

Expert Group "Sova"

Analytical Material

**Unlawful criminal prosecution
of Ukrainian citizens in the Russian Federation and
methods for protecting the rights of victims of such
prosecution**

Authors: Deputy head of the public organization "Expert group 'Sova' ", **Larysa Pylhun**, and head of the Expert Group "Sova", doctor of political sciences **Mykhailo Savva**

This analytical report has been prepared as part of the project "Enhancing Ukrainian society's Understanding of Methods to Pressure the Russian Regime into Complying with International Humanitarian Law," implemented by the Expert Group "Sova" with grant support from the Center for Civil Liberties.

Our analytical report represents only the first stage of a broader effort to identify strategies and methods of unlawful persecution of Ukrainian citizens in the Russian Federation. The focus of this report is to substantiate the illegality of Russian authorities' persecution of Ukrainian prisoners of war and civilians from the perspective of international law, identify methods of fabricating criminal cases, and develop protective strategies for victims of such fabrications. All aspects of this issue require detailed analysis.

The report has undergone external peer review and has been refined based on the extremely valuable feedback from the reviewers. For security reasons, information about the reviewers is not disclosed.

Characteristics of the Analytical Material's Object

The object of this analytical material is the criminal prosecution of Ukrainian citizens, prisoners of war, and civilians by Russian authorities during the period from February 24, 2022, to October 1, 2024, in violation of international law and the legislation of the Russian Federation.

The authors examined only cases where the Ukrainian citizenship of the persecuted individuals is evidently confirmed and where this persecution began after the start of Russia's full-scale invasion in February 2022. The authors acknowledge that the scope of repressions by the Russian regime is significantly broader than the focus of this study. The Kremlin persecutes Russians throughout the entire territory of the Russian Federation and abroad, in violation of Russia's international obligations, and has been actively targeting Ukrainians since 2014, following the onset of military aggression against Ukraine. However, we deliberately narrowed the scope of our analysis to detail the methods of falsifying cases and combating such falsifications associated with the active phase of military aggression.

Characteristics of the problem

Illegal deprivation of liberty during wartime constitutes not only a gross violation of the Geneva Conventions but also a crime under the Rome Statute.

Prisoners of war may not be prosecuted for their direct participation in hostilities.¹ In cases where a prisoner of war is tried for criminal offenses, international humanitarian law provides a series of restrictions and guarantees for this category of persons.

Article 99 of the Geneva Convention relative to the Treatment of Prisoners of War stipulates that "No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused". Article 103 prohibits the detention of a prisoner of war for more than three months during an investigation of a case. Article 104 obliges the detaining power to notify the protecting power about the judicial proceedings against a prisoner of war: "In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial". Former legal adviser to the ICRC, Yvette Issar, notes: "Legal proceedings against POWs must abide by general legal principles, including that prisoners have a right to mount an effective defence and must not be coerced to admit guilt. They must not be subjected to collective punishment (Art. 87(3)), and may only be held criminally accountable for acts for which they bear individual responsibility. They may only be tried by courts that offer 'the essential guarantees of independence and impartiality as generally recognized". Failure to grant prisoners of war the right to a fair and proper trial constitutes a grave breach of the Third Geneva Convention, and as such, entails criminal liability.²

Legal guarantees against certain types of persecution during wartime also apply to civilians. Article 31 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War stipulates that "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties". Article 70 of the same Convention provides that "Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war".

Protection against unlawful criminal prosecution is enshrined not only in international humanitarian law but also in human rights law. Article 10 of the Universal Declaration of Human Rights stipulates that " Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Article 5 of the

¹ Лица, пользующиеся защитой: военнопленные и лица, содержащиеся под стражей. Международный Комитет Красного Креста.

<https://www.icrc.org/ru/law-and-policy/protected-persons-prisoners-war-and-detainees>

² Issar Yvette On trial: the Third Geneva Convention and judicial guarantees for prisoners of war. June 23, 2022//Humanitarian Law and Policy.

<https://blogs.icrc.org/law-and-policy/2022/06/23/on-trial-geneva-convention-prisoners-of-war/>

Universal Declaration proclaimed a universal prohibition of torture, cruel, or degrading treatment or punishment " No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Universal Declaration of Human Rights is not legally binding, it remains a fundamental document in the field of human rights. The International Covenant on Civil and Political Rights, however, is binding upon the Russian Federation as the successor to the Union of Soviet Socialist Republics (USSR). Article 14 of the International Covenant on Civil and Political Rights establishes requirements for the court, such as competence, independence, and impartiality "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Exceptions to these requirements are not permissible.³

Violating the requirements of competence, fairness, and impartiality of the court in relation to citizens of Ukraine constitutes a breach of the international obligations of the Russian Federation.

The conviction of individuals without guarantees established by international law, the conviction based on confessions obtained through torture or psychological pressure, the conviction in violation of procedures established by the Geneva Conventions, or the conviction based on other unlawful methods violates international law and is illegal. Article 7 of the Rome Statute on "Crimes against humanity" defines such offenses, including " Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law". Article 8 on "War crimes" includes offenses such as "unlawful deportation or transfer or unlawful confinement". The crimes described in Articles 7 and 8 of the Rome Statute are characterized by their large scale: "For the purposes of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" and "The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes".

The scale of the problem of unlawful and internationally illegal persecution of Ukrainian citizens is quite significant and continues to grow. The authors are aware of the criminal prosecution of 543 Ukrainian citizens as of October 1, 2024. Fabrication of cases in the occupied territories has already attracted investigators' attention. Several Ukrainian journalists have published investigative articles on this issue.⁴

³ Комитет по правам человека, замечание общего порядка № 32, Статья 14: Равенство перед судами и трибуналами и право каждого на справедливое судебное разбирательство, пп. 18 и 19; Комитет по правам человека, мнение от 28 октября 1992, Мигель Гонсалес дел Рио против Перу, сообщение № 263/1987, п. 5.2.

⁴ 4 Гіреєв Артем Терористи за шаблоном: як за допомогою тортур та фальсифікацій штампують справи у Криму. 22.11.2022//Zmina.
<https://zmina.info/articles/terorysty-za-shablonom-yak-za-dopomogoyu-tortur-ta-falsyfikacij-shtampuyut-spravu-u-krimu/>; Антон Наумлюк Максим Каменєв Правозахисника Максима Буткевича засудили в «ЛНР» до 13 років за вистріл із гранатомета у мирних мешканців. «Грати» з'ясували, що його взагалі не було тоді на Донбасі. 10.03.2023//Грати.
<https://graty.me/news/pravozahisnika-maksima-butkevicha-zasudili-v-lnr-do-13-rokiv-za-vistril-iz-granatometu-u-mirnih-meshkanciv-%d2%91rati-zyasuvali-shho-jogo-vzagali-ne-bulo-todi-na-donbasi>

Evidence of the criminal nature of the prosecution of Ukrainian citizens, within the meaning of the Rome Statute, may result in consequences such as the prosecution of guilty officials (investigators, prosecutors, judges) and the imposition of sanctions against these officials.

The characterization of the array of information about the methods of falsification of criminal cases and the main statistical distributions

The basis of the information array studied by the authors of the analytical material consists of data on criminal cases involving citizens of Ukraine, obtained through monitoring the official websites of the Russian judicial system and other open sources. As of October 1, 2024, information was available for the analysis of 543 individuals who have been prosecuted in criminal cases since the beginning of the full-scale Russian aggression.

The accused include both civilians and prisoners of war. It is precisely known that out of 543 individuals, 236 are prisoners of war and 307 are civilians.

The total number of defendants mentioned above is not complete or final. The unofficial register of criminal cases continues to be updated as a result of:

1. The initiation of new cases.
2. The discovery of information regarding previously initiated criminal cases.

Various criminal cases involving citizens of Ukraine are described with varying degrees of detail. Information about the articles of the Criminal Code of the Russian Federation (CC RF) under which charges have been brought is available for 457 individuals out of 543 (84.2%). 214 individuals (46.8% of the total for which the article is known) are charged under one article of the CC RF and 243 (53.2%) are charged under several articles.

Table №1

Quantitative distributions by articles of the Criminal Code of the Russian Federation in the case of accusing a person under only one article

Nº	Article number of the CC RF	Title of the article	Number of individuals	% of the total number of people charged under one article
1	276	Espionage	80	37,4
2	205	Terrorist act	55	25,7
3	105	Murder	32	15,0

4	208	Organization of an illegal armed formation or participation therein, as well as participation in an armed conflict or hostilities for purposes contrary to the interests of the Russian Federation	22	10,2
5	282.2	Organization of activities of an extremist organization	6	2,8
6	275	State treason	4	1,9
7	222	Illegal acquisition, transfer, sale, storage, transportation, shipment, or carrying of weapons, essential parts of firearms, ammunition	2	0,9
8	281	Subversion	2	0,9
9	280	Public calls for the implementation of extremist activity	2	0,9
10	361	Act of international terrorism	2	0,9
11	356	Use of prohibited means and methods of warfare	2	0,9
12	138.1	Illegal circulation of special technical equipment designed for covert information acquisition	1	0,5
13	284.1	Engagement in the activities of a foreign or international organization whose operations have been deemed undesirable in the territory of the Russian Federation	1	0,5
14	354.1	Rehabilitation of Nazism	1	0,5
15	274.1	Unauthorized impact on the critical information infrastructure of Ukraine	1	0,5

16	360	Attack on persons or institutions enjoying international protection, or the threat thereof	1	0,5
----	-----	--	---	-----

A significant portion of the charges under multiple articles includes charges under Article 30 "Preparation for a crime and attempt to commit a crime". This indicates that the crime itself did not occur. Among the 243 identified cases of initiating criminal proceedings under several articles for such "crimes that did not occur" 96 individuals, or 40%, are being prosecuted. The "incomplete crimes" mainly include "crimes" from the list in the table above: murder, terrorist acts, and a number of others. At the same time, the "incomplete crimes" category also includes offenses such as "attempt on the life of a state or public official" (Article 277), "violent seizure of power or violent retention of power" (Article 278), "illegal manufacture of weapons" (Article 223), "attempt on the life of a law enforcement officer" (Article 317) and several others.

In cases where Ukrainians are charged under several articles of the Criminal Code, Russian repressive authorities most often apply combinations of articles such as 356 and 105 ("use of prohibited means and methods of warfare" and "murder"); 356 and 112 ("use of prohibited means and methods of warfare" and "intentional infliction of moderately severe harm to health"); 361 and 222 ("act of international terrorism" and "illegal acquisition, transfer, sale, storage, transportation, shipment, or carrying of weapons, essential parts of firearms, ammunition"); 278 and 205 ("violent seizure of power or violent retention of power" and "terrorist act").

It should be noted that Article 361 "act of international terrorism" was used by the repressive bodies of the Russian Federation before the annexation of Ukrainian territories in autumn 2022. After the annexation, Article 205 "terrorist act" is generally used. Article 275 "treason" is applied to Ukrainian citizens who also hold Russian citizenship. The imposition of Russian citizenship on residents of occupied territories is widespread, particularly in relation to prisoners.

Accusations of extremism as a means of politically motivated persecution of Ukrainian citizens after the start of Russia's full-scale aggression

Accusations of extremism are directly aimed at preventing threats to the political regime. The "extremist" articles of the Criminal Code of the Russian Federation serve politically motivated persecution of individuals in almost all cases of their application. In this regard, studying the application, including in relation to Ukrainian citizens, is particularly important.

The legislation of the Russian Federation on counteracting extremism was initially developed as a tool to suppress any dissenting opinions. The Federal Law of July 25, 2002, № 114-FZ "On counteracting extremist activity" provided an extremely broad definition of extremism: "violent change of the foundations of the constitutional order and (or) violation of the territorial integrity of the Russian Federation (including the alienation of part of the territory of the Russian Federation), except for delimitation, demarcation, redemarcation of the borders of the Russian Federation with neighboring states; public justification of terrorism and other terrorist activities; incitement to social, racial, national or religious enmity; propaganda of human exclusivity, superiority or inferiority based on social, racial, national, religious or linguistic affiliation, or attitude towards religion; violation of human and citizen rights, freedoms and lawful interests depending on their social, racial, national, religious or linguistic affiliation, or attitude towards religion; hindering the exercise by citizens of their electoral rights and right to participate in referendums or the violation of the secrecy of voting, associated with violence or the threat of its use; obstruction of the lawful activities of state authorities, local government bodies, electoral commissions, public and religious associations or other organizations, accompanied by violence or the threat of its use; the commission of crimes based on the motives mentioned in subparagraph "e" of part one of article 63 of the Criminal Code of the Russian Federation; use of Nazi attributes or symbols, or attributes or symbols resembling Nazi attributes or symbols to the extent of their mixture, or attributes or symbols of extremist organizations, except in cases where the use of Nazi attributes or symbols, or attributes or symbols resembling Nazi attributes or symbols to the extent of their mixture, or attributes or symbols of extremist organizations forms a negative attitude toward the ideology of Nazism and extremism, without any signs of propaganda or justification of Nazi and extremist ideologies; public calls to commit the aforementioned actions or mass dissemination of knowingly extremist materials, as well as their production or storage for the purpose of mass distribution; publicly consciously false accusations against an individual holding a state office in the Russian Federation or a state office in a Russian Federation subject, of committing criminal acts during the performance of their official duties as specified in this article; organization and preparation of the aforementioned actions, as well as incitement to their commission; financing the aforementioned actions or otherwise contributing to their organization, preparation and execution, including through providing educational, printing, and material-technical support, telecommunication services or information services".

The definition allows considering almost any public activity, including criticism of officials, as extremist. "Incitement" to extremism and "other facilitation" of extremism are classified as crimes. The Russian authorities widely practice declaring organizations, including Ukrainian ones, as extremist and terrorist. All this enables the repressive Russian agencies, if desired, to prosecute individuals who were not directly involved in activities that the authorities deem extremist. Russian legislation on countering extremism is constructed according to the principle "if there is a person, we will come up with an article".

Based on the broad understanding of extremism, the list of "extremist" crimes in the Criminal Code of the Russian Federation is very extensive: 278 "Violent seizure of

power or violent retention of power", 279 "Armed rebellion", 280 "Public calls for the implementation of extremist activities", 280.1 "Public calls for actions aimed at violating the territorial integrity of the Russian Federation", 280.2 "Violation of the territorial integrity of the Russian Federation", 280.3 "Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation for the purpose of protecting the interests of the Russian Federation and its citizens, supporting international peace and security, the performance of their powers by state authorities of the Russian Federation, the assistance provided by volunteer formations, organizations or individuals in accomplishing tasks assigned to the Armed Forces of the Russian Federation or the National Guard Forces of the Russian Federation", 280.4 "Public calls for activities directed against state security", 282 "Incitement of hatred or enmity, as well as humiliation of human dignity", 282.1 "Organization of an extremist community", 282.2 "Organization of activities of an extremist organization", 282.3 "Financing extremist activities", 282.4 "Repeated propaganda or public display of nazi attributes or symbols, or attributes or symbols of extremist organizations, or other paraphernalia prohibited by federal laws".

The above articles are formulated very broadly to enable criminal charges for the slightest deviation of an individual in their statements or actions from the official political course. These articles are systematically and widely used by the Russian regime for politically motivated persecution that is, to maintain and consolidate power.

For the persecution of Ukrainians, the following articles from the "extremist list" are applied (in descending order of the number of accusations):

Article 278 "Violent seizure of power or violent retention of power" — 31 cases. These accusations are brought against individuals who opposed the separatism of the so-called Donetsk People's Republic and Luhansk People's Republic. The Russian regime considers the power of the DPR and LPR to be legitimate, and resistance against them as a violent seizure of power.

Article 282.2 "Organization of the activities of an extremist organization" — 16 cases.

Article 280 "Public calls for the commission of extremist activities" — 4 cases.

Article 282.1 "Organization of an extremist community" — 1 case.

Methods of falsification of criminal cases against citizens of Ukraine

The authors of the analytical material understand the methods of falsification to mean the actions of the investigative authorities, the prosecution and the judiciary, as a result of which conditions are created for convicting an innocent person.

Method 1. Criminalization of the fact of belonging to the military units of Ukraine

Some Ukrainian prisoners of war are being prosecuted for serving in units of the Armed Forces of Ukraine, the National Guard and the police. Several units of the Armed Forces, the National Guard and the police of Ukraine have been declared "terrorist organizations" in the Russian Federation: the 12th Special Purpose Brigade of the National Guard of Ukraine "Azov" (the name in the Russian "Unified Federal List of Organizations, including foreign and international organizations, recognized as terrorist in accordance with the legislation of the Russian Federation" as the "Ukrainian Paramilitary Nationalist Organization 'Azov'" (other names: "Azov Battalion" and "Azov Regiment")), the 24th Separate Assault Battalion "Aidar" of the Land Forces of the Armed Forces of Ukraine (listed in Russia as the "Terrorist community 'Aidar'"), the "Dnipro-1" Fire Support Regiment, a paramilitary unit under the Special Police Department of the "United Assault Brigade of the National Police of Ukraine 'Lyut'" (referred to in the Russian version as the "Terrorist Community 'Dnipro-1'" ("Dnipro-1 Battalion", "Dnipro-1 Regiment"). This allows Russian authorities to prosecute Ukrainian citizens solely for their service or work in these units. The accused are often not charged with any crimes other than serving in units designated terrorist. In fact, personnel from these units are prosecuted simply for participating in the war. At the same time, international law prohibits the criminal prosecution of prisoners of war for participating in hostilities.

It can be assumed that the refusal of the Russian regime to recognize Ukrainian prisoners of war as having the status of prisoners of war is motivated precisely by the desire to prosecute many of them for their participation in the war. The refusal to recognize this status is evidenced by the language used by Russian authorities in their responses to relatives regarding the fate of prisoners of war. In such responses, concerning both Ukrainian prisoners of war and civilians, it is stated that they are: "detained for opposing the special military operation".⁵ Thus, Ukrainian prisoners of war are not officially referred to as prisoners of war. Representatives of the Russian authorities merely indicate that these individuals are subject to the provisions of the Geneva Convention concerning the treatment of prisoners of war.

Method 2. Coercion to Confession of Crimes

The physical and psychological violence against Ukrainians is widespread and systematic. This has been documented by the Office of the United Nations High Commissioner for Human Rights: over 91% of civilian respondents, after returning from Russian detention facilities, reported being subjected to torture, ill-treatment and sexualized violence.⁶ However, this violence serves various purposes beyond extracting confessions of committing crimes: to ensure obedience in conditions of captivity; to force individuals to side with the Russian Federation in this war; to use people's statements in Russian state propaganda. The authors of this analytical material provide evidence of the use of coercion aimed at falsifying criminal cases.

⁵ Sources are not disclosed for security reasons.

⁶ Detention of civilians in the context of the armed attack by the Russian Federation against Ukraine. 24 February 2022 – 23 May 2023. 27 June 2023// OHCHR.
<https://www.ohchr.org/sites/default/files/2023-06/2023-06-27-Ukraine-thematic-report-detention-ENG.pdf> P. 8.

An illustrative case of coercion to confession is the case of Ukrainian human rights defender, prisoner of war Maksym Butkevych, who was captured on June 21, 2022 and released from captivity on October 18, 2024. Representatives of several human rights organizations, including international ones, have claimed that the criminal case against Maksym Butkevych has been falsified. Denis Kryvosheiev, the acting director of Amnesty International for Eastern Europe and Central Asia, stated: "The sentence of 13 years of imprisonment was handed down by the so-called 'Supreme Court of the LPR' in Russian-occupied Luhansk. The hearings were held in closed session, and the sentence was based on a confession made under video recording, which was practically certainly obtained under pressure, as well as several other questionable pieces of evidence. We believe that the entire case against him is entirely motivated by the Russian authorities' desire to take revenge on him for his past activism and his distinguished human rights work".⁷

A conviction based solely on a confession is illegal even under the repressive Russian legislation. According to part 2 of article 77 of the Criminal Procedure Code of the Russian Federation "The accused's admission of guilt in committing a crime may serve as the basis for the accusation only if their guilt is confirmed by a body of evidence present in the criminal case". Regarding the absence of evidence linking Maksym Butkevych to the crime he is accused of, Butkevych himself stated at one of the court hearings: "Apart from the testimony of the accused, meaning my own, nothing connects him to the incident. The victims do not mention me (especially considering that both those who were injured and the person whose property was damaged speak of a mortar shelling and 'a mine that fell', rather than a grenade launcher shot); there is no weapons expert analysis; the forensic medical examination did not establish which ammunition's explosion caused the injuries, only that a grenade launcher was not ruled out; and there were no 'other pieces of evidence examined and duly assessed in the verdict' mentioned by the appellate court's ruling. To see this, one only needs to read the mentioned verdict. Thus, there is no other evidence of the defendant's guilt in the case except for his (my) confessions, which, according to the Criminal Procedure Code of the Russian Federation, could not serve as the basis for the accusation. However, they were used as such, and the court, based on this accusation, found me guilty". At the same hearing, Butkevych also stated that he was forced to confess under pressure: "These statements are not true, they were signed by me under duress but were not written by me". When asked by the judge why he had incriminated himself, Butkevych explained the circumstances under which he signed the confession: he was promised that "if I sign what I am accused of, I would be immediately exchanged for Russian military personnel convicted in Ukraine (along with other convicted prisoners of war). However, if I refused to confess, I would still be convicted, but there would be no discussion of an exchange, and I would be subjected to

⁷ Власти Российской Федерации должны сообщить местонахождение Максима Буткевича, подвергшегося насильственному исчезновению, — Amnesty International. 08.11.2023//Amnesty International.

<https://eurasia.amnesty.org/2023/11/08/vlasti-rossijskoj-federacii-dolzny-soobshhit-mestonahozhdeniemaksima-butkevicha-podvergshegosya-nasilstvennomu-ischeznoveniyu>

psychological and physical pressure. Some examples of such pressure were demonstrated".⁸

To coerce a confession of a crime, torture, other forms of physical violence, and psychological pressure are used. The method of coercion to confess guilt is primary and is applied to all suspects under investigation. Other methods are auxiliary and are used in conjunction with coercion.

By using torture to coerce Ukrainian citizens into confessing guilt, the Russian Federation violates several international obligations. Some international treaties prohibiting torture have been mentioned earlier. Additionally, it should be noted that the RF also violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The RF is a party to this Convention, which defines torture as follows: "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". Thus, the Convention takes into account acts of violence aimed at obtaining confessions. This Convention also applies in times of war (Art. 2): "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

Method 3. Accusations of crimes that did not actually occur

The investigation, the state prosecution and the court attribute crimes to Ukrainian citizens for events that never occurred. These crimes simply did not take place, yet people are accused of preparing to commit a crime (Article 30 of the Criminal Code of the Russian Federation: "Preparation for a crime is recognized as the search for, manufacture or adaptation of means or instruments for committing a crime by a person, the search for accomplices in a crime, conspiracy to commit a crime or other deliberate creation of conditions for committing a crime, if the crime was not completed due to circumstances beyond the person's control") and of attempting to commit a crime (Article 30 of the Criminal Code of the Russian Federation: "An attempt to commit a crime is recognized as intentional actions (inaction) by a person directly aimed at committing a crime if the crime was not completed due to circumstances beyond the person's control").

The practice of attributing crimes to individuals that never actually occurred is widespread. As noted above, among the 243 identified cases of criminal proceedings initiated under multiple articles for such "incomplete crimes" 96 individuals, or 40%,

⁸ Максим Буткевич: Злочини, в яких мене звинувачують, суперечать моїм цінностям та діяльності, яка є головною справою мого життя. 16.07.2024//Детектор медіа.
<https://detector.media/community/article/229630/2024-07-16-maksym-butkevych-zlochyny-v-yakym-moim-tsinnostyam-ta-diyalnosti-yaka-ie-golovnoyu-spravoyu-mogo-zhyttya>

have been prosecuted. Liability for an attempted crime or preparation for one is lawful. However, none of the examined verdicts for preparation and attempted crime contain information about objective evidence of guilt. All confirmations fall into a category that is easily falsified. Primarily, such confirmations include testimonies from interested witnesses.

"Unfinished" (in fact—never committed) crimes are easier to falsify. In modern Russia, investigators do not need to search for facts that would confirm the commission of a crime. The intent to commit the crime is attributed to a person, who is then forced to incriminate themselves and confess to the offense. Nearly all charges related to preparation and attempted terrorist acts are constructed according to this scheme. This allows for criminal prosecution and subsequent imprisonment of any individual.

The study of verdicts in which article 30 of the Criminal Code of the Russian Federation is part of the charges shows that convictions are based solely on the defendants' confessions and testimonies of interested parties, such as police officers. In cases where the defendant states during the court session that they gave testimony under pressure, the judge deems this statement to be untrue. Typically, the basis for such a court decision is the testimony of police officers asserting that they "did not use prohibited investigative methods against the defendant".

Method 4. Ignoring the basic principles and norms of international law regarding the affiliation of the occupied territories of Ukraine

The international law and international institutions, such as the United Nations, recognize the temporarily occupied territories of Ukraine by Russia as part of sovereign Ukraine. Russian repressive authorities accuse Ukrainian military personnel of defending Ukraine's territorial integrity within its internationally recognized borders.

Quotes from the verdict (personal data of the convicted person is not disclosed for security reasons): "the members of the specified terrorist organization are conducting combat operations aimed at changing the political course of the government of the Donetsk People's Republic and the Luhansk People's Republic. This course was aimed at ensuring the sovereignty of the DPR and LPR and the annexation of these states to the Russian Federation", "the terrorist organization sought to influence decision-making by the authorities of the Donetsk People's Republic and the Luhansk People's Republic concerning the return of these republics under the control of Ukraine".

Method 5. Ignoring international rules and recommendations recognized by Russian legislation

A number of international documents that are important for our investigation but not mandatory for enforcement are recognized by Russian legislation. The list of such documents regulating the detention of individuals is contained, for example, in the Resolution of the Plenary Session of the Supreme Court of the Russian Federation dated December 25, 2018, № 47, "On Certain Issues Arising in Courts When Considering Administrative Cases Related to Violations of the Conditions of Detention of Persons

Held in Places of Compulsory Detention": "When challenging the procedure for implementing coercive measures restricting freedom and personal inviolability, documents of the United Nations (hereinafter referred to as the UN) and the Council of Europe that apply in the field of organizing the detention of deprived persons (in particular, The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948; The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), approved by UN General Assembly Resolution № 70/175 of December 17, 2015; The Basic Principles and Guidelines on the Right to Legal Remedies and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution № 60/147 of December 16, 2005; The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Istanbul Protocol); The Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by UN General Assembly Resolution № 37/194 of December 18, 1982; The Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly Resolution № 34/169 of December 17, 1979; Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules, dated January 11, 2006; Recommendation (2006)13 of the Committee of Ministers of the Council of Europe to Member States on the use of remand in custody, the conditions in which it takes place, and the provision of safeguards against abuse, dated September 27, 2006; General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)".⁹

Violations of the UN Minimum Standard Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which are recognized by the Russian Federation, regarding Ukrainian citizens, are a widespread practice in Russia and are also applied to pretrial detainees. Rule 1 states: "No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification". As demonstrated above, torture against Ukrainian prisoners of war and civilians is carried out on a massive and systematic scale. Rule 22 states: "Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served".¹⁰ At the same time, in several Russian places of detention, hunger is used as a method of coercion against Ukrainians. One such facility is Pretrial Detention Center № 2 in Taganrog, Rostov Region. The creation of hunger conditions in this facility was documented by experts from the "Tribunal for Putin" coalition as early as 2022:

⁹ Постановление Пленума Верховного Суда РФ от 25.12.2018 N 47 «О некоторых вопросах, возникающих у судов при рассмотрении административных дел, связанных с нарушением условий содержания лиц, находящихся в местах принудительного содержания»//Консультант Плюс.
https://www.consultant.ru/document/cons_doc_LAW_314620

¹⁰ Мінімальні стандартні правила Організації Об'єднаних Націй щодо поводження з в'язнями (Правила Нельсона Манделі)//UNODC. United Nations Office on Drugs and Crime.
https://www.unodc.org/res/justice-and-prison-reform/cpcj-prison-reform_html/UKR_final_Nelson_Mandela_Rules-E-ebook.pdf

"Extremely low-calorie food (entirely watery), people rapidly lose weight and strength. This issue should be regarded as torture by starvation".¹¹ Subsequently, the existence of this problem has been regularly confirmed by individuals who have returned to Ukraine from Russian places of forced detention.¹² The creation of inhumane detention conditions for pretrial detainees is aimed at coercing them into confessing guilt.

Method 6. Separating different elements of the process of combat training and participation in hostilities into several offences

The "Anti-Terrorism Legislation" of the Russian Federation allows for the aggravation of punishment for Ukrainian prisoners of war through simple manipulation, namely by dividing the process of combat training and participation in hostilities into multiple crimes and imposing penalties through partial aggregation of imprisonment terms. A service member's participation in combat operations inherently includes prior training as a mandatory element. In several cases, Russian repressive authorities have accused Ukrainian combatants of multiple crimes at once, including under article 205.5 of the Criminal Code of the Russian Federation ("Participation in a terrorist organization") and article 205.3 of the Criminal Code of the Russian Federation ("Undergoing training for the purpose of engaging in terrorist activities").

Quotes from the verdict: "(Full Name) joined a terrorist organization and was appointed to a command position. During the period ... he underwent training aimed at carrying out terrorist activities, including acquiring knowledge, practical skills, and abilities during physical and psychological training sessions, as well as studying the rules for handling weapons", "during the period ... (Full Name) was stationed at combat positions and applied the acquired knowledge and skills by directly participating in combat operations against the Armed Forces of the Russian Federation, thereby engaging in the activities of a terrorist organization until his arrest", "to find him guilty of committing a crime under part 2 of article 205.5 and based on this, to impose a sentence of imprisonment for a term of ... years. To also find him guilty of committing a crime under article 205.3 and based on this, to impose a sentence of imprisonment for a term of ... years. In accordance with part 3 of article 69 of the Criminal Code of the Russian Federation, the final sentence for the totality of crimes shall be determined for (Full Name) by means of partial aggregation of punishments ...".

Method 7. Ignoring the fundamental principles and norms of Russian legislation

Article 4 of the Criminal Code of the Russian Federation "The Principle of Equality of Citizens Before the Law" broadly defines the principle of equality and establishes that "Persons who have committed crimes are equal before the law and are subject to

¹¹ Місця примусового утримування громадян України – некомбатантів у Російській Федерації та окупованому Криму. 04.11.2022// Центр громадянських свобод. Додаток. Пункт 19. <https://ccl.org.ua/news/misczya-prymusovogo-utrymuvannya-gromadyan-ukrayiny-nekombatantiv-u-rosijskij-federacziyi-ta-okupovanomu-krymu/>

¹² Савва М. Это концентрированный садизм. Таких людей надо лечить, причем принудительно. 24.10.2024//Первый отдел. <https://dept.one/story/mikhail-savva/>

criminal liability regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude toward religion, beliefs, membership in public associations, as well as other circumstances". This principle is violated concerning citizens of Ukraine who serve or work in military and paramilitary units that have been designated as terrorist organizations by the Russian regime. Among such units are, for example: the 12th Special Purpose Brigade of the National Guard of Ukraine "Azov" (the name in the Russian "Unified Federal List of Organizations, including foreign and international organizations, recognized as terrorist in accordance with the legislation of the Russian Federation" as the "Ukrainian Paramilitary Nationalist Organization 'Azov'" (other names: "Azov Battalion" and "Azov Regiment")), the 24th Separate Assault Battalion "Aidar" of the Land Forces of the Armed Forces of Ukraine (listed in Russia as the "Terrorist community 'Aidar'"), the "Dnipro-1" Fire Support Regiment, a paramilitary unit under the Special Police Department of the "United Assault Brigade of the National Police of Ukraine 'Lyut'" (referred to in the Russian version as the "Terrorist Community 'Dnipro-1'" ("Dnipro-1 Battalion", "Dnipro-1 Regiment"). Thus, the Russian regime has criminalized mere affiliation with certain official structures of another state.

The principle of justice, established by article 6 of the Criminal Code of the Russian Federation, states: "Punishment and other criminal law measures applied to a person who has committed a crime must be fair, that is, they must correspond to the nature and degree of public danger posed by the crime, the circumstances of its commission, and the personality of the offender". This principle is clearly violated in relation to individuals who serve or work in official Ukrainian military or paramilitary units and are prosecuted for "membership in terrorist organizations". These individuals were fulfilling their duty to their country and did not commit any crimes.

The Principle of humanism (article 7 of the CC RF) is formulated as follows: "1. The criminal legislation of the Russian Federation ensures the security of individuals. 2. Punishments and other criminal-law measures applied to a person who has committed a crime shall not aim to inflict physical suffering or degrade human dignity". However, in practice, the security of Ukrainian detainees is not ensured: they are subjected to torture, starvation, humiliation. After sentencing, the execution of punishments for many Ukrainian citizens is organized in a manner intended to cause them physical suffering and degrade their human dignity.

During the criminal prosecution of Ukrainian citizens, not only principles but also specific provisions of Russian law are violated. For example, Russian legislation classifies the falsification of evidence in a criminal case by an inquirer, investigator, prosecutor or defense attorney as a criminal offense (article 303 of the CC RF, punishable by up to five years of imprisonment). At the same time, the materials of criminal cases clearly demonstrate blatant and widespread falsifications of evidence. During one of the court hearings, Maksym Butkevych presented facts of such falsifications: "The prosecution, for example, claimed that I committed a crime by firing a shot from a German-made 'Panzerfaust' grenade launcher. According to their version, I 'opened the packaging containing grenades', 'assembled the grenade', loaded the grenade launcher and fired a shot. Even though the Panzerfaust may resemble the RPG-7 in terms of tactical and technical characteristics, the designs of these grenade launchers are different, and the person who wrote this had no understanding of the Panzerfaust's construction: its

charges are not stored in packaging and do not require assembly".¹³ However, the evident exposure of falsifications was ignored by the Russian court.

Methods of protecting the rights of victims of fraud

1. Observation of court proceedings concerning citizens of Ukraine within the framework of the protecting power's functions

An important element of the system for protecting the rights of Ukrainians who have been convicted or are being tried in the Russian Federation is the involvement of a protecting power or the assumption of the functions of a protecting power by the ICRC. This would ensure the possibility of monitoring the criminal prosecution of Ukrainian citizens by the Russian authorities. Article 71 of the Geneva Convention on the Protection of Civilian Persons in Time of War establishes that: "The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons". No protecting power has been designated due to Russia's refusal to accept the proposed candidates. It can be confidently assumed that the absence of a protecting power is in the interest of the Russian regime, and any proposed candidate would be rejected. At the same time, the ICRC, as a substitute, could perform all the functions of a protecting power, including monitoring criminal prosecutions. Article 11 of the Geneva Convention on the Protection of Civilian Persons in Time of War establishes that the state holding persons under its control must accept the ICRC's offer to assume the performance of humanitarian functions that, under the Convention, are carried out by protecting powers. Currently, the ICRC refuses to participate in legal proceedings against Ukrainians in Russia, arguing that such participation could jeopardize the organization's ability to fulfill its mandate.

The ICRC's position on assuming the role of a protecting power is as follows: "Unlike a protecting power, which acts on behalf of/in the interest of one of the parties to the conflict, the ICRC serves as a neutral intermediary. Therefore, officially assuming the functions of a protecting power for one of the parties could undermine the ICRC's reputation as a neutral and impartial organization. In practice, when it comes to the legal obligations of parties to an international armed conflict that must be fulfilled through a protecting power (such as the exchange of information on prisoners of war), one way for the parties to comply with these obligations in the absence of a protecting

¹³ Максим Буткевич: Злочини, в яких мене звинувачують, суперечать моїм цінностям та діяльності, яка є головною справою мого життя. 16.07.2024//Детектор медіа.
<https://detector.media/community/article/229630/2024-07-16-maksym-butkevych-zlochyny-v-yakykh-me-ne-zvynuvachuyut-superechat-moim-tsinnostyam-ta-diyalnosti-yaka-ie-golovnoyu-spravoyu-mogo-zhyttya>

power is to request an impartial humanitarian organization, such as the ICRC, to perform these functions. Although the ICRC is not de facto obliged to accept such a request, it increasingly assumes responsibilities that are typically entrusted to protecting powers, acting in accordance with its right of initiative".¹⁴

The ICRC has the same powers as the Protecting Powers in matters concerning visits to places of forced detention of "protected persons," namely places of internment, deprivation of liberty, and their workplaces (Art. 143 of the Geneva Convention on the Protection of Civilian Persons). However, the monitoring of judicial proceedings falls exclusively within the competence of representatives of the Protecting Power or an organization that replaces it in accordance with article 11 of the Geneva Convention on the Protection of Civilian Persons. The ICRC has neither initiated nor undergone the procedure established by article 11 to replace the Protecting Power.

A systematic and active advocacy campaign is necessary to persuade the ICRC to assume the functions of a protecting power and to begin monitoring the criminal prosecution of Ukrainian citizens by the Russian regime. This would allow for the collection of information on such prosecutions and subsequently expose falsifications of criminal cases. In accordance with article 74 of the Geneva Convention on the Protection of Civilian Persons in Time of War "Representatives of the Protecting Power shall have the right to be present at any hearing of a court dealing with a case concerning a protected person, except in exceptional cases where the hearing must be held in camera in the interests of the security of the Occupying Power, which shall notify the Protecting Power accordingly". Moreover, the same article ensures access for ICRC representatives to court sentences: "In the case of sentences of death or imprisonment for two years or more, the Protecting Power shall be notified as soon as possible, stating the grounds on which the sentence was passed. The notification shall contain a reference to the communication made in accordance with article 71, and in the case of imprisonment sentences, shall also specify the place where the sentence is to be served. Records of other sentences, apart from those mentioned above, shall be kept in the court and made available for inspection by representatives of the Protecting Power. The period allowed for lodging an appeal in the case of a death sentence or imprisonment for two years or more shall not begin until the Protecting Power has received notification of the sentence".

2. Monitoring of Criminal Cases and Court Decisions Regarding Citizens of Ukraine

It is necessary to constantly monitor and analyze criminal cases initiated and court decisions rendered by the Russian Federation against Ukrainian citizens. This will make it possible to establish and update not only a database of methods used to falsify criminal cases but also a database of Russian officials responsible for such falsifications and the issuance of unlawful verdicts, resulting in illegal deprivation of liberty. Such

¹⁴ Explanatory note on the Roles of a Protecting Power and of the ICRC// Пояснювальна записка щодо ролі держави-покровительки та МКЧХ. Неофіційний переклад. Березень 2024; Коментар МКЧХ 2020 року, ст. 10 ЖК III, пп. 1422, 1438 f.

officials, categorized accordingly, include operational officers, investigators, prosecutors (state accusers) and judges".

It is not advisable to publicly disclose the methods of such monitoring, as this may create additional issues regarding its implementation.

3. Inclusion of officials responsible for the falsification of criminal cases in various sanctions lists and initiation of criminal proceedings against them

The monitoring results may be used to impose sanctions and initiate criminal proceedings against Russian officials responsible for unlawful deprivation of liberty.

Participation in falsifying criminal cases serves as a basis for the imposition of sanctions by both states that respect human rights and international organizations. Until now, there has been no specific package of sanctions for the falsification of criminal cases. Such sanctions may include travel bans to certain countries for sanctioned individuals and their family members, asset confiscation, and other measures. The subjects of sanctions may include not only officials but also organizations involved in decision-making leading to unlawful deprivation of liberty, such as investigative bodies, prosecutors' offices, courts and others.

The unlawful deprivation of liberty is a compelling reason to hold counterfeiters criminally liable. Such criminal cases may be initiated by law enforcement agencies of Ukraine, the International Criminal Court, and, based on the principle of universal jurisdiction, law enforcement authorities of certain other countries.

4. Public dissemination of verified information about the falsification of criminal cases by Russian repressive authorities

The dissemination of information regarding the falsification of criminal cases can act as a deterrent for both Russian officials already involved in such falsifications and for those who are faced with the decision of whether to engage in such activities. It is necessary to inform not only the Ukrainian public but also foreign audiences, experts and representatives of authorities about the following aspects of the falsification problem:

1. Violations of international and Russian law during the falsification of criminal cases cannot be concealed, and those responsible will not be able to disguise their involvement in these violations.
2. Illegal deprivation of liberty is subject to criminal liability, including imprisonment. As a war crime and a crime against humanity, these crimes are not subject to a statute of limitations. The International Criminal Court may impose a sentence of up to 30 years of imprisonment for the illegal deprivation of liberty.
3. The Russian regime cannot provide eternal security guarantees to criminals who falsify criminal cases against Ukrainian citizens.

4. Informing the victims of falsifications in places of forced detention about the work of Ukrainian civil society, the authorities of Ukraine and other countries in uncovering these falsifications.

The ultimate goal of our work regarding victims of unlawful deprivation of liberty is to free everyone. However, in order to achieve freedom, we must help them survive the incredibly harsh conditions until their release. Information about the exposure of falsifications and the prosecution of those responsible for unlawful deprivation of liberty is crucial for individuals who are under investigation or imprisonment. The practices of Ukrainian and Russian human rights defenders confirm that this information helps people in captivity maintain hope for liberation and survive.

Victims of falsifications can be informed about such activities both during the investigation and trial stages, as well as after the verdict.

Publicly disclosing the methods of such information dissemination is inadvisable.