

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa

ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp

197402ZU34



CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.40

Nº 73

Julio

Diciembre

2022



Investigation and justice of crimes committed under war conditions in Ukraine

DOI: <https://doi.org/10.46398/cuestpol.4073.16>

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Abstract

The purpose of the article is to review the topic of investigation and administration of justice in relation to crimes committed during the war in Ukraine, as one of the important elements of transitional justice. The authors focus on the possibility of applying the concept of post-conflict solution in Ukraine after the end of hostilities provoked by armed aggression. The article draws attention to the fact that in order to counter these crimes it must be necessary: to develop effective mechanisms and establish communication within universal jurisdiction with other countries that have experience in investigating Russian military aggressions; extensive use of the capabilities of the International Commission on Human Rights established by the UN Human Rights Council to investigate war crimes committed by the aggressor's armed forces and violations of international humanitarian law, the prepared evidence of which can be used in all international and national

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jurisdictions. It is concluded that it is urgent to borrow positive international experience in the standardization of current national legislation, aimed at optimizing the process of documentation and investigation of crimes against humanity, bringing the perpetrators to justice.

Keywords: war crimes; Rome Statute; International Criminal Court; ratification; Transitional justice.

Investigación y justicia de crímenes cometidos en condiciones de guerra en Ucrania

Resumen

El propósito del artículo es revisar el tema de la investigación y administración de justicia en relación con los crímenes cometidos durante la guerra en Ucrania, como uno de los elementos importantes de la justicia transicional. Los autores se centran en la posibilidad de aplicar el concepto de solución posconflicto en Ucrania tras el fin de las hostilidades provocadas por la agresión armada. El artículo llama la atención sobre el hecho de que para contrarrestar estos crímenes debe ser necesario: desarrollar mecanismos efectivos y establecer comunicación dentro de la jurisdicción universal con otros países que tienen experiencia en la investigación de agresiones militares rusas; uso extensivo de las capacidades de la Comisión Internacional de Derechos Humanos establecida por el Consejo de Derechos Humanos de la ONU para investigar crímenes de guerra cometidos por las fuerzas armadas del agresor y violaciones del derecho internacional humanitario, cuya evidencia preparada puede usarse en todas las jurisdicciones internacionales y nacionales. Se concluye que urge tomar prestada la experiencia internacional positiva en la estandarización de la legislación nacional vigente, destinada a optimizar el proceso de documentación e investigación de crímenes de lesa humanidad, llevando a los perpetradores ante la justicia.

Palabras clave: crímenes de guerra; Estatuto de Roma; Corte Penal Internacional; ratificación; Justicia transicional.

Introduction

Full-scale military operations on the territory of Ukraine and the related temporary occupation of its separate territories by the Russian Federation (hereinafter – the Russian Federation) have challenged not only the national

security of the Ukrainian state, but also the ability to effectively protect and restore human rights and fundamental freedoms in terms of overcoming the consequences of the armed conflict. Such illegal actions have killed and injured many civilians, and forced more than 10 million Ukrainians from illegal military incursions and temporarily occupied territories to flee their homes, leading to influxes of internally displaced persons.

By their nature, crimes committed during the war are one of the most serious and serious crimes known to mankind. In accordance with the norms of international law, the state on the territory of which war crimes are committed is the most active in investigating and bringing the perpetrators to justice (Nazarchuk, 2020). In such circumstances, Ukraine must not only respond adequately to hostilities in its own and temporarily occupied territories, but also ensure that criminal acts are properly investigated and the perpetrators brought to justice. After all, «the duty of any state is to protect its citizens, in whatever situation and in what territory they find themselves» (Investigation of war crimes).

Each category of war crime has its own problems and obstacles. At the same time, there are general problems of pre-trial investigation and administration of justice, which, in our opinion, are inherent in all categories of crimes and which indicate that the poor quality of pre-trial investigation and criminal justice is a consequence not only of war but also inability of criminal justice bodies to act effectively. This situation, in turn, creates serious risks of ineffective investigation, prosecution, violation of the rights and legitimate interests of participants in criminal proceedings.

1. Methodology of the study

The peculiarity of the applied methodology is determined by the main tasks of studying the peculiarities of the investigation of crimes in wartime in the international and national aspects. Solving them involves studying not only the implementation at the constitutional and legal levels and at the level of criminal procedural mechanisms, but also a number of other related legal phenomena. That is why the variety of approaches, methods and means of knowledge to ensure the process of documenting, investigating and prosecuting war criminals is a necessary condition for successful analysis of this phenomenon.

The philosophical and methodological basis of the research is formed on the basis of dialectical, hermeneutic and comparative approaches to the knowledge of legal phenomena. They led to the use of a set of philosophical, general and special research methods. Among the general scientific methods used, first of all, analysis, synthesis, deduction, systemic, historical, comparative, structural-functional, classification, generalization, prognostic and other methods.

In the process of scientific research special legal methods were also used: comparative legal, formal-legal method, interpretation, study of legal practice, method of document analysis, etc. The specificity of the subject of research has led to a combination of certain methodological approaches and principles characteristic of the science of criminal procedure, international, constitutional and criminal law.

2. Analysis of recent research

War crimes directly related to international criminal law are particularly dangerous to humanity and undermine the international security and law enforcement system. Many years of efforts by the international community have yielded fruitful results, which are reflected in the formation of international legal norms that establish the grounds and conditions of responsibility for crimes against peace, security of mankind and international law and order. With the signing of the Rome Statute in 1998, on July 1, 2002, the International Criminal Justice Authority, which is responsible for prosecuting those responsible for genocide, war crimes, crimes against humanity and aggression, has been officially operational on a permanent basis.

To date, Ukraine has also taken some steps at the national level, and the development of Ukrainian law enforcement agencies to document and investigate crimes of military aggression, make numerous changes to criminal and criminal procedure legislation, indicates a desire to optimize investigations into this category of crimes. persons of the aggressor's country.

The work of many domestic and foreign scholars and practitioners is devoted to the research of certain issues of the organization of the investigation of crimes committed during the war, the implementation of the provisions of international law at the constitutional, legal and criminal procedural levels. At the same time, the issue of introducing systematic and effective documentation and investigation of war crimes is becoming especially important in the martial law in Ukraine, as one of the measures to overcome their consequences and an important element of transitional justice.

3. Results and discussion

3.1. National mechanisms for investigating crimes committed during the war in Ukraine

Russia's aggressive war against Ukraine is one of the most obvious violations of Article 2 (4) of the Charter of the United Nations since its entry into force. In addition to the legal consequences for the responsibility of the Russian Federation as a state, these events again aroused interest in individual responsibility for the crime of aggression. One of the steps of Ukraine's adequate response to such the most horrific and daring criminal offenses was to amend the legislation in order to optimize the investigation and bring the perpetrators to justice.

Bills have recently entered into force in Ukraine, which will regulate some procedural issues in the work of courts and law enforcement agencies under martial law. In particular, draft laws № 7117 (on amendments to the Law of Ukraine "On Judiciary and Status of Judges" to change the jurisdiction of courts) and № 7118 (on amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine on additional regulation of law enforcement in complex martial law) (Law Of Ukraine «On Amendments To The Criminal Procedure Code Of Ukraine And Other Legislative Acts Of Ukraine On Additional Regulation Of Law Enforcement In Difficult Martial Law»; Law Of Ukraine «On Amendments To The Law Of Ukraine «On The Judiciary And The Status Of Judges On Changing The Jurisdiction Of Courts», 2022).

Consider in more detail the changes made to the Criminal Procedure Code of Ukraine.

In case of impossibility to enter information on criminal offense into the Unified State Register of Pre-trial Investigations and, accordingly, impossibility to form an extract from this Register, information on registration of criminal offense and commencement of pre-trial investigation may be confirmed by a reasoned decision of pre-trial investigation body. information specified in Art. 214 of the Criminal Procedure Code of Ukraine. Such a document may be considered a proper confirmation of the commencement of the pre-trial investigation and a basis for consideration of the requests of the pre-trial investigation body (Criminal Procedure Code Of Ukraine, 2012).

According to the first part of Art. 615 of the Criminal Procedure Code of Ukraine in the area (administrative territory), where the legal regime of martial law, state of emergency, anti-terrorist operation or measures to ensure national security and defense, repel and deter armed aggression in Donetsk and Lugansk regions, in case of impossibility by law the terms of

the investigating judge of the powers provided by Art. 163, 164, 234, 235, 247 and 248 of the Criminal Procedure Code of Ukraine, as well as the power to choose a measure of restraint in the form of detention for up to 30 days to persons suspected of committing crimes under Art. Art. 109–114-1, 258–258-5, 260–263-1, 294, 348, 349, 377–379, 437–444 of the Criminal Code of Ukraine, these powers are exercised by the relevant prosecutor.

In this case, such a prosecutor is both the prosecutor who exercises the powers of the prosecutor in a particular criminal proceeding, and his leaders. Relevant decisions may be made by the prosecutor in the event that criminal proceedings are instituted against a set of crimes committed by the suspect, at least one of which is a crime under Art. 615 of the Criminal Procedure Code of Ukraine. In other cases, namely in the absence of grounds for the exercise of these powers by the prosecutor, he may apply to the court at the place of investigative (investigative) actions.

Also in the case of criminal proceedings against articles of the Criminal Code of Ukraine, not included in the list provided for in Art. 625 of the Criminal Procedure Code of Ukraine, the prosecutor should change the territorial jurisdiction of the criminal proceedings and transfer it to another district, the region where the court operates (The supreme court has prepared recommendations for criminal proceedings in wartime, 2022; the supreme court stressed the need for urgent legislative changes to ensure the continued administration of justice in wartime, 2022).

The analysis of these norms shows that this version of the law in some way levels the role of defense counsel at all stages of the pre-trial investigation by giving the investigator and prosecutor the opportunity not to involve the latter or involve through audio and video conferences. However, as M. Dyomin rightly points out, the defense attorney will be deprived of the effective performance of his duties without being at the scene and at the scene of the investigation, and therefore there is a real threat of human rights violations by the investigating authorities (Dyomin, 2020).

Such conclusions are prompted by the monitoring of paragraph 1 of part 12 of Article 615 of the Criminal Procedure Code of Ukraine, which provides that the investigator, prosecutor ensures the participation of defense counsel in a separate procedural action as soon as possible, including if necessary - using technical means (video, audio language) to ensure the remote participation of the defender. In case of impossibility to involve a defense counsel for a separate procedural action, such action is carried out without his participation, and its course and results must be recorded by available technical means by continuous video recording (Criminal Procedure Code Of Ukraine, 2012).

It is seen that allowing an investigator or prosecutor to determine a lawyer at his or her own discretion would potentially lead to a number

of violations of human and civil rights and freedoms during criminal proceedings. The «impossibility» of the defense counsel's participation will be determined by the investigator and the prosecutor in the absence of any criteria for making such a decision, which creates additional conditions for the prosecution to abuse its procedural powers (Dyomin, 2022).

In addition, in our opinion, the involvement of a lawyer in video or audio communication will lead to the actual impossibility of his duties, because, for example, without a physical presence at the scene or at the scene of the search can not fully and objectively collect all available evidence. Such restrictions on the rights of the defense also violate the requirements of Article 63 § 2 of the Constitution of Ukraine, according to which a suspect, accused or defendant has the right to defense. After all, the rights and freedoms of this article cannot be restricted, including in conditions of martial law or state of emergency (part 2 of article 64 of the Constitution of Ukraine) (Constitution Of Ukraine, 1996).

The updated criminal procedural legislation of Ukraine has certain peculiarities in terms of regulating the procedure for consideration of motions for the election of a measure of restraint under martial law. Thus, all motions submitted to investigating judges should be considered within the time limits established by the Criminal Procedure Code of Ukraine, but if possible - immediately. If it is impossible for a judge (panel of judges) to consider a request for election or continuation of a preventive measure in the form of detention within a specified period, it may be transferred to another judge, determined in accordance with part three of Art. 35 of the Criminal Procedure Code of Ukraine, or considered by the presiding judge, and in his absence - by another judge of the panel of judges, if the case is considered collectively.

If due to objective circumstances a participant in criminal proceedings cannot participate in a meeting by videoconference using technical means specified by the Criminal Procedure Code of Ukraine, as an exception such participant may be allowed to participate in videoconferencing by other means, attention should be paid to explaining to such a participant his procedural rights and responsibilities. Also, given the objective circumstances, as an exception, it is possible to allow requests for precautionary measures to be considered without the participation of the suspect, with due motivation for such a review procedure (Criminal Procedure Code Of Ukraine, 2012).

If the territorial jurisdiction of criminal offenses at the stage of pre-trial investigation is changed and the materials of criminal proceedings due to hostilities have not been transferred or transferred in full, assessing the risks that justify the application of precautionary measures in general and detention in particular, the investigating judge) is guided by all available materials of the petition for application (continuation) of the precautionary

measure. At the same time, the courts must take into account the imposition of martial law and armed aggression in Ukraine (The supreme court has prepared recommendations for criminal proceedings in wartime, 2022).

It should be noted that in martial law the head of the prosecutor's office has the right to use the powers of an investigating judge under Articles 186, 187, 190, 206, 219, 232, 246, 250 of the Criminal Procedure Code of Ukraine, in the absence of objective possibility of their execution by an investigating judge. As the Criminal Procedure Code does not disclose the meaning of "lack of objective possibility" in the exercise of powers by an investigating judge, the prosecutor will interpret it at his / her own and unrestricted discretion. In this aspect, there is a high probability of interpretation of the concept introduced in the Criminal Procedure Code of Ukraine in their own interests in order to obtain the powers of an investigating judge, which in itself eliminates the role of judicial control in criminal proceedings and violates human and civil rights and freedoms. Therefore, scholars and practitioners rightly point out that in this case it would be logical to construct this rule that such an impossibility for an investigating judge to exercise his powers should be confirmed by an official announcement on the court's web portal (attached to criminal proceedings) and the Supreme Court's failure to a court that will administer justice in a certain territory (Dyomin, 2022).

There are fears that all the «simplifications» mentioned in the Criminal Procedure Code, which are due to the complexity of the investigation of crimes in hostilities and the severity of such crimes (for example, against peace and security of mankind), may be actively used by individual officials in their own interests. «Standard» crimes against property and other criminal offenses, only indirectly related to hostilities. Under such conditions, it would be logical and expedient to introduce simplified pre-trial investigation procedures for certain categories of crimes against humanity, as defined in Article 7 of the Rome Statute and provided for in separate articles of the Criminal Code of Ukraine.

Of course, the changes we have made to the Criminal Procedure Code do not solve all the problems that arise in wartime, such as the timing of investigations, trials, simplification of evidence collection, and so on. We believe that the prospects for such changes to the Criminal Procedure Code require a separate scientific study.

3.2. Organizational aspects of the application of customary international law in the investigation of war crimes

In order to develop appropriate recommendations for optimizing the investigation of war crimes in Ukraine, we identify common problems in this direction: lack of capacity – material and human resources is the most

obvious objective reason for the ineffectiveness of the investigation; general problems of the criminal justice system; lack of experience in war conditions (intensity, number of victims, characteristics of the network of performers, etc.); qualification of torture and other shortcomings of national law.

The organization and methods of investigation, the collection of evidence of war crimes committed by the parties to the armed conflict, are directly affected by the following destructive factors: rapid change in the operational situation; frequent redeployment of military units and subdivisions; death, wounding and captivity of witnesses, victims, suspects in the course of hostilities; change in the situation as a result of bombing, artillery or mortar fire, capture by the enemy; a large number of cases investigated in a limited time; bringing to justice the parties to the armed conflict; a significant time interval from the moment of mass murder to the beginning of the study of mass burial sites, which prevents their identification due to the decomposition of corpses; problems with the formation of the evidence base, as the shootings took place in places that precluded the presence of unwanted witnesses; selective provision of various military information to the criminal justice authorities, ie documents, objects, photographs from drones, decoded recordings of interceptions of radio conversations, etc. about events that could become or were the subject of investigations.

Politicization of the investigation process and the investigation of the border line between national sovereignty and international responsibility, in the area between the legal and political spheres; the nature of the local population's perception of the investigation of war crimes at the national level and the administration of justice within the state for war crimes against persons of the opposite side; illegal comparisons with the actions of the other party and the use of the «shed blood» factor as a «right to commit illegal acts against the enemy» to evade criminal liability for war crimes for unfounded accusations of «cowardice» by investigative bodies not directly involved in hostilities ; unwillingness of the parties to the armed conflict to comply with the legal requirements of the judiciary and a number of international legal provisions; problems of ensuring the testimony of high-ranking foreigners.

Unwillingness of the parties to the armed conflict to comply with the legal requirements of the judiciary and a number of international legal provisions; attempts to stage «committing» war crimes by the enemy; opposition to the investigation; the possibility of armed resistance during detention by the suspect or his colleagues; the problem of slow investigation of crimes of this category, which may exceed all reasonable terms and long periods of detention (Rome Statute Of The International Criminal Court, 1998; Batyuk and Dmitriv, 2021).

In organizing the collection of evidence of war crimes committed by representatives of the military-political leadership of the states, the main

efforts should be aimed at gathering sufficient evidence that provides grounds for accusing those who are most responsible and hold senior political and military positions. Of course, in order to prove their guilt, it is necessary to establish the connection of public policy makers with a set of crimes committed in different areas of armed conflict, to prove that they or under their direct leadership developed and implemented a strategic criminal plan, ie to adopt doctrine «Common purpose», when several criminals act together to achieve the goal (Batyuk and Dmitriv, 2021).

At the national level, members of the investigative task force directly interact with each other, agree on the main directions of pre-trial investigation, conduct procedural actions, exchange information. The General Prosecutor's Office of Ukraine (Instruction On The Organization Of Interaction Of Pre-Trial Investigation Bodies With Other Bodies And Subdivisions Of The National Police Of Ukraine In Prevention Of Criminal Offenses, Their Detection And Investigation, 2017) coordinates their activities on the territory of Ukraine as the initiator of the creation of a joint investigation team. Also, in addition to representatives of law enforcement agencies of the member states of the organization, which are members of joint investigation teams, within the European Union provides for the possibility of involving employees of Europol and Eurojust (Shostko and Ovcharenko, 2008).

The UN General Assembly and the UN Human Rights Council have established mechanisms for certain situations to collect and preserve evidence (Krapivin, 2022).

In particular, in early March 2022, the UN General Assembly adopted a resolution condemning Russia's invasion of Ukraine and calling for the immediate withdrawal of its troops (UN Human Rights Council considers). The UN has also announced the composition of a commission to investigate war crimes in Ukraine. The commission will include three independent members from Norway, Bosnia and Herzegovina and Colombia, who will give an oral presentation on their work at the 51-st session of the UN Human Rights Council in September 2022. A full written report is due in March 2023. In addition, members of the commission will make a report at the 77-th session of the UN General Assembly, which will be held in September (Kalatur, 2020).

On March 4, 2022, the UN Human Rights Council established an international commission to investigate war crimes committed by Russian servicemen and violations of international humanitarian law. These mechanisms usually involve experienced international investigators and prosecutors. They can collect, store and systematize evidence at a high level. Thus, experienced prosecutors have already begun collecting evidence of Russian war crimes for further use in various prosecution mechanisms.

On March 25, 2022, the Prosecutors General of Ukraine, Poland and Lithuania signed an Agreement on the establishment of a joint investigation team to investigate the aggression of the Russian Federation and its war crimes on the territory of Ukraine. The activities of such an international investigative task force will focus on the collection, safe storage and rapid exchange of information and evidence of war crimes of the Russian Federation, collected during investigations in the territory of the States Parties, as well as operational and investigative activities. In addition, it will identify the assets of war criminals in order to freeze and confiscate them (Ukraine, Lithuania and Poland...2022).

Given the limited time, lack of opportunities and resources to organize a simultaneous investigation of a large number of criminal proceedings related to the commission of war crimes in various areas of armed conflict, the task of each international investigative task force should be rapid and high-quality investigative and collecting the maximum amount of physical evidence. At the same time, prosecutors of the international investigative task force should coordinate the investigation of various criminal proceedings, ensure effective exchange of information, promptly and competently report suspicions to the main organizers of war crimes.

3.3. Using the capabilities of the International Criminal Court and the European Court of Human Rights in the context of military aggression in Ukraine

The International Criminal Court (also known as the Hague Tribunal) is an international tribunal established in 1998 to investigate and prosecute those accused of genocide, war crimes and crimes against humanity. It is an institution that is complementary to national jurisdictions, to national criminal justice systems. There is no general principle in international law that protects a person from conviction in different jurisdictions. Even under international human rights law, if a person has been prosecuted for certain acts in one state, he or she may be prosecuted for the same acts in another state, if that state has jurisdiction to do so.

In other words, if we have a person who has been convicted or even acquitted of an act of international crime by a court in the self-proclaimed republics, this decision is not an obstacle for the International Criminal Court to try the case and bring that person to justice. international crime (War and justice: how to effectively use osint and what to do with court decisions in uncontrolled territories, 2021).

It should be noted, however, that the ICC opens proceedings only when the state is unwilling or unable to initiate criminal proceedings and conduct an appropriate investigation. If the international court still opens the main proceedings, the prosecutor of the court independently investigates

crimes, ie collects and examines evidence, conducts examinations, invites witnesses. The International Criminal Court may prosecute those who have committed the most serious violations of human rights and humanitarian law in the territory of a State or against a citizen of that State.

The important point is that the Hague Tribunal focuses not so much on the perpetrators of crimes as on those who give orders or by their inaction make it possible to commit these crimes (Investigation of war crimes: what the international criminal court can help).

The ICC is about individual responsibility, not state responsibility. At the same time, the principle of complementarity applies, ie the ICC does not replace national protection mechanisms, but takes into account only those war criminals who cannot be reached by the national legal system. The ICC may prosecute suspects, but has no authority to make arrests. The court relies on states that have law enforcement agencies to do so. If the perpetrators remain in power, they cannot be arrested. But the accusations limit the ability of these leaders to travel and send a signal to their country that it will remain isolated as long as they remain in power.

Ukraine in 2000, it signed the Rome Statute, the document on the basis of which the ICC operates. After the annexation of Crimea and the occupation of Donbass, Ukraine adopted a Resolution of the Verkhovna Rada recognizing the jurisdiction of the ICC, and later amended the Constitution to ratify the Rome Statute (blocked in 2001 by the Constitutional Court of Ukraine). These changes came into force in 2019, and two years later Ukraine adopted amendments to the Criminal Code of Ukraine in terms of war crimes required for ratification of the Rome Statute (the law is expected to be signed by the President in June 2021). Thus, one step remains to fully address Russia's crimes – to ratify the Rome Statute. At the same time, the jurisdiction recognized in 2014-2015 allows the ICC to collect evidence today (Krapivin, 2022).

Thus, the harmonization of the Criminal Code of Ukraine should be an important step towards the ratification of the Rome Statute – so that the International Criminal Court can fully investigate and prosecute the military-political leadership of Russia.

March 16, 2022 the session of the UN International Court of Justice took place in The Hague, at which a decision was announced on the request to impose interim measures in the case of Ukraine v. Russia on genocide. According to the court's decision, Russia must immediately suspend all hostilities in Ukraine and stop any military or irregular armed groups under its control or influence. The court also ruled that both sides should refrain from any action that could aggravate or prolong the dispute and complicate further proceedings (Ten European Countries Lead).

As of the end of March 2022, 42 countries have already appealed to the International Criminal Court due to Russian war crimes in Ukraine. If the court rules against Russia, those involved in these crimes can be detained in any country that recognizes the jurisdiction of this court (Bega, 2022). Therefore, the occupiers can be detained in any country that recognizes the jurisdiction of the ICC. All those who have committed war crimes against civilians are already potentially under arrest.

In connection with the military aggression of the Russian Federation, on February 28, 2022, Ukraine submitted a request for urgent interim measures in accordance with Rule 39 of the Rules of Procedure of the European Court of Human Rights (hereinafter – ECtHR). Such requests are usually made in the event of a threat to human life and health, such as failure to provide medical care to a prisoner, which may have irreparable consequences. In the case of Ukraine, it is the shelling and killing of civilians (Krapivin, 2022). It is important that Russia is a member of the Council of Europe and recognizes the jurisdiction of the European Court of Human Rights over itself, so this mechanism is fully applicable in this case.

In accordance with the principle of universal jurisdiction, national crimes committed by foreign nationals in foreign territory may be prosecuted within national justice systems. It is also important to note that some countries – Germany, Sweden, Finland – have jurisdiction over all international crimes committed in Ukraine. These are international investigative teams, ie bringing together investigators from different national legal systems to bring perpetrators to justice. Such a mechanism allows to bring to justice not only the military-political leadership of the state, but also a serviceman of any rank who has committed war crimes against the civilian population of Ukraine in any part of the world under the jurisdiction of the special investigation team. mechanism of prescriptions (cards) of Interpol) (Krapivin, 2022).

Among the prisoners of war are those who committed war crimes and who can be prosecuted in Ukraine, ie not extradited in any way, given the principle of extraterritoriality of criminal law (Article 6 of the Criminal Code of Ukraine). The same applies to members of sabotage and intelligence groups, some of whom are citizens of the Russian Federation, and who are accused of encroaching on the territorial integrity and inviolability of Ukraine (Article 110 of the Criminal Code of Ukraine) and sabotage (Article 113 of the Criminal Code of Ukraine). After the end of the war, they can be held accountable under Ukrainian law and serve their sentences in our country.

At present, we can state an unexpectedly quick response from international institutions in connection with the scale of the aggression, so we can say that Ukraine has mobilized (enforced) extremely clumsy mechanisms of international law. From the point of view of the “Hague law”

and the “Geneva law”, which form international humanitarian law, we speak of individual responsibility for 1) war crimes; 2) crimes against humanity and the responsibility of the state and its military-political leadership for 3) genocide; 4) the crime of [military] aggression (Krapivin, 2022).

All these crimes are recorded in a number of treaties, and an institute for dispute resolution (courts) of various jurisdictions has been established to find justice if committed. Depending on the type of agreement signed and ratified by Ukraine and the aggressor state, opportunities should be actively used to appeal to various international institutions in order to bring the perpetrators to justice.

3.4. Prospects for the implementation of transitional justice

In the context of the researched issues, the prospects of applying the concept of post-conflict settlement in Ukraine after the end of hostilities caused by the armed aggression of the Russian Federation need to be clarified.

Transitional justice (transitional justice) is a set of principles, processes, measures, practices aimed at restoring justice to victims of large-scale or systematic human rights violations, creating conditions and opportunities for peacebuilding in the post-conflict period or in transforming political systems into authoritarian ones. states). In general, the concept of «transitional justice» (or «transitional justice») is a framework name for the various processes, formats, and mechanisms used in more than 40 post-conflict countries and regions.

Transitional justice is associated with both judicial and non-judicial processes and mechanisms, such as: establishing the truth; prosecution and prevention of impunity; reparation; institutional reforms. At the same time, it is extremely important to introduce all four identified elements in the complex in order to achieve justice and build a harmonious path from a state of war to a state of peace. Transitional justice should be aimed at comprehensively addressing the causes of conflict and related violations of civil, political, economic, cultural and other rights.

Each country that has survived an armed conflict develops its own model of transitional justice, taking into account the political situation, the peculiarities of legal practice, the national mentality. In Resolution 12/11, the UN Human Rights Council emphasizes that «the development of a transitional justice strategy must take into account the specific circumstances of each situation in order to prevent recurrence of future crises and human rights violations and ensure social cohesion, state-building».

However, analyzing the numerous documents and decisions in the structure of UN bodies, it can be concluded that any national approach

should take into account the presence of mandatory measures such as combating impunity, developing national capacity to prosecute perpetrators of gross human rights violations and serious violations of international humanitarian law, fulfillment of obligations regarding fair trials.

Transitional justice approaches make it mandatory to document, investigate and prosecute perpetrators of war crimes, crimes against humanity and gross human rights violations. In today's language, when criminal acts of another aggressor's country are taking place in modern Ukraine, it is extremely important to take measures to overcome the consequences of the war, including full documentation, investigation and prosecution of those responsible for the most serious crimes.

Among the key tasks facing the state and the national legal system in this direction, scholars include: legislative regulation of procedural issues related to special criminal proceedings (in the absence of a person in absentia) in this category of cases; harmonization of national legislation and law enforcement practice in the field of criminal justice to the norms of international criminal and international humanitarian law; determining the mechanism of investigation of crimes against humanity, war crimes, as well as their further trial (Konopelsky and Sviridova, 2020). It is obvious that the relevant work should be carried out in two directions: international and national.

Conclusions

Having conducted a scientific study of the organization of documentation, investigation of war crimes committed during the war in Ukraine, it is necessary to draw the following conclusions.

The introduction of systematic and effective documentation and investigation of crimes committed during the war in Ukraine is one of the key elements of transitional justice, the effective implementation of which is necessary to comprehensively overcome the armed aggression of the Russian Federation. The formation of an effective national justice system in this direction should be based on legislation and law enforcement practice that meets international standards in the field of human rights and legitimate interests.

The highest form of cooperation between the competent authorities in the investigation of war crimes, which are often transnational in nature, should be the introduction of interdepartmental investigative task forces, the number and personnel of which should be determined by the complexity of the crime, the number of episodes, the location of crimes, the number of persons involved in the crime, the need to identify and search them, the amount of evidence and indicative information, etc.

Effective in counteracting crimes committed in the context of military aggression on the territory of Ukraine should be: developing effective mechanisms and establishing communication within universal jurisdiction with other countries that have experience in investigating military aggression by the Russian Federation; extensive use of the capabilities of the International Commission on Human Rights established by the UN Human Rights Council to investigate war crimes committed by the aggressor's military and violations of international humanitarian law, evidence prepared by which can be used in all international and national jurisdictions; borrowing positive international experience in standardizing current national legislation aimed at optimizing the process of documenting and investigating crimes, bringing perpetrators to justice.

In order to prevent the commission of crimes against humanity and war crimes on the territory of Ukraine, as well as to promote the development of an effective national criminal justice system, the Rome Statute of the International Criminal Court needs immediate ratification. At the same time, using the capabilities of the International Criminal Court and the relevant mechanism will bring to justice not only the military-political leadership of the state, but also a serviceman of any rank who committed war crimes against civilians in Ukraine, in the territory of investigative team.

The application of the provisions of the Criminal and Criminal Procedure Code of Ukraine requires focusing on the practice of international criminal courts, doctrine, authoritative comments on international humanitarian law and the provisions of international treaties. At the same time, the list of acts that can be considered violations of the laws and customs of war does not necessarily have to coincide with the list of Art. 8 of the Rome Statute, or a list of serious violations of international humanitarian law under the Geneva Convention or the First Additional Protocol. It can be expanded, but not arbitrarily, but in accordance with international practice.

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UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 N° 73

*Esta revista fue editada en formato digital y publicada en julio de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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