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CRIMINAL LIABILITY FOR WAR CRIMES: NATIONAL PRACTICE AND INTERNATIONAL STANDARDS

Abstract. Purpose. The purpose of the article is to analyse the specific features of criminal liability for war crimes in the context of interaction between national legal systems and international standards. The study aims at identifying the basic principles and mechanisms for bringing to justice those responsible for war crimes, as well as at identifying the urgent challenges and prospects for the implementation of international norms in national judicial practice. **Results.** The article focuses on the issue of criminal liability for war crimes in the modern international legal system. It is noted that the issue of punishing those responsible for such crimes is key to ensuring justice, restoring peace and preventing the recurrence of such crimes in the future. However, this process is accompanied by numerous challenges, including the lack of effective mechanisms for collecting evidence during active hostilities, political influence on trials, and the difficulty of identifying perpetrators. A special emphasis is placed on analysing the issues related to the scale of the russian-Ukrainian conflict, which requires the use of both national legal mechanisms and international instruments, such as the International Criminal Court (ICC). It is underlined that not only the perpetrators of war crimes but also political leaders and high-ranking officials who gave illegal orders should be prosecuted. The importance of documenting crimes, collecting evidence and using it in court proceedings at the national and international levels is emphasised. It is noted that the implementation of international provisions in the national legislation of Ukraine will contribute to more effective investigation and prosecution. The international documents, such as the Rome Statute of the ICC, are reviewed, as well as the practice of involving international human rights organisations in monitoring, evidence collection and advocacy. An emphasis is placed on the prospects of establishing an international tribunal to try Russia's war crimes. It is stated that the mechanisms for liability include cooperation with the national courts of Ukraine, the ICC and special ad hoc tribunals. **Conclusions.** The conclusions of the article emphasise that the fight against impunity is not only a matter of justice, but also an important step towards ensuring international security. If precedents of punishment are established, regardless of the status of the perpetrators, this will contribute to the formation of new standards of international law and create conditions for lasting peace.

Key words: war crimes, martial law, international standards, national practice, human rights, violations of the laws and customs of war, international criminal law, Rome Statute, International Criminal Court.

1. Introduction

In the modern international legal system, bringing to criminal liability those responsible for war crimes is a key element in ensuring justice and preventing the recurrence of such crimes in the future. However, despite this goal, numerous problems arise in the process of implementing this, which makes it complex and multidimensional.

First, it should be noted that no effective mechanisms for collecting and preserving evidence during armed conflicts exist. The latter are often accompanied by massive

destruction of civilian and critical infrastructure and disruption in all sectors of human life, which complicates the work of law enforcement bodies and creates obstacles to collecting reliable evidence, especially in the occupied territories. In addition, identifying specific perpetrators of such crimes can be very difficult due to the large amount of information that requires careful analysis and the potential for falsification or destruction of evidence.

Another serious problem is the political influence on the trial. In many cases, those responsible for war crimes enjoy the support

of influential political or military structures, which makes it difficult to extradite them or bring them to international courts. Such political interference can lead to selective justice and create conditions of immunity for individuals who hold high positions or enjoy significant support.

The outbreak of the Russian invasion of Ukraine is quite complex due to the scale of the conflict, which requires a comprehensive approach to take into account both domestic legal mechanisms of Ukraine and international instruments such as the International Criminal Court (ICC). However, the social and humanitarian aspects of this process should be addressed. This is because war crimes cause irreparable damage to civilians, and ensuring justice is an important step towards restoring trust and reconciliation. Therefore, it is important not only to bring to justice the direct perpetrators, but also to investigate the role of political leaders and other senior officials who may have given illegal orders or facilitated their execution. Moreover, the international community plays an important role in supporting Ukraine in this process. This includes providing technical and financial assistance, facilitating training, and putting pressure on countries that try to avoid liability for their actions.

In conclusion, prosecuting war crimes in Ukraine is not only a matter of justice, but also a key step in restoring peace and stability. This process requires coordination of efforts at the national and international levels, active cooperation with international courts and organisations, and political will to ensure impartial justice. Only joint efforts can overcome impunity and create the preconditions for a just future based on the rule of law.

The purpose of the article is to analyse the specific features of criminal liability for war crimes in the context of interaction between national legal systems and international standards. The study aims at identifying the basic principles and mechanisms for bringing to justice those responsible for war crimes, as well as at identifying the urgent challenges and prospects for the implementation of international norms in national judicial practice.

Some issues of criminal law liability for war crimes are addressed in the works by the following scholars: S. Ablamskyi, V. Borovenko, I. Hloviuk, L. Honcharenko, O. Dudorova, S. Zahorodniuk, N. Zelinska, Y. Krychun, V. Mironova, V. Navrotskyi, Y. Orlov, T. Pavlova, P. Pekar, H. Perepylytsia, P. Repeshko, O. Sereda, H. Teteriatnyk, S. Tkachenko, M. Khavroniuk, S. Shevchuk and others.

The launch of a systematic approach to the study of basic legal concepts has

led to the need for a comprehensive study of the specific features of criminal liability for war crimes through the prism of national practice and international standards.

2. General description of a war crime

With the modern development of civilisation and rapid scientific and technological progress, humanity is facing the terrible consequences of armed conflicts started by adventurers and short-sighted politicians. Instead of building trusting, mutually beneficial and good-neighbourly relations between countries and peoples, we are forced to witness the destruction and suffering caused by wars. Any armed conflict inevitably leads to severe consequences: mass deaths of military and civilians, as well as destruction of material assets, structures and buildings. Frequently, these horrific results are a direct consequence of war crimes committed during wars of aggression.

War crimes are defined as particularly grave acts that contravene the fundamental principles of international humanitarian law, as well as the provisions of the Charter of the United Nations (1945). They cover violations of numerous international instruments, including the Universal Declaration of Human Rights (1948) (Universal Declaration of Human Rights: adopted and proclaimed by resolution 217 A (III) of the UN General Assembly, 1948), The Convention for the Protection of Human Rights and Fundamental Freedoms (abbreviated as the European Convention on Human Rights (1950)). These crimes usually take place in various types of armed conflicts, but most often during wars of aggression. The mere fact of inciting, planning or waging an aggressive war is a crime against the peace and security of mankind.

It should be noted that the mandatory elements of a war crime are: 1) the existence of an armed conflict of international or non-international nature; 2) awareness of its existence by the perpetrator; 3) the connection between the act and the armed conflict, which can be proved through the implementation or facilitation of the goals of a particular armed formation, targeting protected objects, persons not involved in the conflict, etc.

It should be noted that, based on paragraph 2 of Article 8 of the Rome Statute of the International Criminal Court, Russia's actions contain signs of all war crimes defined by this document. In this regard, it is important to define all socially dangerous acts related to Russia's aggressive war against Ukraine as war crimes (Rome Statute of the International Criminal Court of July 17, 1998).

We believe that the most serious war crimes committed by Russia on the territory of Ukraine

include the following actions: an armed attack on an independent sovereign state; planning, incitement and waging an aggressive war; occupation of certain territories of a sovereign state; intentional killing of soldiers defending their country; killing of captured soldiers; intentional destruction of civilians, including children and minors; cruel and inhuman treatment of prisoners of war and civilians, including torture, infliction of physical and mental suffering; violation of human dignity of persons under the control of the occupying power, humiliation and insults; forced removal of children to destroy their national identity; rape and other forms of sexual violence; resettlement of the civilian population of the aggressor state to the occupied territories in order to demographically change the region; deportation or forced displacement of the indigenous population of the occupied territories; attacks on civilians and persons not involved in hostilities; use of civilians as human shields; shelling of cities, villages and other settlements using various types of weapons.

It should be noted that individuals, regardless of their status or official position, are usually held accountable for war crimes under international law (e.g. through specialised tribunals), the national criminal law of the state that has been the victim of aggression, or, in some cases, under the law of the aggressor state in the event of a change of political regime. In such situations, the new government may undertake, together with international judicial bodies, to punish those responsible for waging an aggressive war and committing serious crimes during hostilities.

Criminal liability for war crimes at the international level, similar to criminal liability in general, provides for the most severe sanctions for those who have violated the law. This type of liability is characterised by special substantive and procedural grounds, as well as detailed procedures for its implementation. In addition, the specificity of war crimes determines the special nature of the rules that determine the procedure for bringing to justice and the mechanisms for its application (Shablysty, 2013).

The modern legal system demonstrates close interaction between international and national law. They influence each other, but do not form a hierarchical legal relationship, as their rule-making and regulatory entities are different. States independently determine in their legislation how international law is implemented in the domestic legal system.

Prosecution for war crimes committed on the territory of Ukraine is a key element for restoring law and order and ensuring

international security. In addition, Ukrainian researchers emphasise that the existence of national legislation criminalising a particular international crime and regulating the process of bringing to liability is not always a prerequisite. This is because the ambiguity in determining the grounds for criminal liability for war crimes in international law is due to the fact that prohibited methods and means of warfare, as well as the protection of human rights during armed conflict, are regulated by international humanitarian law (Berezniak, Demycheva, 2023). This law is also known as the law of armed conflict or the laws and customs of war. It should be noted that the interaction of international and national law in cases of war crimes committed on the territory of Ukraine should be based on the available facts that can be collected by the victim state. Ukraine, as an aggrieved party, possesses important information regarding war crimes committed by Russia on its territory. This information includes eyewitness testimonies, documents, photographs and other evidence. Cooperation with international justice involves the provision of these materials to ensure an objective consideration of cases at the international level.

3. International standards of liability for war crimes

For example, the adoption by the Verkhovna Rada of Ukraine on 21 August 2024 of the Law of Ukraine On the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto is an important and necessary step for the legal system of Ukraine, as it has enabled the strengthening of the activities of public authorities in the field of investigations and prosecution of perpetrators of serious crimes, and Ukraine's active participation in the formation and operation of the International Criminal Court. According to N. Akhtyrskyi, justice in Ukraine is administered exclusively by courts and in accordance with the legal procedures established by law. For its part, the Rome Statute of the ICC complements national criminal justice systems; it has international legal personality; it may exercise its functions and powers on the territory of any State Party and, by special agreement, on the territory of any State, that is, the principle of extraterritoriality applies, which is not regulated in criminal procedure legislation (Akhtyrsky, 2023).

An important element in achieving justice, international security and the protection of human rights is the interaction between international and national law regarding the war crimes committed by Russia in Ukraine. International judicial institutions, such as the International Criminal Court (ICC),

which can investigate and try war crimes cases, play an important role in this process. In connection with the crimes committed by Russia after the invasion of Ukraine in 2022, international tribunals are obliged to ensure that the perpetrators are brought to justice. In addition, in accordance with the ICC's principle of complementarity, national courts have priority in considering such cases. Therefore, Ukraine needs to have the necessary resources to investigate crimes so that international tribunals can punish Russia as effectively as possible (Yunin, 2024).

The international community uses sanctions and other measures to influence Russia and ensure its participation in investigations and trials. However, the effectiveness of these measures depends on the willingness of other countries to act together. It is important to ensure coordination between Ukraine and international organisations to facilitate the establishment of the facts of crimes and identification of perpetrators through the exchange of information, evidence and expert assistance (Liudvik, 2024).

Trials should be transparent and meet international standards of fairness. In addition to punishing the perpetrators, such trials are a means of restoring justice and protecting the rights of Ukrainian citizens who have suffered from Russia's crimes. Therefore, effective cooperation between the international and national legal systems is essential to bring the perpetrators to justice and protect the interests of war victims.

International human rights organisations play a significant role in documenting and monitoring war crimes related to the Russian-Ukrainian war. Their main tasks include:

1. To collect information. Organisations monitor the situation in the conflict areas, collecting objective data on war crimes, which may include testimonies, photos, videos and other evidence.
2. To analyse evidence. The collected materials are thoroughly analysed to determine the circumstances of the crimes, identify the perpetrators and victims, which allows us to establish the degree of responsibility of the parties.
3. To facilitate the collection of evidence for tribunals. Human rights organisations can help prepare the evidence base for courts such as the ICC or the UN Special Tribunal.
4. To appeal to the international community. Organisations publicly express concern and call for an end to war crimes, working with other institutions to draw attention to the situation.
5. To monitor the observance of human rights. They monitor the observance of human

rights during the war, recording systematic violations and those responsible for them.

6. To publish reports. The organisations prepare reports that highlight Russia's crimes and human rights violations, helping to inform the world community.

The aim of these activities is to ensure Russia's accountability for war crimes, protect the rights of Ukrainian victims and contribute to ending the war. However, the effectiveness of these measures depends on the support and coordination of international and national institutions.

The prospects of holding Russia accountable for war crimes committed in Ukraine in 2014-2024 can be implemented through various mechanisms: national courts of Ukraine, decisions of the European Court of Human Rights, the International Criminal Court or the creation of a special ad hoc tribunal. Ukraine has the necessary legal mechanisms to investigate and prosecute war crimes, although there are certain obstacles on the way.

4. Conclusions

The prosecution of perpetrators of war crimes is a key element in ensuring justice, restoring peace and international security. In today's international legal system, this process is extremely complex and multifaceted due to a number of challenges, including the lack of effective mechanisms for collecting evidence during active hostilities, political influences and the difficulty of identifying perpetrators. The problem is complicated by the scale of the armed conflict between Russia and Ukraine, which requires the application of both national legal mechanisms and international standards of justice.

Ukraine is facing a number of challenges that require coordination of efforts between national and international justice agencies. In particular, an important task is to ensure proper documentation of war crimes and cooperation with international organisations such as the International Criminal Court (ICC). Furthermore, the implementation of international provisions into Ukraine's national legal system is crucial to ensure that investigations and prosecutions are conducted more effectively.

Particular attention should be paid to the role of political and military leaders who may be responsible for issuing criminal orders or facilitating their execution. It is important to ensure impartial justice, free from political pressure and selectivity in the process of bringing to justice. This will contribute to the restoration of trust in the legal system at both the national and international levels.

The international community is crucial in supporting Ukraine in this process by providing

technical, financial and legal assistance. Effective cooperation between Ukraine and international organisations will help set precedents that demonstrate the inevitability of punishment for war crimes, regardless of the status or political influence of the perpetrators. It will also contribute to the formation of new standards of international justice that will ensure fair punishment for all perpetrators of serious crimes against humanity.

Therefore, ensuring criminal liability for war crimes is not only a matter of punishing the perpetrators, but also a key step towards restoring peace, justice and stability. Only through coordinated national efforts, with international support, can impunity be overcome, the rights of victims restored, and the foundations laid for a just future based on respect for human rights and the rule of law.

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КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА ВОЄННІ ЗЛОЧИНИ: НАЦІОНАЛЬНА ПРАКТИКА ТА МІЖНАРОДНІ СТАНДАРТИ

Анотація. Метою статті є аналіз особливостей кримінальної відповідальності за воєнні злочини в контексті взаємодії національних правових систем та міжнародних стандартів. Дослідження спрямоване на визначення основних принципів та механізмів притягнення до відповідальності осіб, винних у скоєнні воєнних злочинів, а також на виявлення нагальних викликів і перспектив імплементації міжнародних норм у національну судову практику. **Результати.** Стаття присвячена проблемі кримінальної відповідальності за воєнні злочини в умовах сучасної міжнародно-правової

системи. Зазначено, що питання покарання винних за такі злочини є ключовим для забезпечення справедливості, відновлення миру та запобігання повторенню подібних злочинів у майбутньому. Проте цей процес супроводжується численними викликами, включно з відсутністю ефективних механізмів збору доказів під час активних бойових дій, політичним впливом на судові процеси та складністю ідентифікації виконавців. Особлива увага приділена аналізу проблем, пов'язаних із масштабністю російсько-українського конфлікту, що потребує використання як національних правових механізмів, так і міжнародних інструментів, таких як Міжнародний кримінальний суд (МКС). Наголошено на необхідності притягнення до відповідальності не лише виконавців воєнних злочинів, а й політичних лідерів та високопосадовців, які віддавали протиправні накази. Підкреслюється важливість документування злочинів, збору доказів та їх використання в судових процесах на національному й міжнародному рівнях. Зазначено, що імплементація міжнародних норм у національне законодавство України сприятиме ефективнішому розслідуванню та судовому переслідуванню. Аналізуються міжнародні документи, такі як Римський статут МКС, а також практика залучення міжнародних правозахисних організацій до моніторингу, збору доказів та адвокації. Особливу увагу приділено перспективам створення міжнародного трибуналу для розгляду воєнних злочинів росії. Вказується, що механізми притягнення до відповідальності включають співпрацю з національними судами України, МКС і спеціальними *ad hoc* трибуналами. **Висновки.** Висновки статті акцентують на тому, що боротьба з безкарністю є не лише питанням правосуддя, а й важливим кроком для забезпечення міжнародної безпеки. Встановлення прецедентів покарання незалежно від статусу винних осіб сприятиме формуванню нових стандартів міжнародного права та створить умови для довготривалого миру.

Ключові слова: воєнні злочини, воєнний стан, міжнародні стандарти, національна практика, права людини, порушення законів та звичаїв війни, міжнародне кримінальне право, Римський статут, Міжнародний кримінальний суд.

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