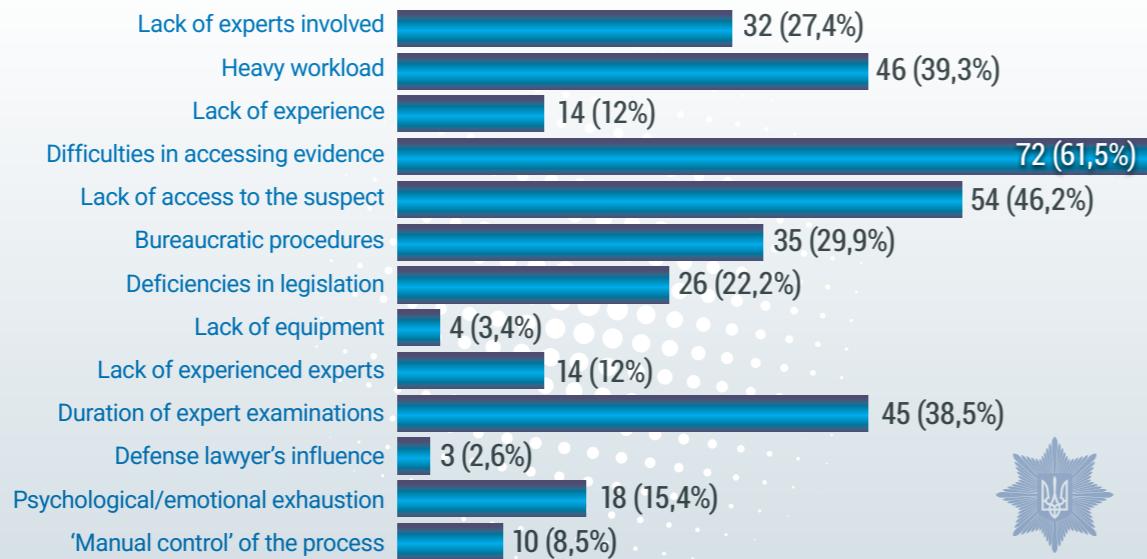
Noteworthy is also the reason of so-called 'manual control' (direct intervention in decision-making) of processes within pre-trial investigations, which was mentioned by 12.5% of prosecutors.

⁴⁶ https://jurliga.ligazakon.net/news/226444_stroki-dosudovogo-rozsluvannya-u-kriminalnikh-provadzhennya

At the same time, the responses of NatPol investigators regarding factors affecting the effectiveness and duration of pre-trial investigations were distributed as follows:

What factors influence the efficiency and duration of case investigations?

117 responses



The main influencing factors, in the opinion of NatPol representatives, are: difficulties in accessing evidence (61.5% of respondents), lack of access to suspects (46.2%), heavy workload on investigators (39.3%), lengthy expert examinations (38.5%), bureaucratic procedures (29.9%), and a shortage of specialists involved in investigations (27.4%).

Approximately 20% of respondents also identified deficiencies in legislation (22.2%) and psychological/emotional exhaustion (15.4%) as factors affecting the investigation of war crimes.

About 10% of investigators also noted such factors as lack of experience in investigating this category of cases (12%), lack of experienced experts and specialists (12%), and 'manual control' of processes (8.5%).

It is noteworthy that, overall, both prosecutors and investigators identified largely the same set of factors as influencing the effectiveness and duration of pre-trial investigations in criminal proceedings under Article 438 of the CC of Ukraine.

As noted above, law enforcement representatives pointed to the lack of access to suspects in war crime cases (the *in absentia* factor) as one of the main reasons that significantly affects the course of pre-trial investigations.

Accordingly, it is important to understand the specific features of notifying a person of suspicion in *in absentia* cases where the person is located on the territory of the Russian Federation or in temporarily occupied territory; what methods of notification of suspicion, in addition to those provided for by law, are used in practice in *in absentia* cases; whether amendments to the CPC of Ukraine are necessary to formalize methods of notifying suspects that are actually used in practice; and whether deviation from procedural legislation is permissible due to the investigation of cases *in absentia*, etc.

In war crime cases, law enforcement officers often work under conditions of limited access to persons who are located in temporarily occupied territories, outside Ukraine, or who evade participation in proceedings. Under such circumstances, traditional mechanisms for serving summonses are insufficient, which prompts investigators to seek additional communication channels to ensure compliance with procedural requirements. This assertion is also confirmed by the results of surveys of investigators, prosecutors, and attorneys, as described later in the study.

In response to a request from UHHRU (Annex 1), the OPG reported that if there are sufficient grounds to believe that a person has left and/or is located in the temporarily occupied territory of Ukraine or in the territory of a state recognized by the Verkhovna Rada of Ukraine as an aggressor state, notification of suspicion to such a person is carried out under a special procedure defined in part eight of Article 135 of the CPC of Ukraine. Namely, the notification is published in nationwide media outlets and on the official website of the Office of the Prosecutor General.

At the same time, the OPG noted that in practice, in addition to the methods specified in part eight of Article 135 of the CPC of Ukraine, notifications of suspicion are served (sent) to known contact details of the person, including email addresses, social media pages, messenger accounts, etc. The practice also involves sending notifications to the official email address of the institution where the person holds a position or services.

At the same time, the National Police reported that investigators of the National Police of Ukraine notify persons of suspicion for criminal offenses under Article 438 of the CC of Ukraine in accordance with the requirements of Articles 135, 276-279, and 297-5 of the CPC of Ukraine.

«In cases where a person is located in temporarily occupied territory or in the territory of the Russian Federation and it is impossible to physically serve a notice of suspicion, special pre-trial investigation (*in absentia*) is permitted in accordance with Chapter 24-1 of the CPC of Ukraine. In such cases, notification of suspicion may be carried out: by publication in official sources (for example, in the newspaper Uriadovyi Kurier or on the website of the Office of the Prosecutor General); through defense lawyer, if they participate in the criminal proceedings; by sending through international channels (for example, diplomatic channels),» the letter from the National Police states (Annex 2).

However, doubts arise as to the effectiveness of such a legislatively established method in *in absentia* cases, i.e. notifying a person of suspicion in the form of publication in Ukrainian media outlets or on the website of the Office of the Prosecutor General.

This is because war crime cases predominantly concern suspicions against service members of the RF AF, who are unlikely to read Ukrainian media or the OPG website, especially in the Ukrainian language.

Moreover, the provisions of Article 135 of the CPC of Ukraine, which law enforcement agencies cite as the legislative grounds for choosing the method of notification of suspicion, do not include such methods as social media pages, messenger accounts, notification through defense lawyer, etc.

This means that, in practice, in war crime cases investigated under the *in absentia* procedure, there is a deviation from the provisions of the CPC of Ukraine.

Law enforcement representatives expressed their views on how permissible and necessary such deviation from the law is in the context of investigating war crimes caused by the full-scale Russian invasion of Ukraine during the survey.

An affirmative response was given by 38.5% of investigators and 28.1% of prosecutors.

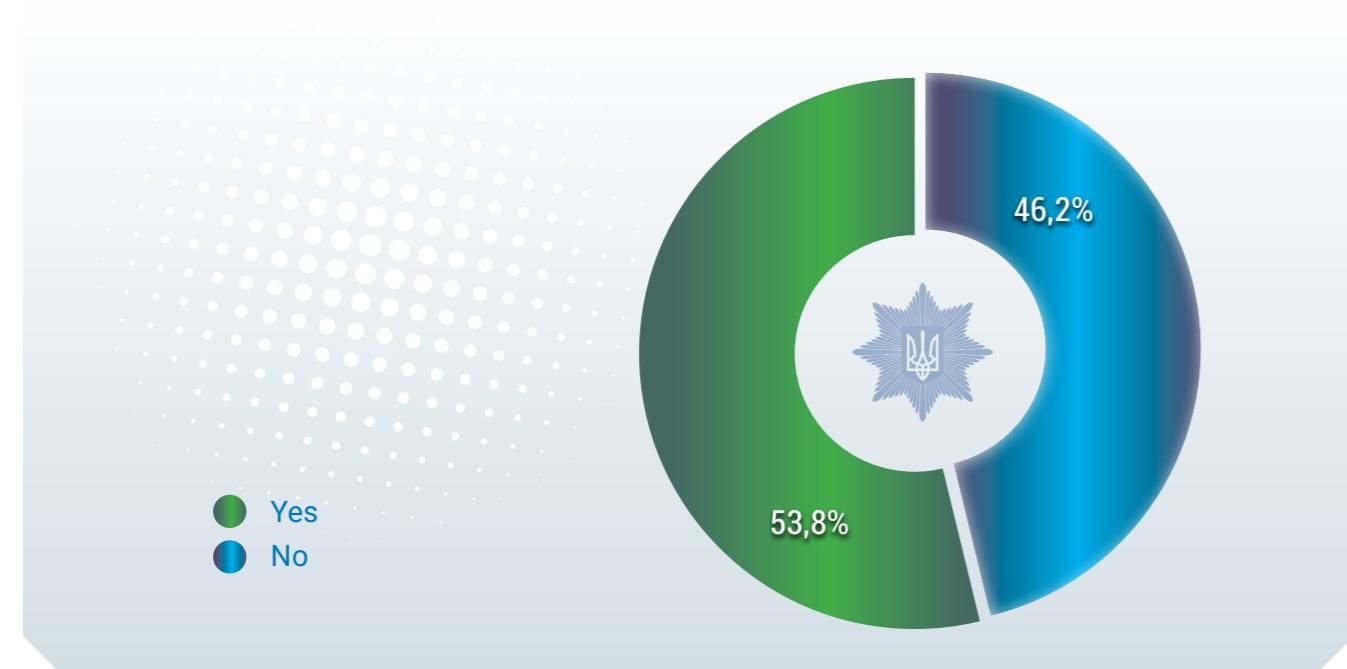
Accordingly, there appears to be a need for additional legislative regulation of the issue of notifying persons of suspicion in criminal proceedings of this category in order to improve the *in absentia* procedure.

This position is also emphasized by the Office of the Prosecutor General.

Currently, the development and submission to the Verkhovna Rada of Ukraine of a draft law aimed at improving the provisions of the CPC of Ukraine concerning *in absentia* criminal proceedings is envisaged in paragraph 3.8.2 of the Action Plan for the Implementation of the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of Ukraine's Security and Defense Sector for 2023-2027 (Resolution of the Cabinet of Ministers of Ukraine No. 792-r of August 23, 2024)⁴⁷.

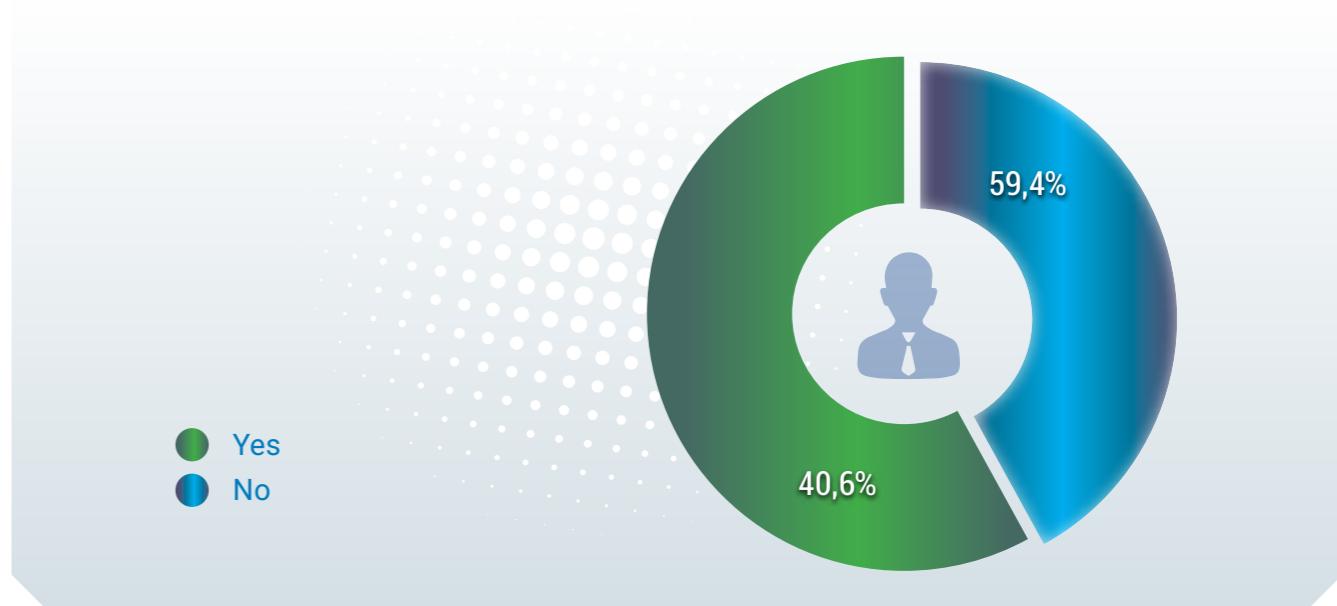
During the survey, both investigators and prosecutors also noted the need to amend the CPC of Ukraine in order to formalize methods of notifying suspects that are actually used in *in absentia* cases.

Of the 117 investigators who participated in the survey, 53.8% consider such amendments necessary.



⁴⁷ <https://zakon.rada.gov.ua/laws/show/792-2024-%D1%80#Text>

The survey results among prosecutors are somewhat different. Thus, of the 64 respondents who participated in the survey, 40.6% see the need to introduce the relevant legislative amendments.



Overall, the results of the survey of law enforcement representatives, as well as the responses of the OPG and the NatPol, reflect the existence of problems and the need for additional legislative regulation of methods of notifying of suspicion that are used in practice in the *in absentia* cases.

Conclusions

1. In light of the specific features of pre-trial proceedings in war crime investigations, particular importance is attached to the need to strengthen the provision of personal protective equipment for all law enforcement representatives involved in rescue and investigative measures at crime scenes resulting from shelling of Ukrainian territory by the RF AF.
2. The involvement of human rights organizations in documenting war crimes is a positive factor that assists law enforcement agencies in detecting and investigating this category of cases; however, it requires legislative regulation within criminal procedural law.
3. Cases under Article 438 of the CC of Ukraine are complex to investigate, and the rules of Articles 219 and 294 of the CPC of Ukraine on extending pre-trial investigation time limits are applied to them. At the same time, the legislation does not contain any definition of special or exceptional complexity of criminal proceedings.
4. Overall, both prosecutors and investigators identified largely the same set of factors as influencing the effectiveness and duration of pre-trial investigations in criminal proceedings under Article 438 of the CC of Ukraine.
5. The most significant factors affecting the effectiveness and duration of pre-trial investigations in war crime cases are: difficulties in accessing evidence, workload, lack of access to suspects, lengthy expert examinations, and a shortage of specialists involved in investigations.
6. The provisions of Article 135 of the CPC of Ukraine, which law enforcement agencies cite as the legislative grounds for choosing the method of notification of suspicion, do not include such methods as social media pages, messenger accounts, notification through defense lawyer, etc.

*This means that, in practice, in war crime cases investigated under the *in absentia* procedure, there is a deviation from the provisions of the CPC of Ukraine.*

7. There is a need for additional legislative regulation of notifications in criminal proceedings in order to improve the *in absentia* procedure.

2.3. Protection and Representation of the Interests of Victims and Defendants in War Crime Cases

One of the key aggravating factors during the pre-trial investigation of war crimes is the fact that the alleged perpetrators are located outside the jurisdictional and factual control of Ukrainian law enforcement agencies (residing in temporarily occupied territories or on the territory of the Russian Federation).

The current CPC of Ukraine provides for a mechanism for conducting pre-trial investigation and subsequent court proceedings in the absence of the suspect – in the form of a special pre-trial investigation (*in absentia*).

In this context, it is extremely important to ensure the fundamental principle of the right to a fair trial for the suspect or defendant (clause 3(c) of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁴⁸). According to this provision, every person suspected or accused of committing a criminal offense is guaranteed the right to personal defense or defense through a lawyer of their own choosing, ensuring the exercise of the right to effective legal protection within the criminal process.

The key guarantor of the rights and lawful interests of the suspect within the framework of a special pre-trial investigation is the defense lawyer. Specifically, according to clause 8 of part two of Article 52 of the CPC of Ukraine, participation of a defense lawyer is mandatory in criminal proceedings conducted against individuals within the framework of a special pre-trial or special court procedure, starting from the moment the relevant procedural decision is made. Thus, the provisions of Ukraine's criminal procedural legislation ensure the involvement of a defense lawyer not only at the trial stage but also during the pre-trial investigation, guaranteeing an adequate level of legal protection for the suspect at all stages of criminal proceedings.

It should be noted that, compared to the mandatory involvement of the accused's lawyer, the involvement of the victim's lawyer is considered possible but not obligatory.

Today, victims can engage a lawyer independently by entering into a contract, obtain guaranteed state-funded free legal assistance, or receive legal support from non-governmental organizations. Some lawyers also take on cases on a pro bono basis.

Therefore, the participation of a defense lawyer in special proceedings is a key guarantee of safeguarding the rights of the suspect and upholding the principle of adversarial proceedings. At the same time, the participation of the victim's lawyer is not mandatory, although proper representation of the victims' interests is crucial for the completeness and objectivity of proof. In this regard, the effective involvement of both the defense lawyer and the victim's representative is critical for establishing a balanced evidentiary base and ensuring standards of a fair trial in war crime cases.

Proper formation of the evidentiary base in war crime cases is one of the defining elements of effective criminal prosecution, as the quality, relevance, and admissibility of evidence ensure the possibility of holding perpetrators accountable and restoring justice for victims.

⁴⁸ https://zakon.rada.gov.ua/laws/show/995_004#Text

Given the complexity of the factual and legal context of armed aggression, such proceedings require meticulous and strict adherence to all procedural standards and compliance with national and international practices.

In this process, the participation of both the defense lawyer and the victim's representative is critically important, as they ensure the real application of the principles of adversarial proceedings and equality of the parties. The defense lawyer guarantees that the rights of the suspect or accused are not violated, while the victim's representative ensures that the rights of those affected by war crimes are properly represented and protected at all stages of the proceedings.

Proper and full compliance with proof procedures by pre-trial investigation authorities, the prosecution, and the active procedural involvement of the defense lawyer and victim's representative is the foundation for the right to a fair trial. The participation of these parties in verifying, refuting, or supplementing evidence serves as a guarantee that the process of evaluating facts will be balanced and comprehensive.

In the event of violations of procedural law, including denial of defense lawyer's access to participate in certain procedural actions, restrictions on the rights of the victim's representative, or failure to provide access to evidence, there is a risk of evidence being deemed inadmissible and a significant increase in the likelihood of complaints to the ECtHR. This may result in a finding that Ukraine violated the right to a fair trial and may undermine the legitimacy of the entire proceeding.

Thus, the effective and full involvement of the defense lawyer and victim's representative is not only a requirement of national law but also a key guarantee that the outcome of war crime investigations will be lawful, resilient to international scrutiny, and consistent with the principles of the rule of law.

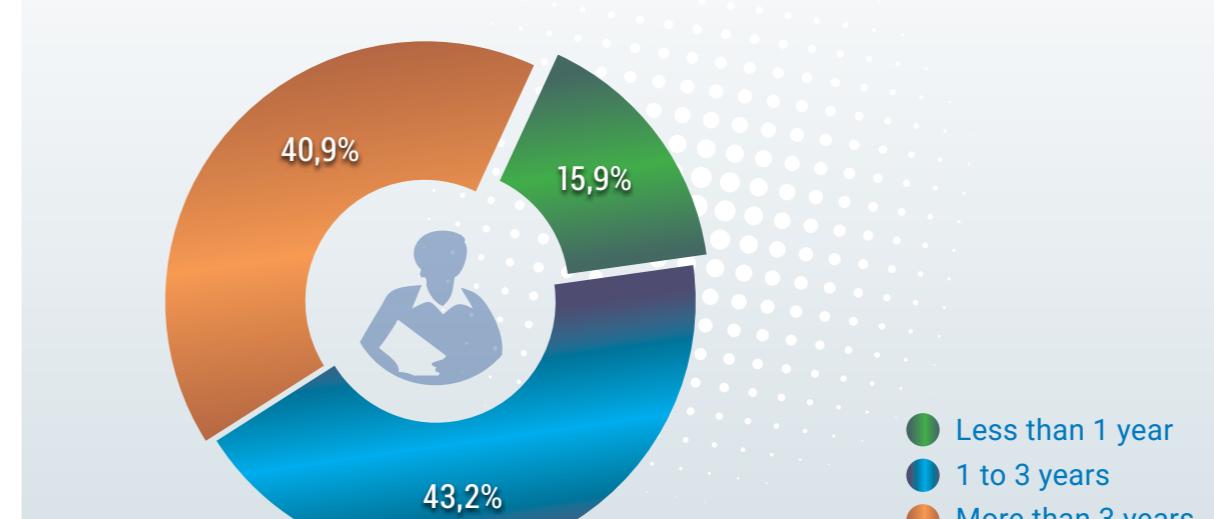
Forty-four lawyers with experience as defense lawyers or victim representatives in war crime cases participated in an anonymous survey.

The lawyers were asked questions regarding:

- Their experience related to defense in war crime proceedings
- Their assessment of this experience in terms of its sufficiency to ensure effective defense during pre-trial investigation
- Their evaluation of the quality of communication between lawyers, investigators, and prosecutors in such proceedings
- Methods of notifying victims and the defense lawyer about the referral of cases to court
- The involvement of victims in all investigative actions
- The factors affecting the effectiveness and duration of pre-trial investigations in war crime cases.

The survey results indicate a generally high level of professional experience among lawyers in the field of war crimes. The vast majority of respondents (84.1%, 37 of 44) have worked in this field for more than one year, with almost half of them (40.9%, 18) having over three years of experience. Only 15.9% (7) have worked on war crime cases for less than one year. This distribution demonstrates the stability of practice and the established expertise of specialists, which is important for ensuring quality defense in war crime proceedings.

How long have you been providing defense in criminal proceedings in the field of war crimes? (44 responses)



At the same time, significant experience does not always translate into a sense of its sufficiency. Despite the high percentage of experienced lawyers (84.1%), only 65.9% consider their professional level sufficient to ensure effective defense in war crime cases, while 34.1% assess their experience as insufficient. This gap indicates a need for additional support tools, training, and professional development to ensure quality representation in these complex case categories.

Such uncertainty may be caused by a number of objective factors: The large volume and complexity of war crime proceedings, especially those conducted in the absence of the defendant; Heightened responsibility for defense outcomes and the impact of decisions on the accused's fate; Emotional pressure associated with maintaining professional detachment while lawyers themselves are part of a society experiencing the consequences of war; Societal and media pressure due to misunderstanding of the role of the defense lawyer in cases involving representatives of the aggressor state. Together, these factors can create a sense of insufficient preparedness even among specialists with substantial professional experience.



Regarding lawyers' interaction with investigators and prosecutors in war crime cases, there is generally a rather low level of satisfaction with communication. A mere 31.8% of respondents are fully satisfied with communication. 22.7% are completely dissatisfied, and 45.5% noted that the level of communication is inconsistent and depends on the specific situation. This trend is also confirmed by the fact that only half of the surveyed lawyers (50%) reported that, during the planning of investigative actions, the involvement of the defense lawyer or representative is taken into account. Meanwhile, 13.6% of respondents indicated that investigators do not consider the availability of a defense lawyers or representative at all, and another 13.6% noted that such consideration is irregular.

Regarding communication with the victim: Investigators communicate both directly and through the victim's lawyer. Victims are usually informed about the referral of materials to court in writing or by phone, though other electronic means or oral notifications are also used.

Regarding victim's participation in all investigative actions, most lawyers reported that such actions are conducted «as needed» (61.4%). 34.1% of respondents answered 'no', and a mere 4.5% indicated victim participation in every investigative action. This distribution may indicate several important trends. First, the involvement of victims is mostly seen as situationally necessary rather than standard practice, which may be explained by investigative workload, limited resources, or logistical difficulties, especially during wartime. Second, a significant portion of cases where victims are not involved may reflect efforts to minimize re-traumatization, as participation in investigative actions often requires detailed reconstruction of the crime circumstances.

Defense lawyers are mostly notified about the referral of materials to court in writing or by phone. Oral notifications and electronic communications are somewhat less commonly used.

As noted above, according to Articles 297⁵ and 323 of the CPC of Ukraine, the following procedure for serving procedural documents to the suspect or accused in special criminal proceedings is established:

1. Sending a summons to the last known place of residence or location of the suspect/accused
2. Publication of the summons in national media, specifically the newspaper Uriadovyi Kurier, and on the official website of the Prosecutor General's Office
3. Publication of information about the summons and procedural documents to be served to the accused in national media and on the official website of the court
4. Sending copies of procedural documents to the defense lawyer.

The summons must include any necessary information by which the individual can ascertain their procedural status in the case, the case number, and the purpose of the summons (Article 137 of the CPC of Ukraine). This ensures compliance with the requirements for full and detailed notification of the suspect/accused.

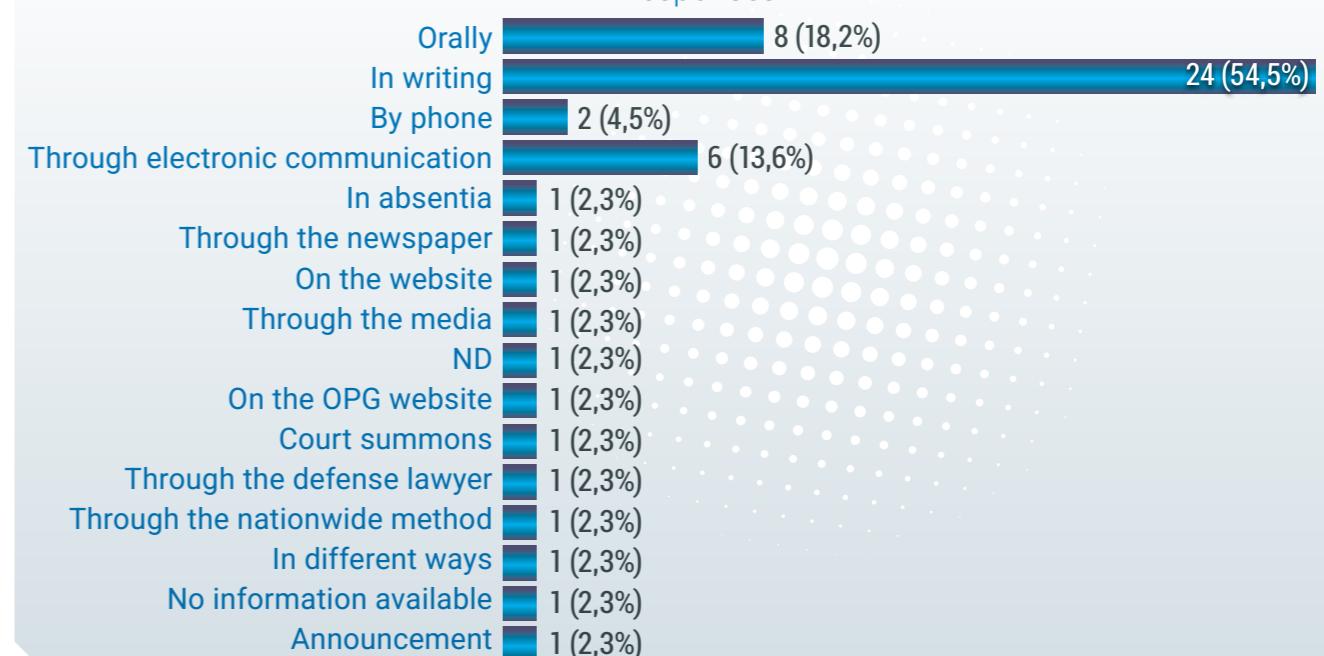
The CPC of Ukraine establishes a presumption that the suspect/accused is aware of the content of the summons from the moment of its publication in the aforementioned manner.

However, it should be noted that, according to survey results, lawyers report that investigators and prosecutors use a variety of methods to notify the suspect/accused.

The chart below reflects the use of different methods⁴⁹.

How is the suspect notified about the fact that materials were sent to court?

44 responses



⁴⁹ Note that respondents could select multiple options.

Survey results indicate a relatively high but still incomplete level of compliance with procedural guarantees regarding the participation of defense lawyers in war crime proceedings. 63.6% of lawyers reported being involved in all investigative actions, while 36.4% indicated selective involvement. This distribution may reflect both different approaches by investigators in specific cases and objective circumstances related to the complexity, scope, or urgency of certain investigative actions in wartime cases.

A similar trend is observed regarding access to case materials: Although most lawyers (63.6%) reported no restrictions, over one-third (36.4%) faced certain obstacles. This may indicate uneven practices at different investigative levels or sporadic restrictions related to operational information, procedural confidentiality, or organizational factors.

Overall, these data suggest that, despite generally positive trends in ensuring procedural rights of defense lawyers, some variability in practices persists in war crime proceedings, which may impact the quality of defense.

Regarding the effectiveness and duration of pre-trial investigations in war crime cases, lawyers cited a number of factors. The most significant factors named were difficulties in accessing evidence, which is characteristic of proceedings related to combat zones, occupied territories, or dispersed sources of evidence.

Extended timelines for expert examinations also serve as a critical factor, since war crime cases often involve complex, multi-component analyses requiring specialized experts.

Another issue noted is the high workload on investigators due to the large number of proceedings and the need to handle complex materials. This inevitably extends the duration of investigations.

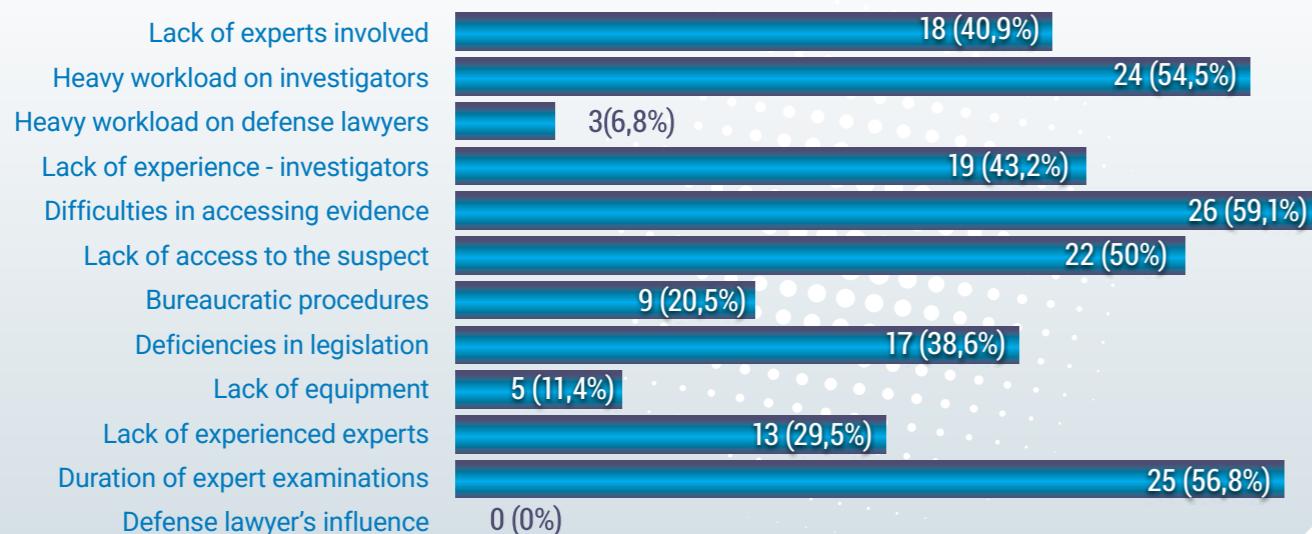
Additionally, lawyers noted the lack of access to the suspect when the individual is located in the occupied territories, on the territory of the Russian Federation, etc.

The lack of experience in investigating war crimes, which is a relatively new and highly complex category of proceedings for the law enforcement system, was also highlighted.

Other reasons cited by respondents are reflected in the chart.

What in your opinion influences the investigation efficiency and duration?

44 responses



Survey results indicate no uniform approach among lawyers regarding the impact of procedural independence of the defense lawyer/representative on the quality of pre-trial investigation. Almost half of respondents (47.7%) believe that the ability to independently collect evidence, initiate witness questioning, and exercise other defense powers contributes to a more complete and objective examination of the case circumstances. This position is based on the understanding that an active defense lawyer can compensate for passivity or errors made by the investigation, ensure adversarial proceedings, and improve the quality of the evidentiary base.

At the same time, 18.2% of lawyers are convinced that procedural independence does not have a significant impact on the quality of the investigation. This may be explained by their belief that the key role in proving is played by the pre-trial investigation authorities.

A significant share of «difficult to answer» responses (34.1%) indicates some uncertainty and heterogeneity in practice, where the effectiveness of procedural independence largely depends on the specific case, the attitude of the investigator, access to information, and working conditions.

Regarding the possibility of deviating from procedural law in *in absentia* investigations, most lawyers (71.4%) consider such deviation impossible, while 28.6% allow for its possibility. This emphasizes the high level of awareness regarding the importance of procedural guarantees: even in challenging circumstances, when the suspect is absent, the right to proper notification, defense, and adversarial proceedings is regarded as an integral part of lawful proceedings.

This distribution reflects a balance between the pursuit of investigative efficiency and the necessity of upholding the legally guaranteed rights of individuals, which is critical in war crime cases, where the risk of rights violations due to accelerated or formalistic investigations is particularly high.

Conclusions:

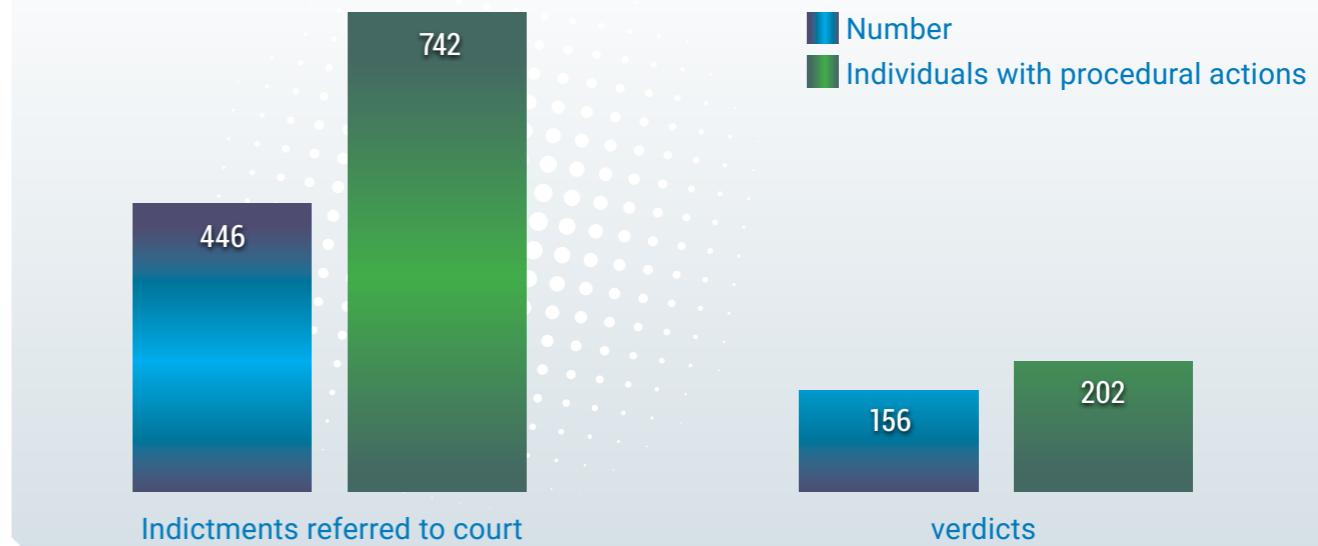
1. The survey indicates a high level of professional experience among lawyers in the field of war crime, the majority have worked in this area for more than one year, and a significant portion for more than three years. At the same time, only two-thirds of respondents (65.9%) consider their experience sufficient to ensure effective defense, indicating the need for additional support tools and professional development. Lawyers' uncertainty may be caused by the objective complexity of proceedings, high responsibility, and emotional and societal pressure.
2. Lawyers report low and inconsistent communication with investigators and prosecutors (only 31.8% are fully satisfied), and the consideration of defense lawyer participation occurs in only half of the cases. Victims are generally involved in investigative actions «as needed», likely due to limited resources and the risk of re-traumatization.
3. Wartime conditions and the fact that individuals may be located in occupied territories complicate traditional notification of suspects, forcing law enforcement to use alternative methods.
4. Survey results indicate a relatively high but incomplete level of compliance with procedural guarantees for the participation of defense lawyers in war crime proceedings. Most lawyers are involved in all investigative actions and have access to case materials, but over one-third (36.4%) experience selective involvement or restricted access, indicating variability in practices and potential impact on defense quality.
5. According to lawyers, the factors that most complicate and negatively affect the duration of pre-trial investigation in war crime cases are: limited access to evidence, prolonged and complex expert examinations, heavy workload on investigators, lack of access to suspects in occupied territories, and insufficient experience in investigating war crimes.
6. The lawyers do not have any uniform approach regarding the impact of the procedural independence of the defense lawyer on the quality of pre-trial investigation: 47.7% believe it increases objectivity and completeness of evidence, 18.2% believe it has no effect, and 34.1% found it difficult to answer.
7. Most respondents (71.4%) consider deviation from procedural guarantees impossible even in *in absentia* investigations, reflecting awareness of the importance of lawful protection in war crime cases.

Section 3. Judicial Proceedings: Procedural Specifics

According to data from the Office of the Prosecutor General (Annex 1), as of September 30, 2025, law enforcement authorities were conducting pre-trial investigations into 184,334 criminal offenses under Article 438 of the CC of Ukraine, War Crimes. As a result of the pre-trial investigations conducted, 446 indictments concerning 742 individuals were referred to court.

At the same time, according to the information from the Unified State Register of Court Decisions⁵⁰ (USRCD), Ukrainian courts of first instance issued 156 verdicts in this category of cases. According to the OPG (Annex 1), as a result of war crime cases reviewed by the courts, 202 individuals were convicted.

Indictments to verdicts ratio as of september 30, 2025



The ratio of the number of indictments and the number of individuals they concern to the total number of registered criminal offenses is a mere 0.24% and 0.4%, respectively. This indicates an extremely low proportion of cases that progress from the pre-trial investigation stage to the trial stage. At the same time, the ratio of indictments referred to court to the number of verdicts issued reaches almost 35%, demonstrating the relatively greater capacity of the judicial system to ensure effective case resolution despite significant personnel workloads and limited resources.

It should be noted that in most war crimes cases, judicial proceedings are conducted under the special court procedure (*in absentia*), as the accused are located in occupied territories, in the Russian Federation, or their whereabouts are unknown. This assertion is confirmed in the report Monitoring Judicial Proceedings and Analysis of Court Decisions in War Crime Cases (under Article 438 of the CC of Ukraine)⁵¹, prepared by the All-Ukrainian NGO Ukrainian Bar Association in cooperation with the EU Project Pravo-Justice, the Human Rights Institute of the UBA, and the International Bar Association. As part of this monitoring, 55 verdicts of courts of first instance in cases under Article 438 of the CC of Ukraine were analyzed, and 644 court hearings were attended. Of these, the accused was present in only 7 cases.

⁵⁰ <https://reyestr.court.gov.ua>

⁵¹ <https://www.pravojustice.eu/storage/app/uploads/public/68d/3f7/b01/68d3f7b01dd2c863222971.pdf>

Practice shows that the prosecution and courts generally ensure notification through official resources and additional communication channels, and in some cases, proactive measures are taken to establish the whereabouts of individuals and verify the effectiveness of the notification.

At the same time, systemic problems are observed: the formal nature of notification through official Ukrainian resources, the absence of translations of documents into Russian, technical errors in summonses, insufficient budget funding for publications, and disregard of certain defense initiatives to expand methods of notification.

Considering fair trial standards, proper notification is a key guarantee for the admissibility of in absentia proceedings. Therefore, it is advisable for the prosecution to strengthen the practice of using alternative communication channels, ensure accuracy and accessibility of procedural documents, and ensure stable funding for the notification of the accused.

Regarding challenges that may affect the guarantee of the right to a fair trial, the report outlines the following:

1. In some courts, hearing schedules are not posted in courtrooms, although they are available on official websites. In addition, in some proceedings, there is limited public access to materials in the USRCD, including the absence of key procedural documents, which complicates public access to information about the course of proceedings.
2. Hearings were held in premises that do not ensure adequate conditions for participants (in judges' offices) due to limited resources or damaged infrastructure.
3. Numerous delays in the start of court hearings were recorded (from a few minutes to two hours) caused by air raid alerts, lack of available courtrooms, judges' and lawyers' schedules, technical failures in the video conferencing system, logistical difficulties in transporting defendants, and other organizational circumstances. Often, the delays were combined in nature.
4. Systematic adjournments of war crime cases were also identified (hundreds of cases). The reasons were mostly linked to the fact that participants failed to appear in court, technical or power supply issues, air raid alerts, judges' workload, procedural motions from the parties, or difficulties with proper notification of the accused. These repeated adjournments significantly affect the timeliness of proceedings and the overall resilience of the judicial process.
5. Insufficient personalization of risks. In some decisions, boilerplate reasoning was applied without specifying the risks particular to the individual accused.
6. Absence of the timeline for preventive measures and alternatives. In some rulings, the duration of detention was not specified, or the possibility of bail was not considered.

7. Formal approach to defense arguments. In some cases, the court did not analyze the defense materials in detail or dismissed it simplistically, without considering the submitted evidence.

8. Lack of translation of procedural documents for the accused, etc.

Thus, there is a substantial mismatch between the scale of registered crimes (tens of thousands) and the actual capacity of pre-trial investigation authorities to ensure appropriate speed and quality of investigations. The large number of proceedings that remain for a long time at the pre-trial stage, as well as the ratio of indictments to verdicts under Article 438 of the CC of Ukraine, indicate that the law enforcement system objectively cannot process the full scope of war crimes, which, in turn, continue to be committed by the enemy.

At the same time, the effectiveness of courts in handling cases that do reach trial indicates their ability to deliver justice even under conditions of judicial personnel shortages and procedural workload. Nevertheless, the overall picture indicates that the judicial system continues to operate imperfectly. Without strengthening the institutional capacity of pre-trial investigation bodies and courts, optimizing procedures, increasing material resources, and enhancing staffing, it is impossible to ensure an adequate level of accountability for those responsible for committing war crimes.

In conclusion, the statistical data presented indicate a systemic challenge for the entire law enforcement and judicial infrastructure and require comprehensive state-level solutions to ensure the inevitability of punishment and restore justice for victims of war crimes.

Conclusion: Comparison of the number of registered criminal offenses (184,334) with the number of indictments (446) and verdicts (156) indicates a significant overload of pre-trial investigation authorities and courts. The resources and capacities of the pre-trial investigation and judicial system must match the volume of criminal offenses to ensure not only the right to a fair trial but also justice for victims of war crimes.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions:

1. Comparison of the number of registered criminal offenses (184,334) with the number of indictments (446) and verdicts (156) indicates a significant overload of pre-trial investigation authorities and courts. The resources and capacities of the pre-trial investigation and judicial system must match the volume of criminal offenses to ensure not only the right to a fair trial but also justice for victims of war crimes.
2. Despite the positive amendments to Article 438 of the CC of Ukraine, which have brought it closer to international standards, law enforcement experts also note the existence of certain problems related to defining the qualifying elements of the article itself and their combination with other provisions of the CC of Ukraine.
3. Despite Article 216 of the CPC of Ukraine assigning jurisdiction over pre-trial investigations under Article 438 (War Crimes) of the CC of Ukraine to the Security Service of Ukraine, one-third of such cases are investigated by the National Police.
4. Due to insufficient legal regulation (the absence of relevant provisions in the CPC of Ukraine), jurisdiction in war crime cases is determined by prosecutors on a case-by-case basis, without a clear interagency distribution formally stipulated in law. In view of the above, the current CPC of Ukraine does not correspond to the realities of wartime and requires amendments.
5. The introduction of specialized structural units within law enforcement agencies to counter crimes committed in the context of armed conflict is a positive step toward holding perpetrators of war crimes accountable.
6. Staffing levels in units involved in the investigation of war crimes are insufficient, as indicated by nearly half of the surveyed law enforcement officers.
7. The vast majority of investigators and nearly half of prosecutors have less than three years of experience in investigating war crimes, which may negatively affect the quality and timeliness of investigations and the outcome of court proceedings.
8. The disparity in workload between investigators and prosecutors is significant and inevitably affects the quality of procedural supervision in war crime cases: 67.2% of prosecutors are in charge of procedural supervision in more than 100 war crime cases, while only 27.4% of investigators have more than 100 cases in their caseload.
9. A significant number of investigators and prosecutors encounter shortages of technical resources in their work, including the lack of vehicles (in particular armored vehicles), individual workstations, office equipment, and personal protective equipment, etc.
10. In light of the specific features of pre-trial proceedings in war crime investigations, particular importance is attached to the need to strengthen the provision of personal protective equipment for all law enforcement representatives involved in rescue and investigative measures at crime scenes resulting from shelling of Ukrainian territory by the RF AF.

11. The overwhelming majority of prosecutors consider the existing interaction between law enforcement agencies to be ineffective or insufficient and in need of change.

Lawyers noted that communication with investigators and prosecutors is both poor and inconsistent.

A mere 31.8% of respondents reported being fully satisfied with communication with law enforcement during the pre-trial investigation of war crime cases.

12. Cases under Article 438 of the CC of Ukraine are complex to investigate, and the rules of Articles 219 and 294 of the CPC of Ukraine on extending pre-trial investigation time limits are applied to them. At the same time, the legislation does not provide definitions or criteria for what constitutes a criminal proceeding of particular or exceptional complexity.

13. The most significant factors affecting the effectiveness and duration of pre-trial investigations in war crime cases are: difficulties in accessing evidence, workload, lack of access to suspects, lengthy expert examinations, and a shortage of specialists involved in investigations.

Overall, prosecutors, investigators and lawyers identified largely the same set of factors as influencing the effectiveness and duration of pre-trial investigations in criminal proceedings under Article 438 of the CC of Ukraine.

14. Martial law and the fact that individuals may be located in occupied territories complicate traditional notification of suspects, forcing law enforcement to use alternative methods.

15. In cases of war crimes investigated under the in absentia procedure, in practice there is a deviation from the norms of the CPC of Ukraine, which indicates the need for additional legislative regulation of notifications in criminal proceedings in order to improve the procedure.

In particular, the provisions of Article 135 of the CPC of Ukraine, which law enforcement agencies cite as the legislative grounds for choosing the method of notification of suspicion (in in absentia cases), do not include such methods as social media pages, messenger accounts, etc.

(Most respondents (71.4%) consider deviation from procedural guarantees impossible even in in absentia investigations, reflecting awareness of the importance of lawful protection in war crime cases).

16. The survey indicated a high level of professional experience among lawyers in the field of war crimes the majority have worked in this area for more than one year, and a significant portion for more than three years.

At the same time, only two-thirds of respondents (65.9%) consider their experience sufficient to ensure effective defense, indicating the need for additional support tools and professional development. Lawyers' uncertainty may be caused by the objective complexity of proceedings, high responsibility, and emotional and societal pressure.

17. Survey results indicate a relatively high but incomplete level of compliance with procedural guarantees for the participation of defense lawyers in war crime proceedings.

Most lawyers are involved in all investigative actions and have access to case materials, but over one-third (36.4%) experience selective involvement or restricted access, indicating variability in practices and potential impact on defense quality.

18. The lawyers do not have any uniform approach regarding the impact of the procedural independence of the defense lawyer on the quality of pre-trial investigation.

47.7% of respondents believe it increases objectivity and completeness of evidence, 18.2% believe it has no effect, and 34.1% found it difficult to answer.

19. Law enforcement agencies use data collected through NGO coalition documentation to serve as a source for identifying war crimes and as grounds for initiating criminal proceedings.

Data collected through documentation by NGO initiatives and coalitions (such as "Tribunal for Putin, 5 AM Coalition, etc.) are used during pre-trial investigation, as confirmed by nearly half of the surveyed investigators and prosecutors (including responses «yes» and «sometimes»).

20. The involvement of human rights organizations in documenting war crimes is a positive factor that assists law enforcement agencies in detecting and investigating this category of cases; however, it requires legislative regulation within criminal procedural law.

Recommendations:

The Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine should consider the below:

- Reviewing the current Article 438 of the CC of Ukraine to strengthen its legal clarity, specify provisions, and expand the possibility of crime qualification.
- Amending Article 216 of the CPC regarding the distribution of jurisdiction for cases under Article 438 of the CC of Ukraine, taking into account current practice and the list of qualifying elements of war crimes.
- Improving methods of notification in criminal proceedings under the in absentia procedure.
- Legislatively defining the concepts or criteria of criminal proceedings of particular or exceptional complexity.
- Enhancing criminal procedure legislation to determine the admissibility of evidence collected by non-governmental and international organizations.

The Cabinet of Ministers of Ukraine, the Office of the Prosecutor General, and the Ministry of Internal Affairs of Ukraine should take measures to:

- Increase the number of positions (expand staff) in units specializing in war crimes within the NatPol and the Prosecutor's Office.
- Allocate human resources according to workload.
- Equip units with armored vehicles, access to hard-to-reach areas, and equipment for working under shelling/attack conditions.
- Properly provide investigators and prosecutors with office equipment, computers, software for handling large amounts of evidence, and communication tools.
- Ensure mandatory provision of personal protective equipment (bulletproof vests, helmets, first aid kits, equipment to record investigative actions such as cameras and drones), especially for those working in dangerous areas.

The Office of the Prosecutor General and the National Police of Ukraine should ensure:

- Proper and systematic interaction between pre-trial investigation authorities, prosecutors, defense lawyers, and other participants in the process.
- Improved communication between investigators, prosecutors, and defense lawyers/representatives, particularly regarding access to criminal case materials in war crime cases.
- Even distribution of workload among prosecutors and investigators involved in investigating war crimes under Article 438 of the CC of Ukraine, considering the number and complexity of cases.

ANNEXES

Annex 1

- Continuous monitoring of workload and adjustment of case distribution to avoid overloading individual staff.
- Full and timely involvement of defense lawyer in all procedural actions in criminal proceedings under Article 438 of the CC of Ukraine.
- Elimination of selective or restricted access of defense lawyer to materials and investigative actions.
- Creation of conditions to ensure procedural guarantees for the defense, including proper notification of investigative actions.
- Regular professional development of investigators and prosecutors involved in war crimes investigations, including training on international humanitarian law, documentation standards, and peculiarities of work under martial law.
- Joint trainings, educational modules, and practical exercises with international and national experts.
- Systematic updating of methodological materials, instructions, and checklists for investigators and prosecutors, taking into account the current challenges of martial law.

Response of the Office of the Prosecutor General to the UHHRU's request



Прокуратура України

ОФІС ГЕНЕРАЛЬНОГО ПРОКУРОРА

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Код ЄДРПОУ 00034051

08.10.2025 № 184-25013-23

на № 02/09-01/00/1365 від 02.09.2025

25429 08.10.2025

Громадська спілка «Українська
Гельсінська спілка з прав людини»
а/с 100
м. Київ, 04071

Офісом Генерального прокурора розглянуто лист виконувача обов'язків
директора української Гельсінської спілки з прав людини Олександра
Павліченка від 02.09.2025 № 02/09-01 (ФА) 1365 про надання інформації щодо
восиних злочинів.

За результатами розгляду з приводу порушених у ньому питань
повідомляємо наступне:

1.1. З 24.02.2022 до 30.09.2025 правоохоронними органами зареєстровано 185 231 (у період з 24.02.2022 до 25.10.2024 зареєстровано 142 145) кримінальне правопорушення за ознаками злочину, передбаченого ст. 438 КК України.

1.2. Положення ст. 8 Римського статуту Міжнародного кримінального суду не містить розподілу злочинів за запропонованими категоріями, у зв'язку з чим надати таку інформацію не вдається можливим.

1.3. Правоохоронними органами АР Крим зареєстровано 126 кримінальних правопорушень, Вінницької області – 53, Волинської – 14, Дніпропетровської – 5 121, Донецької – 56 607, Житомирської – 150, Закарпатської – 2, Запорізької – 12 843, Івано-Франківської – 35, Київської – 20 912, Кіровоградської – 100, Луганської – 9 441, Львівської – 120, Миколаївської – 3 119, Одеської – 411, Полтавської – 262, Рівненської – 25, Сумської – 6 228, Тернопільської – 66, Харківської – 30 161, Херсонської – 37 471, Хмельницької – 28, Черкаської – 43, Чернівецької – 10, Чернігівської – 1 408 областях, м. Кисва – 366 та м. Севастополя – 21.

1.4. Правоохоронними органами здійснюється досудове розслідування 184 334 кримінальних правопорушень.

1.5. Станом на 30.09.2025 правоохоронними органами за результатами розслідування восиних злочинів до суду скеровано 446 обвинувальних актів.

1.6. Досудове розслідування триває у кримінальних провадженнях за підозрою у вчиненні восиних злочинів щодо 255 осіб.

Офіс Генерального прокурора
02.10.2025 № 184-25013-25
184-25013-23



1.7. Підозрювані, щодо яких досудове розслідування триває оголошенні в розшук.

1.8. За результатами досудового розслідування кримінальних проваджень за ознакам злочину, передбаченого ст. 438 КК України до суду скеровано обвинувальні акти щодо 742 осіб.

1.9. За результатами розгляду справ щодо вчинення воєнних злочинів українськими судами засуджено 202 особи.

1.10. Потерпілими від воєнних злочинів визнано 253 382 особи.

2.1. Наразі ч. 1 ст. 278 КПК України передбачає, що письмове повідомлення про підозру вручається в день його складення слідчим або прокурором, а у випадку неможливості такого вручення – у спосіб, передбачений цим Кодексом для вручення повідомлень.

При цьому ч. 1 ст. 135 КПК України визначає вичерпний перелік таких повідомлень. Так, особа викликається до слідчого, прокурора, слідчого судді, суду шляхом вручення повістки про виклик, надіслання її поштою, електронною поштою чи факсимільним зв'язком, здійснення виклику по телефону або телеграмою.

Окремий порядок такого повідомлення визначено у ч. 8 цієї статті, а саме: повістка про виклик особи, стосовно якої існують достатні підстави вважати, що така особа виїхала та/або перебуває на тимчасово окупованій території України, території держави, визнаної Верховною Радою України державою-агресором, у випадку обґрунтованої неможливості вручення її такої повістки згідно з частинами першою, другою, четвертою – сьомою цієї статті публікується в медіа загальнодержавної сфери розповсюдження та на офіційному вебсайті Офісу Генерального прокурора.

Разом із цим у практичній діяльності повідомлення про підозру поряд з указаними способами у ч. 8 ст. 135 КПК України вручається (надсилається) на відомі контактні дані особи, у т.ч. адреси електронної пошти, сторінки у соціальних мережах, облікові записи у месенджерах тощо. Практикується направлення повідомлень на офіційну електронну пошту відомства, де особа обіймає посаду або проходить службу.

2.2. Додаткове законодавче врегулювання питання повідомлень у кримінальному провадженні та їх вирішення безпосередньо пов'язане з внесенням змін до Кримінального процесуального кодексу України з метою вдосконалення процедури *in absentia* (спеціальне досудове розслідування та спеціальне судове провадження). Наразі розроблення та подання до Верховної Ради України законопроекту щодо вдосконалення положень КПК України в частині здійснення кримінального провадження *in absentia* передбачено пунктом 3.8.2 Плану заходів, спрямованих на виконання Комплексного стратегічного плану реформування органів правопорядку як частини сектору безпеки і оборони України на 2023–2027 роки (розпорядження Кабінету Міністрів України від 23.08.2024 № 792-р).

3. З метою ефективного розслідування воєнних злочинів та підтримання публічного обвинувачення наказами Генерального прокурора в обласних прокуратуратах, юрисдикція яких поширюється на території, де найбільше вчинено воєнних злочинів, а також які зазнали тимчасової окупації, створено спеціалізовані підрозділи (відділи та управління) з протидії злочинам, вчиненим в умовах збройного конфлікту.

Зокрема, такі спеціалізовані підрозділи створені у складі Дніпропетровської, Донецької, Запорізької, Київської, Луганської, Миколаївської, Одеської, Сумської, Харківської, Херсонської, Чернігівської обласних прокуратур і прокуратури Автономної Республіки Крим та міста Севастополя.

Крім того, на виконання листа Генерального прокурора про організацію процесуального керівництва у кримінальних провадженнях щодо злочинів, вчинених в умовах збройного конфлікту, в обласних прокуратуратах, у яких спеціалізованих підрозділів не створено, визначено працівників, відповідальних за вказаний напрям, які здійснюють нагляд за додержанням законів під час проведення досудового розслідування у формі процесуального керівництва у всіх кримінальних провадженнях про кримінальні правопорушення, передбачені статтями 436, 437, 438, 439, 440, 442, 447 КК України.

Водночас відповідно до вимог наказу Генерального прокурора від 06.06.2025 № 129, яким затверджено звітність про роботу з кадрами в органах прокуратури України та Інструкцію з її складання, у звітності відображаються основні показники, які характеризують кількісний та якісний склад працівників органів прокуратури, їх переміщення, заохочення тощо.

Однак зазначена звітність не містить інформації про спеціалізацію прокурорів, у тому числі щодо здійснення процесуального керівництва у кримінальних провадженнях про воєнні злочини, їх чисельність та укомплектованість прокуратур прокурорами у цій сфері.

Начальник
Департаменту протидії злочинам,
вчиненим в умовах збройного конфлікту

Юрій РУДЬ

Annex 2 Response of the National Police to the UHHRU's request

НАЦІОНАЛЬНА ПОЛІЦІЯ УКРАЇНИ

Головне слідче управління

вул. Богомольця, 10, м. Київ, 01601,
тел. 256-12-82, gsu@police.gov.ua
Ідентифікаційний код 40108578

02/09-02
На № (ФА) 13626 від 02.09.2025

Про надання інформації

У Головному слідчому управлінні Національної поліції України (далі – ГСУ) в межах компетенції розглянуто лист громадської спілки «Українська Гельсінська спілка з прав людини» про надання статистичних та організаційних даних щодо розслідування воєнних злочинів, які станом на 30 вересня 2025 року перебувають у розпорядженні Національної поліції України, у зв'язку з чим повідомляємо наступне.

За період дії воєнного стану, з 24.02.2022 по 30.09.2025, згідно відомостей Єдиного реєстру досудових розслідувань (далі – ЄРДР) слідчими Національної поліції України розпочато 158 012 кримінальних проваджень за статтею 438 (Воєнні злочини) Кримінального кодексу України (далі – КК України), з яких у період часу з 24.02.2022 по 25.10.2024 – 118 071.

Статтею 438 КК України передбачається відповідальність за жорстоке поводження з військовополоненими або цивільним населенням, вигнання цивільного населення для примусових робіт, розграбування національних цінностей на окупованій території, застосування засобів ведення війни, заборонених міжнародним правом, незаконне переміщення або депортацію дитини, невідповідану затримку репатріації дитини, вербування або використання дитини для участі у збройному конфлікті, воєнних (бойових) діях, інші порушення законів та звичаїв війни, що передбачені міжнародними договорами, згода на обов'язковість яких надана Верховною Радою України, а також віддання наказу про вчинення таких дій, кваліфікований склад указаного злочину включає ті самі діяння, якщо вони спричинили загибель людини.

Інформація щодо розподілу цих проваджень за видами воєнних злочинів, які відповідають класифікації Римського статуту (злочини проти життя та здоров'я особи; пошкодження та знищення цивільної чи критичної інфраструктури; напади на житло та інші категорії) в ГСУ не узагальнюється.

Громадська
спілка
«Українська Гельсінська
спілка з прав людини»

а/с 100, м. Київ, 04071
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У розрізі регіонів кримінальні провадження за статтею 438 КК України реєструвалися: АР Крим – 126; Вінницька область – 2 041; Волинська область – 669; Дніпропетровська область – 15 183; Донецька область – 9 200; Житомирська область – 1 014; Закарпатська область – 945; Запорізька область – 4 370; Івано-Франківська область – 311; Київська область – 30 942; місто Київ – 5 220; Кіровоградська область – 2 571; Луганська область – 4 609; Львівська область – 2 081; Миколаївська область – 1 925; Одеська область – 3 134; Полтавська область – 4 561; Рівненська область – 473; Сумська область – 5 787; Тернопільська область – 995; Харківська область – 24 137; Херсонська область – 29 919; Хмельницька область – 1 919; Черкаська область – 3 163; Чернівецька область – 1 674; Чернігівська область – 731 та ГСУ – 312.

Станом на 30.09.2025 у 13 481 кримінальному провадженні (за фактами вчинення 34 253 злочинів), у яких визнано потерпілими 29 478 осіб, досудове розслідування триває.

У розслідуваних кримінальних провадженнях оголошено про підозру у вчиненні кримінальних правопорушень за статтею 438 КК України для 729 осіб.

Завершено досудове розслідування у 296 кримінальних провадженнях, з яких: 269 (за фактами вчинення 424 злочинів) – направлено до суду (щодо 401 особи) та 27 закрито на підставі статті 284 Кримінального процесуального кодексу України (далі – КПК України).

Зупинене досудове розслідування на підставі пункту другого частини першої статті 280 КПК України у зв'язку з розшуком підозрюючих осіб у 74 кримінальних провадженнях (за фактами вчинення 581 злочину).

За підслідністю до органів Служби безпеки України передано кримінальні провадження щодо вчинення 123 317 злочинів.

Щодо порушеного питання особливостей повідомлення про підозру, зазначаємо що слідчими Національної поліції України повідомлення про підозру у вчиненні кримінальних правопорушень, передбачених статтею 438 КК України, здійснюються відповідно до вимог статей 135, 276-279, 297-5 КПК України.

Повідомлення про підозру складає прокурор або слідчий за погодженням з прокурором.

У разі, якщо особа перебуває на тимчасово окупованій території чи на території РФ і фактично вручити повідомлення про підозру неможливо допускається спеціальне досудове розслідування (in absentia) відповідно до глави 24-1 КПК України. У такому випадку повідомлення про підозру може здійснюватися: - шляхом публікації в офіційних джерелах (наприклад, у газеті «Урядовий кур'єр» чи на сайті Офісу Генпрокурора); через захисника, якщо він бере участь у кримінальному провадженні; шляхом направлення міжнародними каналами (наприклад, дипломатичними).

НПУ № 145468-2025 від 30.09.2025 (1195445)

Підпісак: Пантелеймон Сергій Миколайович

Сертифікат: 368DC35ECECB2DC1040000006A4010040F30400

Дійсний: з 21.06.2024 08:45:19 по 21.06.2026 08:45:19

Annex 3 Questionnaire for Investigators

Будь які інші, не передбачені законом, способи повідомлення про підозру слідчими не застосовуються.

Щодо спеціалізації та організаційної спроможності слідчих у сфері воєнних злочинів, повідомляємо, що штатним розписом посад слідчих підрозділів Національної поліції України передбачені та функціонують спеціалізовані відділи з розслідування злочинів, учинених в умовах збройного конфлікту, окрім спеціалізовані управління в структурі Головного слідчого управління Національної поліції України.

Водночас відомості про організаційно-штатну структуру слідчих підрозділів Національної поліції України не підлягають розголошенню, у зв'язку з тим, що вони не являються відкритими даними й відносяться до категорії службової інформації (інформації з обмеженим доступом).

Перший заступник начальника

Сергій ПАНТЕЛЕЄВ

Анкетування представників правоохоронних органів, захисників у справах розслідування воєнних злочинів за статтею 438 КК України проводиться у рамках дослідження, що реалізується Українською Гельсінською Спілкою з прав людини.

Анкетування є анонімним, його результати будуть висвітлені в дослідженні в якості узагальненої інформації з метою виявлення проблемних питань, пов'язаних з розслідуванням воєнних злочинів та надання рекомендацій щодо покращення ситуації.

Організаційний аспект

Скільки років Ви працюєте над розслідуванням кримінальних проваджень, пов'язаних із воєнними злочинами?

Менше 1 року

Від 1 до 3 років

Більше 3 років

Чи вважаєте Ваш досвід у розслідуванні воєнних злочинів достатнім для забезпечення ефективного проведення досудового розслідування?

Так

Ні

Чи достатнім є кадрове забезпечення підрозділів з розслідування воєнних злочинів?

Так

Ні

Чи є спеціалізація працівників правоохоронних органів, задіяних у розслідуванні воєнних злочинів виправданою?

Так. Цілком виправдана.

Ні. Всі підрозділи мають бути залучені до розслідування

Наявність спеціалізації особливо не впливає на ефективність розслідування

Важко відповісти

Яким є навантаження на одного слідчого по кількості справ, які стосуються воєнних злочинів?

0-50

51-100

Більше 100

Островська Ольга (044) 363 40 08

За якими критеріями здійснюється розподіл навантаження слідчих?

в залежності від досвіду і кваліфікації слідчого

в залежності від кількості проваджень у слідчого

від кваліфікаційних ознак злочину

інше

Чи достатня наявність технічних засобів/оснащення для роботи (наявність робочого місця, оргтехніки, автотранспорту, засобів індивідуального захисту тощо)?

Так

Ні

Якщо відповідь «Ні», зазначте, будь ласка, найбільші потреби:

Що впливає на ефективність та тривалість строків розслідування справи?

- Брак фахівців, залучених до розслідування
- Велике навантаження
- Нестача досвіду у розслідуванні воєнних злочинів
- Складнощі у доступі до доказів
- Відсутність доступу до підозрюваного
- Бюрократичні процедури
- Недосконалість законодавства
- Брак технічних засобів/оснащення для роботи
- Відсутність досвідчених експертів-спеціалістів для проведення необхідних експертиз
- Тривалість строків проведення експертиз
- Вплив захисника на проведення слідчих дій
- Психологічне/емоційне виснаження
- «Ручне управління» процесом

Процесуальний аспект

Які із зазначених нижче джерел виявлення воєнного злочину найчастіше є підставою для відкриття кримінального провадження?

- заяви чи повідомлення фізичних осіб
- заяви чи повідомлення юридичних осіб
- інформація ЗМІ
- дані, зібрані в рамках документування коаліціями ГО (Трибунал для путіна, П'ята ранку тощо)?

Чи є складнощі з кваліфікацією злочину за статтею 438 КК України?

Так

Ні

Чи є складнощі у відмежуванні воєнних злочинів від інших (наприклад, умисних убивств, мародерства або статтями 438 та 439 КК), що ускладнює обвинувачення?

Так

Ні

Чи застосовуються норми Римського статуту та зміни до КК в частині притягнення до відповідальності командира військового підрозділу у випадку, коли відбувалося катування особи проте особу правопорушика не встановлено, а встановлено лише номер військового підрозділу стаття 31-1 КК України?

Так

Ні

Чи стикалися Ви з труднощами у доступі до місця злочину?

Так

Ні

І так і ні

Які способи повідомлення про підозру окрім передбачених законодавством використовуються у справах *in absentia*?

Так

Ні

Допустимість відступу від процесуального законодавства через розслідування справи *in absentia* (оголошення підозри тощо)?

Можливо

Неможливо

Чи може процесуальна незалежність захисника/представника вплинути на якісне розслідування кримінального провадження (право на самостійний збір доказів, допит свідків тощо)?

Так

Ні

Важко відповісти

Чи використовуються під час досудового розслідування дані, зібрані в рамках документування коаліціями ГО (Трибунал для путіна, П'ята ранку тощо)?

Так

Ні

Інколи

Чи потрібно вносити зміни до КПК України з метою визначення допустимості доказів, зібраних ГО в рамках документування коаліцій?

Так

Ні

Яка категорія злочинів розслідується найважче?

Annex 4 Questionnaire for Prosecutors

Анкетування представників правоохоронних органів, захисників у справах розслідування воєнних злочинів за статтею 438 КК України проводиться у рамках дослідження, що реалізується Українською Гельсінською Спілкою з прав людини.

Анкетування є анонімним, його результати будуть висвітлені в дослідженні в якості узагальненої інформації з метою виявлення проблемних питань, пов'язаних з розслідуванням воєнних злочинів та надання рекомендацій щодо покращення ситуації.

Організаційний аспект

Скільки років віздійснюється процесуальне керівництво у кримінальних провадженнях щодо воєнних злочинів?

Менше 1 року	<input type="checkbox"/>	Від 1 до 3 років	<input type="checkbox"/>	Більше 3 років	<input type="checkbox"/>
--------------	--------------------------	------------------	--------------------------	----------------	--------------------------

Чи вважаєте Ваш досвід достатнім для забезпечення ефективного процесуального керівництва у справах про воєнні злочини (стаття 438 КК України)?

Так	<input type="checkbox"/>	Hi	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

Чи достатнім є кадрове забезпечення підрозділів прокуратури з розслідування воєнних злочинів?

Так	<input type="checkbox"/>	Hi	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

Чи є спеціалізація працівників правоохоронних органів, задіяних у розслідуванні воєнних злочинів виправданою?

- Так. Цілком виправдана.
- Hi. Всі підрозділи мають бути залучені до розслідування
- Наявність спеціалізації особливо не впливає на ефективність розслідування
- Важко відповісти

Яким є навантаження на одного прокурора по кількості справ, які стосуються воєнних злочинів?

0-50	<input type="checkbox"/>	51-100	<input type="checkbox"/>	Більше 100	<input type="checkbox"/>
------	--------------------------	--------	--------------------------	------------	--------------------------

За якими критеріями здійснюється розподіл підслідності?

- в залежності від досвіду і кваліфікації підрозділу правоохоронного органу
- в залежності від кількості проваджень
- від кваліфікаційних ознак злочину
- інше

Чи достатня наявність технічних засобів/оснащення для роботи (наявність робочого місця, оргтехніки, автотранспорту, засобів індивідуального захисту тощо)?

Так	<input type="checkbox"/>	Hi	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

Якщо відповідь «Hi», зазначте, будь ласка, найбільші потреби

Що впливає на ефективність та тривалість строків розслідування справи?

- Брак фахівців, залучених до розслідування
- Велике навантаження
- Нестача досвіду у розслідуванні воєнних злочинів
- Складнощі у доступі до доказів
- Відсутність доступу до підозрюваного
- Бюрократичні процедури
- Недосконалість законодавства
- Брак технічних засобів/оснащення для роботи
- Відсутність досвідчених експертів-спеціалістів для проведення необхідних експертиз
- Тривалість строків проведення експертиз
- Вплив захисника на проведення слідчих дій
- Психологічне/емоційне виснаження
- «Ручне управління» процесом

Чи вважаєте Ви ефективними наявні механізми координації діяльності між правоохоронними органами (підрозділи поліції, СБУ, прокуратури), задіяними у розслідуванні воєнних злочинів?

Так	<input type="checkbox"/>	Hi	<input type="checkbox"/>
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Координація є недостатньою і потребує змін

Процесуальний аспект

Які із зазначених нижче джерел виявлення воєнного злочину найчастіше є підставою для відкриття кримінального провадження?

- заяви чи повідомлення фізичних осіб
- заяви чи повідомлення юридичних осіб
- інформація ЗМІ
- дані, зібрані в рамках документування коаліціями ГО (Трибунал для путіна, П'ята ранку тощо)?

Чи є складнощі з кваліфікацією злочину за статтею 438 КК України?

Так

Ні

Чи є складнощі у відмежуванні воєнних злочинів від інших (наприклад, умисних убивств, мародерства або статтями 438 та 439 КК), що ускладнює обвинувачення?

Так

Ні

Чи застосовуються норми Римського статуту та зміни до КК в частині притягнення до відповідальності командира військового підрозділу у випадку, коли відбувалося катування особи проте особу правопорушенка не встановлено, а встановлено лише номер військового підрозділу стаття 31-1 КК України?

Так

Ні

Чи стикалися Ви з труднощами у доступі до місця злочину?

Так

Ні

І так і ні

Які способи повідомлення про підозру окрім передбачених законодавством використовуються у справах *in absentia*?

Чи потрібно вносити зміни до КПК з метою закріплення фактично застосованих методів повідомлення підозрюваного у справах *in absentia*?

Так

Ні

Допустимість відступу від процесуального законодавства через розслідування справи *in absentia* (оголошення підозри тощо)?

Можливо

Неможливо

Чи може процесуальна незалежність захисника/представника вплинути на якісне розслідування кримінального провадження (право на самостійний збір доказів, допит свідків тощо)?

Так

Ні

Важко відповісти

Чи використовуються під час досудового розслідування дані, зібрани в рамках документування коаліціями ГО (Трибунал для путіна, П'ята ранку тощо)?

Так

Ні

Інколи

Чи потрібно вносити зміни до КПК України з метою визначення допустимості доказів, зібраних ГО в рамках документування коаліцій?

Так

Ні

Яка категорія злочинів розслідується найважче?

Annex 5 Questionnaire for Lawyers

Анкетування представників правоохоронних органів, захисників у справах розслідування воєнних злочинів за статтею 438 КК України проводиться у рамках дослідження, що реалізується Українською Гельсінською Спілкою з прав людини.

Анкетування є анонімним, його результати будуть висвітлені в дослідженні в якості узагальненої інформації з метою виявлення проблемних питань, пов'язаних з розслідуванням воєнних злочинів та надання рекомендацій щодо покращення ситуації.

Скільки років Ви надаєте захист у кримінальних провадженнях, що стосуються воєнних злочинів?

Менше 1 року

Від 1 до 3 років

Більше 3 років

Чи вважаєте Ваш досвід у розслідуванні воєнних злочинів достатнім для забезпечення ефективного захисту?

Так

Ні

Чи задоволені Ви рівнем комунікації із слідчим, прокурором у справах про воєнні злочини?

Так

Цілком задоволений/а

Ні

По-різному

Чи враховують слідчі при плануванні слідчих дій залученість захисника/представника в інших процесах (судовий розгляд, слідчі дії тощо)?

Так

Ні

Не завжди

Як слідчі комунікують з потерпілим у справі про розслідування воєнного злочину?

Безпосередньо

Виключно через адвоката

Безпосередньо та через адвоката

У який спосіб потерпілі повідомляються про передачу матеріалів в суд?

Усно

Письмово

Телефоном

Засобами електронного зв'язку

У який спосіб захисник повідомляється про передачу матеріалів в суд?

Усно

Письмово

Телефоном

Засобами електронного зв'язку

У який спосіб підозрюваний повідомляється про передачу матеріалів в суд?

- Усно
- Письмово
- Телефоном
- Засобами електронного зв'язку
- За наявності практики назвіть інший спосіб

Чи залучаються потерпілі до всіх слідчих дій?

- Так
- Ні
- За потреби

Що на Вашу думку впливає на ефективність та тривалість строків слідства?

- Брак фахівців, залучених до розслідування
- Велике навантаження на слідчого
- Велике навантаження на захисника
- Нестача досвіду у розслідуванні воєнних злочинів
- Складнощі у доступі до доказів
- Відсутність доступу до підозрюваного
- Бюрократичні процедури
- Недосконалість законодавства
- Брак технічних засобів/оснащення для роботи
- Відсутність досвідчених експертів-спеціалістів для проведення необхідних експертиз
- Тривалість строків проведення експертиз
- Вплив захисника на проведення слідчих дій

Чи доводилося Вам стикатися з обмеженням у доступі до матеріалів справи?

- Так
- Ні

Чи залучається захисник до всіх слідчих дій?

- Так
- Ні

Чи може процесуальна незалежність захисника/представника вплинути на якісне розслідування кримінального провадження (право на самостійний збір доказів, допит свідків тощо)?

- Так
- Ні
- Важко відповісти

Допустимість відступу від процесуального законодавства через розслідування справи in absentia (оголошення підозри тощо)?

- Можливо
- Неможливо

The Ukrainian Helsinki Human Rights Union (UHHRU) is the largest association of human rights organizations in Ukraine. The Union brings together 26 non-governmental human rights organizations. The mission of the UHHRU is the protection of human rights. The UHHRU considers itself part of the Helsinki movement and a successor to the traditions and activities of the Ukrainian Helsinki Group for the Promotion of the Implementation of the Helsinki Accords (UHG).

- 🌐 <https://www.helsinki.org.ua>
- 🌐 <https://www.facebook.com/Ugspl>

The International Renaissance Foundation is one of the largest charitable foundations in Ukraine. Since 1990 we have been helping to develop an open society based on democratic values in Ukraine. During its activity, the Foundation has supported over 20 thousand projects. The funding amounted to over \$ 365 million.

- 🌐 www.irf.ua
- 🌐 www.fb.com/irf.ukraine

The European Union is an economic and political union of 27 European countries. It is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. It acts globally to promote sustainable development of societies, environment and economies, so that everyone can benefit.



UKRAINIAN
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