



MEDIA  
INITIATIVE  
for Human Rights



# ANALYTICAL NOTE

on the use of the Russian criminal justice  
system to convict for military resistance to  
occupation

# CONTEXT

On February 20, 2014, the Russian Federation launched an aggression against Ukraine, followed by the military occupation of the Autonomous Republic of Crimea and certain districts of the Donetsk and Luhansk Regions. From the first days of the occupation, the Russian Federation began to change Ukrainian law enforcement agencies and the judicial system in accordance to its legislation. In 2022, the Media Initiative for Human Rights (MIHR) prepared an analytical material **“Quasi Legal System in the Occupied Territories: Implementation and Adoption of Practices”**, based on the collected data, covering the period from 2014 to 2022 and concerning the period of formation of the judicial system of the occupied parts of Donetsk and Luhansk Regions.

**This MIHR Analytical Note aims to show how Russia deliberately deprives the accused of the judicial guarantees outlined in the Geneva Conventions and Additional Protocol I in the framework of criminal prosecution.**

The Russian military occupation of Ukraine's territory is an international crime, in particular, a crime of aggression. In addition, the occupation took place in violation of the Convention (IV) respecting the Laws and Customs of War on Land (The Hague, October 18, 1907) and its annex and the Convention relative to the Protection of Civilian Persons in Time

of War (hereinafter referred to as GC IV), in particular, the preservation of Ukrainian legislation, the Ukrainian judicial and law enforcement systems in the occupied territories.



Only in certain areas of the Donetsk and Luhansk Regions was there a transitional period from 2014 to 2022, during which Ukrainian legislation was gradually replaced by Russian legislation, which was implemented based on decisions of the self-proclaimed authorities of the so-called L/DPR.

In Crimea and certain areas of the Zaporizhzhia and Kherson Regions, the Ukrainian judicial and law enforcement systems were replaced with the establishment of effective control over the occupied territory and general control over the population.

The paper argues that Russia's unjust convictions to severe penalties are not a miscarriage of justice, but the result of implementing and maintaining its government's broad-based and systematic criminal prosecution policy.

**Quasi Legal System in the Occupied Territories: Implementation and Adoption of Practices**





# ANALYTICS FOCUS

The Analytical Note focuses on the analysis of criminal prosecutions of Ukrainian servicemen who were taken prisoner by Russia from the beginning of 2014 to the present and have been prosecuted for participation in hostilities. The MIHR experts analyzed procedural documents in at least 30 cases: indictments, verdicts, etc.

## JUDICIAL SYSTEM OF THE OCCUPIED TERRITORIES

In 2014, after the occupation of the Crimean peninsula and parts of the Donetsk and Luhansk Regions, the Russian Federation ceased the functioning of Ukrainian authorities in these territories. Contrary to international law, Article 64 of the Geneva Convention (IV), which requires the preservation of Ukrainian legislation in the occupied territories, the Russian Federation illegally replaced Ukrainian criminal law with Russian legislation and created its own judicial, investigative and police bodies, and in part of the occupied territories created a quasi-legal system based on the legislation of the Russian Federation and the former Soviet Union.

After Russia's full-scale invasion on February 24, 2022, the occupation spread to parts of the Zaporizhzhia and Kherson Regions. The Russian Federation established its governing bodies in these territories and implemented Russian legislation. On October 4, 2022, Russia unilaterally declared the partially occupied Kherson, Zaporizhzhia, Donetsk, and Luhansk Regions of Ukraine as its federal subjects. Following the adopted laws, the Russian Federation, as in 2014 in the Autonomous Republic of Crimea, extended the powers of its prosecutors and courts to these territories.

In particular, September 21, 2023, was recognized as the day of establishing judicial bodies in the occupied territories, including the supreme courts of the so-called Donetsk People's Republic and Luhansk People's Republic, regional courts of the Zaporizhzhia and Kherson Regions, and arbitration and military courts. The new judicial system provides for a hierarchy from local courts to the Supreme Court of the Russian Federation. In the Zaporizhzhia and Kherson Regions, regional courts are the highest courts.




# CRIMINAL LEGISLATION OF THE OCCUPIED TERRITORIES

The regulatory system implemented in the occupied territories formally contains the principles by which the legal system functions in democratic countries. The Criminal Procedure Code of the Russian Federation contains Chapter 2, which sets out the principles of criminal justice. In particular:

- ➔ Article 7 of the Russian Federation's Code of Criminal Procedure. Legality in criminal proceedings. This article contains the following provision: "Violation of the provisions of this Code by a court, prosecutor, investigator, inquiry body, head of an inquiry body, head of an inquiry unit or an investigator in the course of criminal proceedings entails the inadmissibility of evidence obtained in this way";
- ➔ Article 8.1 of the Russian Federation's Code of Criminal Procedure. Independence of judges. Among other things, it sets that: "Judges shall consider and decide criminal cases in conditions that exclude outside influence on them. Interference of state bodies, local self-government bodies, other bodies, organizations, officials, or citizens in the activities of judges in the administration of justice is prohibited and entails liability established by law.";
- ➔ Article 10 of the Russian Federation's Code of Criminal Procedure. Inviolability of the person. The norms of this article provide that: "No one may be detained on suspicion of committing a crime or taken into custody in the absence of legal grounds provided for by this Code. A person in respect of whom custody has been chosen as a preventive measure, as well as a person detained on suspicion of committing a crime, shall be held in conditions that exclude a threat to his life and health.";
- ➔ Article 14 of the Russian Federation's Code of Criminal Procedure. Presumption of Innocence: "A suspect or accused person is not obliged to prove his or her innocence. The burden of proving the accusation and refuting the arguments raised in defense of the suspect or accused shall be on the prosecution.";
- ➔ Article 15 of the Russian Federation's Code of Criminal Procedure. Competitiveness of the Parties: "Criminal proceedings shall be conducted based on the adversarial nature of the parties. The court is not a criminal prosecution body, does not act as a prosecution or defense counsel. The court shall create the necessary conditions for the parties to fulfill their procedural obligations and exercise the rights granted to them";
- ➔ Article 16 of the Russian Federation's Code of Criminal Procedure. Ensuring the right to defense for suspects and accused persons: "The court, the prosecutor, the investigator and the pre-trial investigator shall explain to the suspect and the accused their rights and ensure that they have the opportunity to defend themselves by all means and methods not prohibited by this Code";
- ➔ Article 17 of the Russian Federation's Code of Criminal Procedure. Freedom to evaluate evidence: "The judge, jurors, as well as the prosecutor, investigator, and coroner shall evaluate the evidence according to their inner conviction based on the totality of the evidence available in the criminal case, guided by law and conscience. No evidence has a pre-established force."





Article 240 of the Russian Federation's Code of Criminal Procedure guarantees immediacy and oral evidence during the trial. According to its provisions, all evidence in a criminal case is subject to direct examination during the trial, except for crimes of minor or medium gravity. The court hears the defendant's testimony, the victim's testimony, witnesses, and expert opinions; examines physical evidence; announces protocols and other documents; and performs other judicial actions to examine evidence.

It is clear from the content of this article that a court verdict may be based only on the evidence examined in court, and the announcement of testimony given during the pre-trial investigation is possible only in exceptional cases:

- ➔ In case of significant contradictions between the testimony given by the defendant during the pre-trial investigation and in court, as well as in case of refusal to testify;
- ➔ consent of the parties in case of failure to appear of the victim or witness, as well as in cases where it is impossible to interrogate the victim or witness who did not appear at the court hearing.

Thus, the Russian Code of Criminal Procedure contains the procedural guarantees necessary to ensure the right to a fair trial, and the right to appeal and cassation is ensured. However, these elements of the right to a fair trial are declarative and are not enforced during the trial.

## **GENERAL PRINCIPLES OF JUDICIAL PROCEDURES DURING ARMED CONFLICT**

Provisions of Article 43 of the IV Convention on the Laws and Customs of War on Land and its annex: The Regulations on the Laws and Customs of War on Land stipulate that, upon the actual transfer of authority to the occupying power, it must take all measures in its power to restore and maintain public order and safety, as far as possible, in accordance with the laws existing in its country, except when it is absolutely impossible to do so.

Article 54 of GC IV states that the Occupying Power is prohibited from changing the status of officials or judges in the occupied territories or applying any coercive measures to them if they refrain from performing their duties for the sake of conscience.

This provision is clarified in Article 64 of GC IV, which establishes that the criminal law of the occupied territory continues to apply in the occupied territories unless the Occupying Power repeals or suspends it if this law poses a threat to its security or impedes the fulfillment of the obligations under the present Convention.

The legitimacy of Russia's replacement of Ukrainian criminal legislation with Russian legislation, the replacement of Ukrainian courts with Russian courts, or the extension of the Russian judicial system's jurisdiction to the occupied territories of Ukraine should be assessed through the prism of the provisions of the Hague and Geneva Conventions, as well as the general rules of International Humanitarian Law (IHL).

In no circumstances, as stated in Art. 84 of the Convention relative to the Treatment of Prisoners of War (hereinafter referred to as GC III), whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

The trial must be conducted under the guarantees provided for in Article 99 of the GC III, which stipulate that

- ➔ No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.
- ➔ 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.
- ➔ No prisoner of war may be convicted without having had an opportunity to present their defence and the assistance of a qualified advocate or counsel.

Judicial investigations against a POW shall be conducted as quickly as circumstances permit and in such a way that the trial is held as soon as possible. A POW awaiting trial shall not be detained unless the same measure would be applied to a member of the armed forces of the detaining Power if he were accused of a similar offense or if it is necessary in the interests of national security.



Under no circumstances shall detention in custody exceed a period of three months (Article 103 of the GC ). According to Article 105 of the GC III:

- ➔ The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.



- ➔ Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.
- ➔ The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.
- ➔ Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.
- ➔ The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held 'in camera' in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

The basic guarantees of the judicial process are defined in Part 1 of Article 75 of Additional Protocol I to the Geneva Conventions. They stipulate that persons in the power of a party to the conflict shall be treated humanely in all circumstances and shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.





Following Part 2 of Art. 75 of Additional Protocol I to the Geneva Conventions, following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:



Violence to the life, health, or physical or mental well-being of persons, in particular: murder; torture of all kinds, whether physical or mental; corporal punishment; and mutilation;



outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;



the taking of hostages;



collective punishments; and



threats to commit any of the foregoing acts.



Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

The conviction of a prisoner of war must be pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

- ➔ the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
- ➔ no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed;
- ➔ anyone charged with an offence is presumed innocent until proven guilty according to law;
- ➔ anyone charged with an offence shall have the right to be tried in his presence;

- ➔ no one shall be compelled to testify against himself or to confess guilt;
- ➔ anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- ➔ no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by the Article 75 of Additional Protocol I to the Geneva Conventions until their final release, repatriation or re-establishment, even after the end of the armed conflict. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, their trial must be conducted following applicable international law.

The above-mentioned provisions of IHL play the role of a specialized law (*lex specialis*) that operates in parallel with the norms of International Human Rights Law, in particular, Article 14 of the International Covenant on Civil and Political Rights, the provisions of which can be used in the analysis of Russia's criminal prosecution practices.

The trial should be conducted with equal opportunities for the prosecution and defense. Since the prosecutor, as a state representative, has a procedural advantage and wider resources, including technical ones, the relevant state must ensure that the defense is treated in a manner that would prevent unjustified advantages for the prosecution. Failure to comply with the guarantees of an adversarial process violates the accused's right to a fair trial.

It follows from the foregoing that the basic guarantees of the trial provide for the defendant's right to organize his defense, including the possibility of self-defense and the involvement of third-party legal assistance. At the same time, the defendant's rights to question prosecution and defense witnesses cannot be restricted.

Instead, the Russian criminal system allows the prosecutor to question prosecution witnesses without the participation of defense counsel and announce the latter in court. As a general rule, witnesses are not re-interrogated in court, and if they are, they are summoned to confirm the testimony given by the investigator, not to verify their previous testimony.

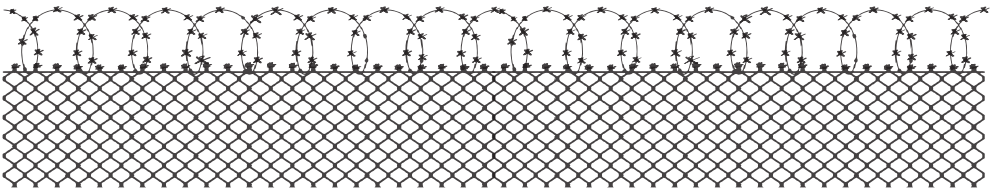
# USE OF THE JUDICIAL SYSTEM TO PUNISH PRISONERS OF WAR FOR RESISTING THE OCCUPATION

The information collected by the MIHR allows us to assert that the Russian Federation is carrying out politically motivated persecution of the Ukrainian Armed Forces who were captured by Russia. Prisoners of war are prosecuted for ordinary criminal

offenses, without taking into account the contextual elements of crimes inherent in armed conflict, and in violation of the combatant's privilege not to be convicted for lawful participation in hostilities.

This is what Russia is prosecuting for the Ukrainian military:

1. terrorism, but in fact for participation in legitimate resistance to Russian aggression;
2. murder, but in fact for the legitimate destruction of enemy combatants;
3. kidnapping, but in fact for the legitimate capture of a Russian combatant;
4. intentional destruction or damage to property, but in fact for legitimate attacks on military targets, including military real estate;
5. illegal handling of firearms or their main parts, explosive devices, ammunition, carrying weapons, main parts of firearms, ammunition, but in fact for the lawful participation of combatants in hostilities;



The Russian authorities commit significant procedural violations during the investigation, and therefore, the judicial assessment of the facts does not refer to the real actions or deeds of the accused but to distorted situations. In court, the evidence is not verified through adversarial procedures, and the evidence

provided by the prosecution is considered a priori reliable. That is, there is a presumption of guilt, and the accused has to prove his or her innocence. Almost all accused prisoners of war testify against themselves, and most often, other prisoners of war are the main witnesses in the case.



Based on publicly available information, the MIHR collected data on criminal prosecutions that are being considered by courts in the occupation and in the Russian Federation at the time of preparation of this report.

This includes, in particular:

Nº	Article of the Russian Federation's Criminal Code	Qualification under the Russian Federation's Criminal Code	Commentary by the MIHR
1	Art. 105	<del>XX</del> Murder	Charges of murder, intentional infliction of moderate grievous bodily harm, and beatings are brought as a result of the application of general criminal qualifications in cases where IHL should apply. As noted above, IHL does not recognize as a war crime all attacks that result in civilian casualties, but only those that are directed at civilian targets or disproportionate attacks where civilian casualties outweigh military superiority.
2	Art. 112	Intentional infliction of moderate harm to health	
3	Art. 112 <del>XX</del>	Beatings	
4	Art. 116	Intentional infliction of minor injury to health <del>XX</del>	
5	Art. 126	Abduction of a person	Cases of restriction or deprivation of liberty of Russian prisoners of war or cases of lawful restriction of liberty due to security measures contrary to IHL are interpreted in the general criminal context.
6	Art. 127	Illegal deprivation of liberty	
7	Art. 167	<del>XX</del> Intentional destruction or damage to property	During a state of war, <del>XX</del> the destruction or damage to property is recognized as unlawful if there has been a grave breach of the laws or customs of war (see Mutatis mutandis §.5 of Article 85 of the I Additional Protocol to the Geneva Conventions)

Nº	Article of the Russian Federation's Criminal Code	Qualification under the Russian Federation's Criminal Code	Commentary by the MIHR
8	Art. 205.2	Public calls for terrorist activities, public justification of terrorism, or propaganda of terrorism	The charges against this group relate to the failure to recognize the Armed Forces of Ukraine by the opposing side as a party to an international armed conflict. As a result, membership in units of the Armed Forces of Ukraine banned in Russia is qualified as participation in terrorist activities. That is, the Russian Federation, ignoring the norms of IHL, applies its interpretation of the law, which leads to illegitimate criminal prosecution and deprivation of liberty, contrary to the guarantees of the Geneva Convention relative to the Treatment of Prisoners of War and other IHL norms.
9	Art. 205.3	Training for terrorist activities	
10	Art. 205.4	Organization of a terrorist community and participation in it	
11	Art. 205.5	Organization of activities of a terrorist organization and participation in the activities of such an organization	
12	Art. 206	Taking a hostage	Capturing the enemy is interpreted as taking a hostage.
13	Art. 208	Organization of an illegal armed formation or participation in it, as well as participation in an armed conflict or hostilities for purposes contrary to the interests of the Russian Federation	Participation in hostilities as part of the official structures of the Ukrainian Defense Forces is qualified in the context of creating an illegal armed formation.
14	Art. 222	Unlawful acquisition, transfer, sale, storage, transportation, shipment, or carrying of weapons, major parts of firearms, ammunition	These charges relate to participants in the armed conflict who are accused contrary to their legal status. They are based on the disregard of the legal consequences of the armed conflict, the failure to recognize the legal regime of occupation, and the arbitrary application of general criminal law by the Russian Federation in a situation where, by virtue of the principle of <i>Lex specialis derogat legi generali</i> , IHL should be applied.
15	Art. 278	Violent seizure of power or violent retention of power	Combat actions in the occupied territories with the aim of their liberation are interpreted in the context of the seizure of the authorities of the occupied territories established by the Russian Federation.

№	Article of the Russian Federation's Criminal Code	Qualification under the Russian Federation's Criminal Code	Commentary by the MIHR
16	Art. 226.1	<p>Smuggling of potent, poisonous, toxic, explosive, radioactive substances, radiation sources, nuclear materials, firearms or their main parts, explosive devices, ammunition, other weapons, other military equipment, as well as raw materials, supplies, equipment, technologies, scientific and technical information or intellectual property that can be used to create weapons or military equipment, as well as strategically important goods and resources or cultural values or particularly valuable</p>	<p><del>XX</del></p> <p>This article applies to civilians charged with smuggling explosives, firearms or their main parts, explosive devices, ammunition, other weapons, other military equipment, as well as raw materials, materials, equipment, and technology that can be used to create weapons or military equipment.</p> <p>The charge under this article can be identified as a general criminal charge in relation to the circumstances that should be interpreted in the light of IHL.</p>
17	Art. 280	<p>Public calls for extremist activity</p> <p><del>XX</del></p>	<p>Participation in the defense of Ukraine and calls for the liberation of the occupied territories are qualified in the context of calls for extremist activities.</p>
18	Art. 356	<p>Use of prohibited means and methods of warfare</p> <p><del>XX</del></p>	<p>The MIHR is not aware of all the charges, but those that have been made available to it are determined by Russia without respect for IHL principles.</p> <p>In particular, the AFU defines the consequences of combat clashes between Russian and Ukrainian forces within populated areas, without regard for the context of war, as the destruction of civilian property. In other words, it refers to attacks on military targets as attacks on civilian targets. In other words, it applies the presumption of attacks by Ukrainian forces on civilian targets.</p> <p>In other cases, it defines captivity as unlawful deprivation of liberty or abduction or identifies participation in the AFU as participation in terrorist or extremist activities.</p>
19	Art. 359	Mercenarism	<p>The Russian Federation interprets the term mercenarism outside the scope of Article 47 of Additional Protocol I.</p>



The information collected by the MIHR indicates that the Russian Federation, contrary to its obligations under IHL, is using the criminal justice system to prosecute Ukrainian military for resistance to Russian aggression and

occupation of Ukrainian territories and accusing them of resistance to such aggression, violating the right of the Ukrainian military to a fair trial. This is not only a war crime but also contains elements of a crime against humanity.

The interviews with POWs conducted by the MIHR and the data collected provide grounds to qualify criminal charges and court procedures for the purposes of politically motivated prosecution rather than justice, as evidenced by the following arguments:

1. there are no records of the inadmissibility of evidence collected by investigators based on which Ukrainian POWs were accused;
2. systematic practices of torture were used against prisoners to obtain self-incriminating testimony, which, according to the interviewed prisoners, are essentially self-incriminating;
3. the principle of presumption of innocence is not respected;
4. the prosecution is not conducted in accordance with the principles of adversarialism between the prosecution and the defense. The courts do not create conditions for the parties to fulfill their procedural obligations and exercise their rights;
5. the right to defense is not ensured;
6. the assessment of evidence is not based on its totality and does not consider the provisions of International Humanitarian Law.

## On violation of the generally recognized rules of court procedure

Although the courts of the occupied territories and courts in the territory of the Russian Federation are obliged to directly examine evidence and evaluate oral testimony, in practice, instead of oral interrogations, in many cases, judges announce written testimony provided by the victim or witness to the investigator and at the pre-trial investigation stage without the participation of the defense.

Announcing a witness's testimony in his or her absence from the trial means that the testimony of such a witness cannot be verified by the defense through cross-examination procedures.





The unreasonable use of the announcement of witness testimony instead of oral examination by the court allows the occupation and Russian courts to avoid conducting thorough investigation procedures. In the verdicts of the occupation courts available to the MIHR, it is noteworthy that accused POWs testify against themselves and other POWs who are accused in their cases and involved as witnesses in other cases.

The content of the verdicts can be characterized as follows:

- ➔ The contextual part includes a description of topics related to the history of the creation of this entity within the Russian Federation in an interpretation that violates international law;
- ➔ Defendants usually agree to the charges, sometimes adding a statement of refusal to testify in court while confirming the testimony provided to the investigation;
- ➔ Usually, witnesses come from among the prisoners of war themselves;
- ➔ The motivational and resolution parts include the court's reasoning and the final decision on punishment;
- ➔ Sentences contain information about the time spent in custody being counted towards the sentence. This part is important for analytics, as it allows us to establish the date of detention of a prisoner of war.

The factual information contained in the verdicts is not credible due to violations of adversarial procedures and the obvious inequality of the parties to the criminal proceedings.

The majority of accused prisoners allegedly confirm self-incriminating statements previously provided to the investigation. In such cases, the court resorts to using written testimony collected by the investigator at the pre-trial stage. This procedure allows the court to simplify and thus speed up the trial, as there is no need to waste time on logistical issues of bringing the accused to the court hearing.

Based on the testimonies of former prisoners of war, the MIHR is well aware of the torture and inhumane conditions of detention in Russian captivity. Prisoners are tortured there

and receive almost no medical care. In the fall of 2024, the UN Independent International Commission of Inquiry on Violations in Ukraine published a report stating that more than 90% of military personnel returning from captivity reported torture: they were mercilessly beaten, starved, deprived of sleep, and kept in complete information isolation.

Given the well-known fact that the Russian Federation systematically uses torture against prisoners, this situation can be explained by the fact that POWs, despite the obvious harm to their interests and the interests of their colleagues, testify against themselves again and again. The interrogation of POW witnesses, whose mutual testimony formed the basis of the verdicts, is noteworthy. At the same time, the position of the defense is passive, and the MIHR is not aware

of any situations when the defense initiated the interrogation of witnesses.

testimony of the accused without proper criticism.

Information about the torture of prisoners of war creates a presumption that the self-incriminating testimony of the accused should be taken critically and, if not excluded from evidence, at least carefully examined. Instead, judges accept the self-incriminating

Despite international publicity about the widespread use of torture and inhuman treatment of POWs, Russian judges do not check the voluntariness of POWs' self-incriminating testimony. Reports of UN monitoring missions on torture practices are ignored. There is no judicial control in the pre-trial investigation process.

## On the violation of the rules of IHL application in the assessment of the circumstances of cases

Russia is conducting mass trials of Ukrainian prisoners of war. The MIHR knows of at least 218 trials in the occupied territories, involving 341 defendants. In addition, there are at least 94 trials of Ukrainian prisoners of war in Russia, where 234 people are on trial. The vast majority of cases involve charges of killing civilians.

It follows that the Russian side does not recognize the Armed Forces of Ukraine as a legitimate participant in the armed conflict, viewing them exclusively as countering the Russian Federation's so-called special military operation. Thus, the very fact of resistance to Russian aggression is interpreted as a crime.

Due to the application of the jurisdictional rules, the same judges

hear cases of POWs. This allows us to reasonably assume that when passing sentences, they de facto copy their sentences, i.e., they work in a template, without going into the details of individual cases.

At the same time, they have the opportunity to perceive the cases of Ukrainian prisoners of war in their totality and to be aware of the conclusions of UN experts who, in their reports, draw attention to documented cases of regular torture of Ukrainian prisoners of war in Russia. Given these findings, judges should have been critical of the self-incriminating testimony of accused prisoners. But this is not happening.

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1. Treatment of prisoners of war and persons hors de combat in the context of the armed attack by the Russian Federation against Ukraine, 24 February 2022 – 23 February 2023; Report of the Independent International Commission of Inquiry on Ukraine; REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE; REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE: 1 February to 31 July 2023; Ukraine: UN Commission concerned by continuing patterns of violations of human rights and international humanitarian law



Although the courts mention the provisions on prohibitions and methods of warfare in their decisions, they do not apply these norms to the actual circumstances of the cases. Courts selectively apply International Humanitarian Law. In particular, judges do not distinguish between civilian and military targets when assessing the facts and qualifying a person's actions. The necessity of the attack and its proportionality are not investigated. As a result of this abuse, any attack on a civilian object is a priori considered a violation of the laws and customs of war.<sup>2</sup>

The judges proceed from the presumption that all military attacks are aimed at civilian objects. No distinction has been made between military and civilian objectives, although IHL requires an assessment of the object's actual purpose at the time of the attack. In particular, an object is considered military if its destruction or capture provides a military advantage.

The judges have not examined these and other fundamental principles of IHL. Without adherence to these principles, the application of IHL norms is limited to declarative references.

In many cases, this leads to the unlawful criminalization of combatants' actions during the war and the conviction of POWs for the mere fact of participation in hostilities.

From the foregoing, it can be concluded that in the occupied territory of Ukraine and in the territory of the Russian Federation, the judicial system is used as an element of the persecution and reprisals against Ukrainian prisoners of war on charges of various kinds of actions against the occupying power, with systematic violations of fair trial standards. These actions should be considered a crime against humanity or at least war crimes.

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2. For reference: IHL allows only military objectives to be attacked. Military objectives are combatants, as well as objects which, by their nature, location, purpose or use, may be involved in military operations and whose total or partial destruction, capture or neutralization in such circumstances would provide a certain military advantage. A military objective remains so even if civilians are present (e.g., warehouses where weapons are stored). Therefore, civilian objects are all objects that are not military.



This Analytical Note was prepared by the Media Initiative for Human Rights with the support of the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

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