

*Text as of
July 15, 2026*

**MAIN PROVISIONS
OF THE
DRAFT LAW OF UKRAINE**

**On Introducing Amendments to the Criminal and Criminal Procedure
Codes of Ukraine Aimed at Improving the Legislation on Responsibility for
International Crimes by Means of Aligning It with the Rome Statute of the
International Criminal Court**

The Verkhovna Rada of Ukraine hereby **r e s o l v e s** as follows:

I. To amend the following legislative acts of Ukraine:

1. The Criminal Code of Ukraine (Bulletin [UKR. Vidomosti] of the Verkhovna Rada of Ukraine, 2001, Nos. 25–26, Art. 131):

Article 437 shall read as follows:

“**Article 437.** Crime of aggression

The crime of aggression, i.e. planning, preparing, initiating, or committing an act of aggression which, by its nature, gravity, and scale, constitutes a gross violation of the Charter of the United Nations,

shall be punishable by imprisonment for the term from ten to fifteen years or life imprisonment.

Note.

1. For the purposes of this article, an act of aggression shall mean the use of armed force by one state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, in particular, waging of a war of aggression or aggressive hostilities, as well as acts listed in Article 3 of UN General Assembly Resolution 3314 (XXIX) of 14 December 1974.

2. The subject of the crime of aggression is a person capable of actually exercising control over or managing political or military actions of a state, or a person capable of substantially influencing political, military, economic, financial, informational, and other processes within their own state or beyond its borders, or of managing specific aspects of political actions or hostilities.

3. In interpreting specific terms provided for in this article, as well as in Articles 438–438⁴, 442, and 442¹ of this Code, provisions of international law

(international treaties, customary international law, and case law of international criminal tribunals) in force at the time the person committed the act shall be taken into account, except in cases when provisions of this Code explicitly require that the relevant term be interpreted otherwise.”

Article 438 shall read as follows:

“**Article 438.** War crimes against a person

1. Intentionally committing or ordering to commit any of the following in connection with an international armed conflict:

- 1) unlawful deprivation of liberty;
 - 2) compelling a prisoner of war or any other person protected under international humanitarian law to serve in the armed forces of the other party to the conflict or to participate in hostilities against their state;
 - 3) unjustified delay with repatriation of prisoners of war or any other person protected under international humanitarian law, in particular, a child;
 - 4) declaring abolished, suspended, or inadmissible in a court some rights of or judicial protection means for citizens of the adverse party;
 - 5) direct or indirect transfer of a part of the civilian population of the occupying state to the occupied territory;
 - 6) using apartheid practices;
 - 7) coercive imposition of citizenship by the occupying authorities upon population of the occupied territory,
- shall be punishable by imprisonment for the term from eight to twelve years.

2. Intentionally committing or ordering to commit any of the following actions with respect to a person protected under international humanitarian law in connection with an international armed conflict or a non-international armed conflict:

- 1) torture or inhuman treatment, in particular, biological experiments and subjecting to collective punishment;
- 2) severe suffering or serious injury or harm to health (in case there are no signs of torture and inhuman treatment);
- 3) inflicting upon a person who is in the power of an adverse party to the conflict physical mutilation or subjecting such a person to medical or scientific experiments of any kind which are neither justified by medical, dental, or hospital treatment of the person concerned nor carried out in his or her interest, and which seriously endanger the health of such person;
- 4) rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, or any other forms of sexual violence;
- 5) taking or holding a person as a hostage;
- 6) enslavement;

7) deportation of the population, i.e. forced and in the absence of grounds set out by international law transfer (eviction) of one or several persons to the territory of another state;

8) forcible transfer of the population, i.e. forced and in the absence of grounds set out by international law transfer (eviction) of one or several persons to another area within the same state;

9) depriving a person protected under international humanitarian law of the right to a fair and proper trial;

10) outrages upon personal dignity, in particular, humiliating and degrading treatment;

11) recruiting or enlisting a person under the age of eighteen into the armed forces or other state military formations or other non-state formations (groups) participating in the conflict, using such person for active participation in the conflict, as well as for propaganda aimed at ensuring the entry of such persons into military service on the side of the opposing party to the conflict,

shall be punishable by imprisonment for the term from eight to fifteen years.

3. In connection with an international armed conflict or a non-international armed conflict, committing or ordering to commit a willful killing of a person protected under international humanitarian law or an act set out by para. 1–2 of this Article resulting in the death of a person

shall be punishable by imprisonment for the term from ten to fifteen years or lifetime imprisonment.

Note.

1. In this article, direct transfer shall mean transfer of persons from among the civilian population of the occupying state to the occupied territory regardless of their consent which is organized, coordinated, or controlled by persons who exercise power or managerial functions on behalf of the occupying state.

In this article, indirect transfer shall mean that persons who exercise power or managerial functions on behalf of the occupying state create such living conditions that encourage or force persons from among the civilian population of the occupying state to move to the occupied territory or persons from among the population of the occupied territory to move within such territory or outside of it.

2. In this article, outrage upon personal dignity shall mean humiliating, degrading, or other treatment of a person (in particular, of a deceased person) that has harmed their personal dignity, taking into account such person's cultural affiliation, but that has not inflicted serious physical pain or suffering, whether physical or moral.

3. In the event of deportation or forcible transfer of the population in connection with a non-international armed conflict, a person who was in a

position enabling them to issue an order (instruction) to carry out such actions shall be subject to criminal liability.

4. In this article, death of a person shall mean the loss of person's life causing of which was approached by the guilty person carelessly, and, in Articles 438¹–438⁴ of this Code, it shall mean the loss of person's life causing of which was approached by the guilty person willfully or due to carelessness.

Articles 438¹–438⁴ shall be added and read as follows:

“Article 438¹. War crimes against property

1. Intentionally committing or ordering to commit any of the following actions in connection with an international armed conflict or non-international armed conflict:

1) pillaging property, i.e. taking possession of property of the adverse party for personal use or private use by other persons;

2) destroying or seizing property of the adverse party which is not justified by military necessity,

shall be punishable by imprisonment for the term from eight to twelve years.

2. Intentionally committing or order to commit looting in connection with an international armed conflict, i.e. taking possession of property of sick, injured persons, victims of shipwreck or deceased persons, in violation of international law,

shall be punishable by imprisonment for the term from eight to twelve years.

3. Intentionally committing or ordering to commit taking possession, destruction, or significant damaging of property protected by the Geneva Conventions for the Protection of War Victims of 1949 that is not caused by military necessity, has been committed in a large scale and illegally, in connection with an international armed conflict,

shall be punished with imprisonment for the term from eight to fifteen years.

4. Should the action set out by para. 1–3 hereof result in the death of a person, it

shall be punishable by imprisonment for the term from ten to fifteen years or lifetime imprisonment.

Note. In this article, “property of the adverse party” means both public and private property belonging to the other party to the conflict.”

Article 438². War crimes consisting in the use of prohibited methods of warfare

1. Intentionally committing or ordering to commit any of the following actions in connection with an international armed conflict or non-international armed conflict:

1) an attack against the civilian population as such, individual civilians who do not take a direct part in hostilities, and/or an attack against a civilian object;

2) launching an attack in the knowledge that such attack will cause loss of life or injury to civilians, damage to civilian objects, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

3) an attack against buildings dedicated to religion, education, art, science, or charitable purposes, historic landmarks, hospitals, and place where the sick and wounded are collected, provided that they are not a military objective, in the absence of signs of other war crimes set out by Article 438⁴ of this Code;

4) an attack against buildings, material, medical facilities, or vehicles which, in conformity with international law, are marked by distinctive emblems or use other distinction methods that signal protection under the Geneva Conventions on Protection of War Victims of 1949, or against the personnel entitled to use such emblems or distinction methods;

5) an attack against personnel, objects, material, equipment, units, or vehicles involved in humanitarian assistance or a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law;

6) an attack at a settlement, dwelling, or building which is undefended and which is not a military objective;

7) an attack, the main goal of which is to terrorize civilian population, or a threat to commit such an attack;

8) actions aimed at causing starvation of civilian population as a method of warfare by means of depriving them of items indispensable to their survival, including impeding relief supplies as provided for under the Geneva Conventions for the Protection of War Victims of 1949;

9) wounding treacherously a person belonging to the adverse party to the conflict;

10) utilizing the presence of civilian population or a person protected under international humanitarian law to protect certain objects, areas, or settlements or armed forces from hostilities;

11) declaring that no quarter will be given,
shall be punishable by imprisonment for the term from eight to fifteen years.

2. Intentionally committing or ordering to commit any of the following in connection with an international armed conflict:

1) wounding a combatant who, having laid down their arms or having no longer means of defense, has surrendered at discretion;

2) an attack against or mistreating a negotiator or a person carrying a flag of truce;

3) improper use of the flag of a negotiator, flag or insignia and uniform of the enemy or the United Nations or distinctive emblems established by the Geneva Conventions for the Protection of War Victims of 1949, which has inflicted serious injury to another person;

4) an attack against installations or structures containing dangerous forces which violates provisions of international humanitarian law;

5) an attack with the knowledge that it will cause widespread, long-term, and serious damage to the environment that would be clearly excessive in relation to the concrete and direct military advantage anticipated;

6) other violations of international humanitarian law provided for by international treaties recognized as binding by the Verkhovna Rada of Ukraine, in case there are no signs of crimes set out by Articles 438-438⁴ of this Code,

shall be punishable by imprisonment for the term from eight to fifteen years.

3. In connection with an international armed conflict or a non-international armed conflict, intentionally committing or ordering to commit a killing of a person belonging to the adverse party to the conflict by treachery or by means of an act set out by para. 1–2 hereof resulting in the death of a person

shall be punishable by imprisonment for the term from ten to fifteen years or lifetime imprisonment.

Note. In this article, installations and structures containing dangerous forces shall mean, in particular, embankments, dams and nuclear power plants, even if they are military objectives.

Article 438³. War crimes consisting in the use of prohibited means of warfare

1. Using or ordering to use means of warfare prohibited by international humanitarian law, in connection with an international armed conflict or non-international armed conflict,

shall be punished with imprisonment for the term from eight to fifteen years.

2. Should the action set out by para. 1 hereof result in the death of a person or large-scale, long-term, and serious harm to the environment, it

shall be punishable by imprisonment for the term from ten to fifteen years.

Note. For the purposes of this article, means of warfare prohibited by international humanitarian law include:

1) poison or poisonous weapons;

2) asphyxiating, poisonous, or other similar gases and all analogous liquids, materials, or means, including chemical weapons, as defined in the 1993 Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction;

3) bullets that easily expand or flatten in the human body, such as bullets with a hard shell that does not completely cover the core or has incisions;

4) weapons the primary effect of which consists in causing damage by fragments that are not detectable in the human body with the help of an X-ray;

5) laser weapons specifically designed so that their primary combat function or one of their combat functions is to cause permanent blindness to visual organs of a human who does not use optical devices, i.e. to unprotected visual organs or visual organs with vision correction devices;

6) weapons that use microbiological or other biological agents or toxins regardless of their origin or production method.

Article 438⁴. War crimes against cultural property

1. Internationally committing or ordering to commit any of the following acts in connection with an international armed conflict in violation of provisions of international humanitarian law:

1) any export, other transfer of cultural property from occupied territory, or unlawful transfer of ownership thereof;

2) any archaeological excavations in occupied territory;

3) any modification or change in the manner of use of cultural property in occupied territory,

shall be punishable by imprisonment for the term from eight to twelve years.

2. Internationally committing or ordering to commit any of the following acts in connection with an international armed conflict or non-international armed conflict in violation of provisions of international humanitarian law:

1) an attack against cultural property protected by international humanitarian law;

2) destruction or substantial damage to cultural property protected by international humanitarian law;

3) taking possession in any form of a cultural property protected by international humanitarian law;

4) an act of vandalism against cultural property protected by international humanitarian law,

shall be punishable by imprisonment for the term from eight to twelve years.

3. Actions set out by para. 1 and 2 hereof, which are committed on a large scale or with respect to cultural property under special or enhanced protection, or included in the World Heritage List, as well as intentional use of cultural property under enhanced protection or of a place directly adjacent to it to

support hostilities in connection with an international armed conflict or non-international armed conflict,

shall be punishable by imprisonment for the term from ten to twelve years.

4. Should intentional committing or ordering to commit an attack against cultural property in connection with an international armed conflict or a non-international armed conflict in violation of international humanitarian law result in the death of a person, it

shall be punishable by imprisonment for the term from ten to fifteen years or lifetime imprisonment.

Note.

1. In this article, cultural property shall mean objects defined in Article 1 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.
2. In this article, special and enhanced protection of cultural property shall mean the protection provided in accordance with the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.
3. In this article, the World Heritage List shall mean the list compiled pursuant to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage.”

Clause 24 shall be added to Section II of the Final and Transitional Provisions as follows:

“24. Since the amendments to Section XX of the Special Part of the Criminal Code of Ukraine, as provided for by the Law of Ukraine “On Introducing Amendments to the Criminal and Criminal Procedure Codes of Ukraine Aimed at Improving the Legislation on Responsibility for International Crimes by Means of Aligning It with the Rome Statute of the International Criminal Court”, do not abolish criminal unlawfulness of acts, do not mitigate criminal liability, nor do they improve the situation of the person, then:

a) criminal proceedings, which were initiated under Articles 437 and 438 of the Criminal Code of Ukraine in the wording in force at the time this Law enters into force or previously in force, shall not be subject to closure in connection with the entry of this Law into force;

b) in these proceedings, the legal qualification of acts shall not change due to the entry of this Law into force;

c) persons convicted at the time this Law enters into force under Articles 437 and 438 of the Criminal Code of Ukraine shall not be eligible for release from serving their sentence pursuant to para. 2 and 3 of Article 74.”

Section III shall be added to the Final and Transitional Provisions as follows:

“Section III.

1. Acts provided for in Articles 437–438⁴, 442, and 442¹ of this Code, which at the time of their commission were not yet provided for by this Code but were already recognized as crimes of aggression, war crimes, genocide, or crimes against humanity under international law, shall be recognized as having been criminal offenses at the time of their commission in accordance with the legislation of Ukraine on criminal liability. A person shall be liable for such acts under Articles 437–438⁴, 442, or 442¹ of this Code in the wording in force at the time closest to the time of the commission of the relevant act, unless otherwise provided for in Article 5 of this Code.”

EXCERPTS

from the explanatory note to the draft law

2. Justification of the need to adopt the draft Law

On 21 August 2024 Ukraine ratified the ICC RS, in connection with which Law of Ukraine No. 4012-IX dated 09.10.2024 complemented the Criminal Code (CC) of Ukraine with a range of provisions, namely, crimes against humanity (Article 442-1) and criminal responsibility of military commanders, other persons who actually act as military commanders, and other superiors (Article 31-1).

At the same time, Article 438 of the CC of Ukraine was updated at the minimal level, while the content of Article 437 of the CC of Ukraine was not amended at all, even though both of these provisions require further harmonization with provisions of international law in order to ensure proper and established practice of criminal prosecution for international crimes.

Hence, the current version of Article 437 of the CC of Ukraine does not correspond to the definition of the crime of aggression set out by Article 8bis of the ICC RS, as well as Article 2 of the Statute of the Special Tribunal for the Crime of Aggression against Ukraine. That lack of correspondence complicates proper criminal legal qualification of acts of aggression taking into account modern provisions of international law and does not facilitate effective international cooperation in this sphere.

Moreover, the current version of Article 438 of the CC of Ukraine envisioning criminal liability for war crimes is not aligned with provisions of international criminal law. Absence of a specific list of acts (catalogue) which constitute war crimes stipulated by the law does not provide for criminalization of all actions recognized as war crimes under international law, does not promote legal certainty, and unreasonably complicates their criminal prosecution.

Contrary to Article 8 of the ICC RS, which contains a specific list of acts (catalogue) which constitute war crimes, Article 438 of the CC of Ukraine is basically a blanket provision as the overwhelming majority of war crimes are qualified as other violations of laws and customs of war set out by international treaties recognized as binding by the Verkhovna Rada of Ukraine. Consequently, such prevalent war crimes as unlawful deprivation of liberty, unlawful deportation or transfer, pillage, conflict-related sexual violence, intentional attacks on the civilian population in general or on individual civilians, intentional attacks on civilian objects, disproportionate attacks etc. do not get separate qualification but are rather covered by a non-specific wording of blanket nature. This causes difficulties with qualification of war crimes and their distinction. Besides, such situation does not ensure proper differentiation of punishment for war crimes.

In the context of the international armed conflict caused by the aggression of the RF against Ukraine alignment of the legislation of Ukraine on criminal liability with requirements of international criminal law, including primarily the ICC RS, is an extremely important issue to be addressed.

The objective of the state is proper criminalization of violations of international humanitarian law (IHL), in particular, specification of prohibited conduct, response to significant and large-scale violations of the IHL, as well as ensuring enhancement of adherence to its provisions.

3. Main provisions of the draft Law

The draft Law suggests introducing amendments to Articles 437, 438 of the CC of Ukraine in order to ensure their alignment with the ICC RS regarding the crime of aggression and war crimes.

Article 8bis of the ICC RS, which stipulates responsibility for planning, preparation, initiation, or committal of an act of aggression, has been taken as the basis for the updated wording of Article 437 of the CC of Ukraine.

The note to the article sets out the definition of the act of aggression, criteria of the subject of the crime, as well as provisions regarding interpretation of terms, taking into account requirements of international law.

The suggested version of the article complies with requirements of Article 8bis of the ICC RS, while also taking into account approaches to criminal liability for the crime of aggression which have been formed in the Ukrainian legal system over the years of the Russian armed aggression against Ukraine, departure from which is not desirable from the perspective of national security and criminal legal policy.

The draft Law suggests stipulating the definition of the subject of the crime of aggression as a person capable of actually exercising control over or managing political or military actions of the state, or a person capable of substantially influencing political, military, economic, financial, informational,

and other processes within their own state or beyond its borders, or of managing specific aspects of political actions or hostilities.

Such approach is based on the legal position of the Grand Chamber of the Supreme Court expressed on 28 February 2024 in ruling No. 415/2182/20. Even though it envisions a broader definition of the subject of the crime of aggression than sources of international law, it takes into account the real course of the RF's aggression, and departure from it in the direction of a narrower (leadership-based) understanding of the subject of the crime of aggression will lead to decriminalization of actions committed by a large group of Russian officials, which appears to be undesirable from the perspective of national security and criminal legal policy.

In view of similar reasons, the draft Law does not suggest introducing limitations regarding the leadership status of accomplices of the crime of aggression, i.e. those who engage in aiding and abetting or who are organizers.

Definition of the act of aggression takes into account provisions of Article 8bis of the ICC RS, Article 3 of the UN General Assembly Resolution 3314 (XXIX) dated 14 December 1974, while preserving the definition of aggressive war or aggressive hostilities from the current version of the article as the form of the act of aggression. International legal acts envision unlawfulness of planning, preparing, initiating, or committing an act of aggression, but they insufficiently take into consideration circumstances under which the act of aggression has already been committed and the aggressive war is actually being waged. The RF's aggression against Ukraine has been ongoing since 2014, which means that a large number of actions shall be qualified as aggressive war or aggressive hostilities. Exclusion of these forms of *actus reus* (objective side) of the criminal offence will negatively impact the possibility of criminal prosecution for this crime.

These amendments are aligned with the Statute of the Special Tribunal for the Crime of Aggression against Ukraine and do not contradict Article 7 of the ECtHR.

Hence, the suggested version of Article 437 of the CC of Ukraine implements provisions of the ICC RS and additionally takes into account the political and legal situation which exists in Ukraine, ensures criminal prosecution at the national level, and its amendment will result in partial decriminalization of unlawful actions.

Clause 3 of the note to Article 437 of the CC of Ukraine will promote a consistent and correct interpretation of articles of the CC of Ukraine which stipulate responsibility for international crimes.

An overly narrow interpretation of these provisions by law-applying bodies will create a situation in which Ukraine will limit its jurisdiction regarding criminal prosecution and punishment of perpetrators of these crimes, i.e. will improperly fulfil international legal commitments it has undertaken. In turn, an unreasonably broad interpretation will create a risk of conviction that

was unforeseeable for defendants in the meaning of Article 7(1) of the European Convention on Human Rights. According to the general rule the provision envisions a comprehensive consideration of sources (international treaties, customary international law, and case law of international criminal tribunals) which were in force as of the moment of the person committing an act, while interpreting Articles 437–438⁴, 442, 442-1 of the CC of Ukraine.

Instances when provisions of the CC of Ukraine directly imply the need to interpret the respective term in another manner are rather an exception. For example, given that clause 2 of the note to Article 437 of the CC of Ukraine suggests defining the subject of the crime of aggression broader than under international law, interpretation of the essence of separate forms of this crime cannot give a meaning to these forms which would correspond to international law, while contradicting clause 2 of the note to Article 437 of the CC of Ukraine.

The draft Law suggests introducing a clear list of specific *corpus delicti* of war crimes (catalogue) which are divided among five articles in terms of immediate object of the criminal offence. These are war crimes directed against the person, against property, the ones involving the use of methods of warfare prohibited by international humanitarian law, the ones involving the use of means of warfare prohibited by international humanitarian law, and the ones directed against cultural property.

The catalogue covers as broadly as possible the range of actions which are recognized as war crimes under international law, in particular, all crimes set out by Article 8 of the ICC RS. Names of the crimes are adapted taking into account official translations of official English texts of the ICC RS, Elements of Crime of the ICC RS, other sources of international law into Ukrainian, as well as legal technique and terminology used in the CC of Ukraine.

Each of the articles contains at least one main *corpus delicti* of the criminal offence. Main *corpus delicti* of war crimes under the draft Law are characterized by the variety of forms in which they are committed that are specified in separate clauses of the respective paragraph of the article. Each of the articles includes at least one qualified *corpus delicti* of the criminal offence. A typical qualifying feature is causing of a person's death, the meaning of which is explained in clause 4 of the note to Article 438 of the CC of Ukraine, taking into account the established interpretation of this feature in the legislation of Ukraine on criminal responsibility, as well as approaches of international criminal and humanitarian law.

It is suggested to enhance punishment for certain war crimes (from 8 to 15 years of imprisonment). Currently even in cases involving a significant number of episodes of war crimes, for example, torture, inhuman treatment, rape etc., when none of them qualifies under Article 438(2) of the CC of Ukraine, the maximum penalty is limited to 12 years of imprisonment.

Within separate articles crimes are grouped by the element of being

committed in the context of international and non-international armed conflicts. The draft Law is based on combining contexts of international and non-international armed conflicts within one *corpus delicti* of the crime, whenever possible. However, at the same time it is not allowed to narrow down the scope of criminal liability as compared to the international legal definition of the crime.

The draft takes into account that the range of serious violations of the IHL is not limited to the list provided in Article 8 of the ICC RS, but such actions are committed by the RF in the course of the aggression against Ukraine. In connection with this the catalogue envisions actions recognized as war crimes according to international law, for example, attack on installations containing dangerous forces; forcible imposition of citizenship by the occupying power on the population of the occupied territory; or an attack the primary purpose of which is to terrorize the civilian population.

Besides, the draft Law is based on the idea of progressive development of the catalogue of war crimes under international criminal law which would take into account peculiarities of the armed conflict in Ukraine and Ukrainian context-specific challenges in the legal regulation, as well as development of the IHL after establishment of the ICC RS.

For example, cl. 9 of para. 3 of Article 438 of the draft Law stipulates responsibility for recruitment or enlistment of a person under the age of eighteen into the armed forces or other state military formations or into other non-state formations (groups) participating in an armed conflict, the use of such person for active participation in the conflict, as well as propaganda aimed at ensuring the entry of such persons into military service on the side of the opposing party to the conflict.

The suggested version is different from Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the ICC RS, envisioning responsibility for a broader list of actions (involvement into active participation in the conflict and propaganda), as well as higher age of the victim (18 years of age versus 15 years of age). Such amendments correspond to real social danger posed by such acts, as children must be protected from all forms of involvement in conflict, and there is no justification for limiting the age of protection to 15; they are also based on relevant prohibitions under IHL and development of international law regarding protection of children.

Furthermore, the draft Law takes into account the RF's large-scale and systematic violations of provisions of international humanitarian law regarding protection of cultural property which necessitates clarification and refinement of criminal liability for war crimes against Ukraine's cultural heritage. The ICC RS mostly relies on general classifications of war crimes that encompass attacks on cultural property, although there are specific international legal norms established by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict as its 1954 and 1999 Protocols. The

Second Protocol of 1999 defines a list of grave breaches of the 1954 Convention and its Protocols, regarding which the states-parties to the Protocol must take such measures as may be necessary to recognize them as criminal offences under their national legislation. These serious violations have been incorporated into the *corpus delicti* of crimes set out by Article 438-4 of the draft Law. Moreover, given the threat posed by the RF's actions aimed at destroying the cultural identity and appropriating the cultural heritage of the Ukrainian people, Article 438-4(1) criminalizes acts prohibited by Article 9 of the 1999 Second Protocol.

Since amendments to Section XX of the Special Part of the Criminal Code of Ukraine set out by this draft Law do not abolish criminal unlawfulness of acts, do not mitigate criminal responsibility, and do not improve the situation of the person, the text proposes to stipulate that criminal proceedings initiated under Articles 437 and 438 of the Criminal Code of Ukraine in versions current as of the moment of it coming into force or in force prior thereto shall not be subject to closure, legal qualification does not change in these proceedings in connection with this Law coming into force, and persons convicted as of the moment of this draft Law coming into force based on Articles 437 and 438 of the CC of Ukraine shall not be released from serving their punishment following procedures set out by paragraph 2 and 3 of Article 74 of the CC of Ukraine.

The draft Law takes into account that currently law enforcement bodies have registered over 200,000 war crimes, which is why introduction of any amendments to Article 438 of the CC of Ukraine shall not result in making criminal prosecution for their committal impossible and, more importantly, in abolishing criminal liability.

In view of the above each of Articles 438 – 438⁴ of the draft Law retains such form of *actus reus* (objective side) of the criminal offence as giving an order which is set out by the current version of Article 438 of the CC of Ukraine.

Besides, cl. 6 of para. 2 of Article 438-2 of the draft Law suggests preserving the *actus reus* (objective side) of the criminal offence in the form of other violations of international humanitarian law recognized as binding by the Verkhovna Rada of Ukraine which exists now in the current version of Article 438 of the CC of Ukraine, provided that there are no signs of crimes specified in Articles 438 – 438⁴ of this Code. Preservation of this clause underlines that there shall be no decriminalization of any war crimes set out by the current version of Article 438 of the CC of Ukraine in connection with amendments to the CC of Ukraine suggested by this draft Law, but its application is possible only in exceptional instances of committal of war crimes which are not set out by other clauses of the catalogue.

The draft Law envisages to add a separate provision to the Final and Transitional Provisions of the CC of Ukraine which allows criminal prosecution

and punishment of persons for acts that were already recognized as crimes of aggression, crimes against humanity, war crimes, or the crime of genocide, but were not yet recognized as criminally unlawful under the criminal legislation of Ukraine as of the moment of their committal. Adoption of this provision and its further application are fully consistent with Article 7(1) of the 1950 European Convention on Human Rights, according to which no one may be held liable for committing a criminal offence on the basis of any action or inaction which at the time of its committal did not constitute a criminal offence under *the national law or international law*, as repeatedly confirmed in its judgements by the European Court of Human Rights (see, for example, judgements in cases *Kolk and Kislyiy v. Estonia* (2006), *Penart v. Estonia* (2006), *Kononov v. Latvia* (2010)). A similar provision is also given in Article 15(1) of the 1966 International Covenant on Civil and Political Rights.

There are no grounds to believe that the proposed provision conflicts with Article 58(2) of the Constitution of Ukraine, even though the latter explicitly provides that no one may be held liable for acts that were not recognized by law as offences at the time when they were committed. If this provision were indeed to provide an absolute guarantee against conviction for an act that at the time of its committal was not recognized by the Ukrainian law as a criminal offence, even though it was recognized as a crime under international law, this would essentially mean that the ECHR is unconstitutional in the fragment of its Article 7(1) which allows the opposite. However, there is no ruling by the Constitutional Court of Ukraine declaring Article 7(1) of the ECHR unconstitutional. It is followed by the presumption that the aforementioned provision of the Convention is constitutional and, consequently, that the conviction and punishment of a person for an act that at the time of its committal was recognized as a crime under international law, but was not yet recognized as a criminal offence under Ukrainian criminal law, are also constitutional.

Furthermore, indent 1 of clause 2 of the reasoning part of the decision of the Constitutional Court of Ukraine under the case concerning the constitutional submission by 46 people's deputies of Ukraine regarding official interpretation of provisions of Article 58 of the Constitution of Ukraine, Articles 6, 81 of the Criminal Code of Ukraine (case on retroactive application of the criminal law) dated 19.04.2000, No. 6-rp/2000 states that: "The principle enshrined in the Constitution of Ukraine regarding inadmissibility of the retroactive effect of laws and other regulations is consistent with international legal instruments, in particular, the International Covenant on Civil and Political Rights (Article 15), Convention for the Protection of Human Rights and Fundamental Freedoms (Article 7)." If the international legal aspect of the principle of legality were to contradict Article 58 of the Constitution, there would be no question of any consistency.

In practical terms adoption of the proposed provision is extremely

important for ensuring effective criminal prosecution and punishment of crimes against humanity committed by representatives of the aggressor state, since certain patterns of behaviour that can be interpreted as manifestations of a large-scale or systematic attack on the civilian population (for example, repeated acts of violence against civilian population, mass deportations, shelling of critical infrastructure), essentially took shape as early as 2014 – 2024 before Article 442-1 of the CC of Ukraine came into force. In the absence of the proposed provision pre-trial investigation bodies are forced to artificially focus their attention solely on events that occurred after the entry of the aforementioned article into force.