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TREATMENT OF RUSSIAN PRISONERS OF WAR IN THE HANDS OF UKRAINE

Abstract

In the current international armed conflict between Russia and Ukraine, both parties have taken many prisoners of war. Their treatment is regulated by international humanitarian law (IHL), particularly the Geneva Convention III on the Treatment of Prisoners of War of 1949 and Additional Protocol I on the Protection of Victims of International Armed Conflicts 1977. The research aim of this article is to identify the legal standards applicable to the treatment of Russian prisoners of war under Ukrainian control and evaluate Ukraine's respect for them. The authors attempt to answer the following research questions: has Ukraine complied with international humanitarian law and Ukrainian law rules on the treatment of prisoners of war? Is Ukrainian law compatible with IHL?

KEYWORDS

prisoners of war, Russia, Ukraine, international armed conflict, international humanitarian law, legal proceedings

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jeńcy wojenni, Rosja, Ukraina, międzynarodowy konflikt zbrojny, międzynarodowe prawo humanitarne, postępowania sądowe

I. INTRODUCTION AND METHODOLOGY

In the current international armed conflict between Russia and Ukraine, initiated by Russian aggression, both parties took many prisoners of war (hereinafter POWs). Their treatment is regulated by international humanitarian law, most of all by the Geneva Convention III on the Treatment of Prisoners of War (1949; hereinafter GC III) and Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts (1977; hereinafter AP I). The national law of States-parties is also applicable here, and, as this article is limited to the treatment of Russian POWs, out of national laws, the authors will examine only Ukrainian law. While prisoner of war status is regulated by Article 4 of GC III and Article 44 of AP I, the detailed analysis of this status is beyond the scope of this paper, so suffice to state that a prisoner of war is usually a combatant in the hands of the enemy such as a soldier or a member of irregular armed forces who meets certain conditions (so called combatant's requirements of being commanded by a responsible commander, having a fixed distinctive sign recognized at a distance, carrying arms openly and respecting IHL¹). The most important rules of treatment of POWs are humane and equal treatment (Articles 13 and 16 of GC III). Other legal provisions will be referred to in the analysis below.

The research aim of this article is to identify the legal standards applicable to the treatment of Russian POWs under Ukrainian control and evaluate Ukraine's respect for them. The authors attempt to answer the following research questions: has Ukraine complied with international humanitarian law (IHL) and Ukrainian law rules on the treatment of POWs? Is Ukrainian law compatible with IHL? The research methods are adjusted to the research goal, including institutional-legal analysis and comparative analysis of IHL and Ukrainian law. The latter does not require much comment. Simply, the content of the most important rules of IHL and Ukrainian law on the treatment of POWs will be compared to verify whether they are compatible. The institutional-legal analysis focuses on the examination of international treaties like the GC III, AP I and Ukrainian law as well as of other documents which may not be binding such as international organizations' reports (for example of the Organization

¹ For more details, see Allan Rosas, *The Legal Status of Prisoners of War. A Study in International Humanitarian Law Applicable in Armed Conflicts* (Suomalainen Tiedeakatemia 1976); Claude Emanuelli, *International Humanitarian Law* (Éditions Yvon Blais 2009) 162–164.

for Security and Co-operation in Europe of 2022, 2023, 2024 or UN Human Rights Office of the High Commissioner of 2023 and 2024). Russia and Ukraine are parties to both GC III and AP I. Regarding the facts of the legal proceedings analyzed in section 3, the available information was relatively scarce; hence, the authors had to rely on the media accounts and legal blogosphere.

The structure of the article is the following: after the introduction, section 2 examines the most relevant rules of IHL and their application to the concrete case of Russian POWs; then, section 3 continues with the application of Ukrainian law and prosecution of Russian POWs for violations of both IHL and Ukrainian law. In conclusion, the authors attempt to answer the research questions.

II. INTERNATIONAL HUMANITARIAN LAW AND ITS RESPECT OR VIOLATIONS

The most dire or fragile moments for POWs are when they get captured and when they are interrogated. Beginning of captivity and interrogation rules are, hence, the ones that need elaboration and examination in the present case, complemented by the analysis of the respect for the most important rules on the internment.

First, it should be stated that the International Committee of the Red Cross (ICRC) has started receiving lists of POWs from both sides of the conflict; their names are passed on to the other party, and families are informed accordingly. Ukraine has established a National Information Bureau and enacted relevant legislation to handle the POWs properly in compliance with IHL (Article 122 of GC III²). The military, responsible for detaining POWs, passes data on the captured Russian soldiers, including the capture cards, mentioned in Article 70 of GC III, filled by the POWs, to the ICRC, with the National Information Bureau acting as an intermediary.³ Moreover, the UN Office of the High Commissioner for Human Rights (OHCHR) was granted complete and private admission by the Ukrainian government to POWs held in authorized detention centers.⁴ The same refers to the ICRC.⁵

² Geneva Convention III on the Treatment of Prisoners of War (1949).

³ OSCE, 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022' (2022) 12 <<https://www.osce.org/odihr/515868>> accessed 3 May 2025.

⁴ OHCHR, 'Treatment of prisoners of war and persons hors de combat in the context of the armed attack by the Russian Federation against Ukraine' (2023) 3 <<https://www.ohchr.org/en/documents/country-reports/ohchr-report-treatment-prisoners-war-and-persons-hors-de-combat-context>> accessed 3 May 2025.

⁵ See, for example, ICRC, 'Russia-Ukraine international armed conflict: New visits to prisoners of war bring much-awaited news to families' (2022) <<https://www.icrc.org/en/document/russia->

In the context of contacting the relatives, the Ukrainian authorities launched an internet service called 'Ischi Svoikh/Look For Your Own' to help the families of POWs find information about their loved ones. However, in the process, Ukraine violated Article 13 of GC III, which prohibits exposing POWs to public curiosity and humiliating them.⁶ The service contains hundreds of images and films presenting captured soldiers, which are accompanied by scans of their passports and other documents. Ukraine has also compounded the violation by publishing screenshots of POWs' internet correspondence with their friends and families, which is not acceptable under IHL. Moreover, Ukraine has displayed POWs at press conferences, where their participation in the invasion was discussed. Even if the press conference statements of POWs were not obtained by coercion, these practices create a potential danger to soldiers and their families.⁷ As to public curiosity and humiliating treatment, OHCHR noted in its report that it was common for the Ukrainian armed forces to film Russian POWs being forced to engage in acts of humiliation, such as singing songs or shouting slogans that glorify or insult specific military units or individuals. These videos, which may reasonably be perceived as degrading, were often shared on social media.⁸ Such actions violate Article 13. Even though sometimes there was progress concerning respect for IHL, as Ukraine, after the criticism from IHL experts, took down some of the videos in December 2024 by OSCE and OHCHR, there were still accusations of Ukraine exposing Russian POWs to public curiosity.⁹

The gravest violation was the summary execution of 25 Russian POWs. The OHCHR recorded events in which Ukrainian military personnel were responsible

[ukraine-international-armed-conflict-new-visits-prisoners-war-bring-much-awaited](#)> accessed 3 May 2025.

⁶ Updated ICRC Commentary to the III Geneva Convention (2020), paras 1610, 1621, 1624, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-13/commentary/2020?activeTab=#_Toc42436486> accessed 27 September 2025; Nils Melzer, 'International Humanitarian Law. A Comprehensive Introduction' (2016) ICRC, Geneva 182, 195; Gary D Solis, *The Law of Armed Conflict. International Humanitarian Law in War* (Cambridge University Press 2010) 323–325.

⁷ OSCE (n 3) 15; OSCE, 'Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine' (2022) <https://www.osce.org/files/f/documents/c/d/523081_1.pdf> accessed 3 May 2025.

⁸ OHCHR (n 4) 28; OSCE, 'Fifth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine' (2024) 30 <<https://www.osce.org/odihr/573346>> accessed 3 May 2025.

⁹ OSCE (n 7) 40; OSCE (n 8) 30; OSCE, 'Sixth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine' (2024) 35 <https://www.osce.org/files/f/documents/6/9/582835_0.pdf> accessed 3 May 2025; OHCHR, 'Report on the Human Rights Situation in Ukraine. 1 March 2024–31 May 2024' (2024) 20 <<https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/24-07-02-OHCHR-39th-periodic-report-Ukraine.pdf>> accessed 3 May 2025.

for the deaths of at least 25 Russian POWs. The OHCHR also examined videos that were published online on 22–23 November 2022, which seemed to show instances of Ukrainian armed forces carrying out summary executions of Russian POWs and incapacitated individuals at various times and places. Upon analyzing the footage, it appears highly probable that the videos are authentic. There are also videos from March 2022 taken in Nova Basan in the Chernihiv region, showing seven Russian POWs killed with their hands tied. Such acts definitely constitute war crimes and should be investigated, and their perpetrators prosecuted and punished (as they constitute willful killing mentioned in Article 130 of GC III and Article 8(2)(a)(i) of the ICC Statute). Unfortunately, OHCHR's report indicated a lack of progress in this regard.¹⁰

Out of 229 POWs who were interviewed, 101 had experienced various types of torture or maltreatment upon being apprehended by the Ukrainian armed forces. In the majority of the documented cases, the prisoners were subjected to prolonged beatings, resulting in significant pain and injuries. The OHCHR also recorded three incidents where Ukrainian military personnel shot POWs in the legs either immediately after they were captured or during their initial interrogation.¹¹ The OHCHR also documented cases of torture and ill-treatment of POWs by the Ukrainian armed forces. Five cases of electrocution were reported, in which wires were attached to the prisoners' feet and electrical current was passed through their bodies. In addition, there were instances of psychological torture, such as death threats, mock executions, and threats of sexual violence. In one case, soldiers told a prisoner of war that they had killed two other prisoners and that he would be executed next after he heard gunshots during separate interrogations.¹² Despite criticism, similar accusations continued into 2023 and 2024.¹³ Again, such acts constitute war crimes and should be investigated and their perpetrators tried and punished (Article 130 of GC III).

As to the interrogation process, Ukraine has breached IHL by posting generally available videos in which captured soldiers are interrogated or forced to express apologies to the Ukrainian people, praise the Ukrainian military forces, condemn

¹⁰ OHCHR (n 4) 25–26; OSCE, 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022)' (2022) 19 <<https://www.osce.org/odihr/522616>> accessed 3 May 2025.

¹¹ See also, Human Rights Watch, 'Ukraine: Apparent POW Abuse Would Be War Crime' (2022) <<https://www.hrw.org/news/2022/03/31/ukraine-apparent-pow-abuse-would-be-war-crime>> accessed 3 May 2025.

¹² OHCHR (n 4) 26–27.

¹³ OSCE, 'Third Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine' (2023) 15 <https://www.osce.org/files/f/documents/5/2/548629_0.pdf> accessed 3 May 2025; OSCE (n 8) 30.

their own leaders, or call their relatives to urge them to put an end to the war. IHL allows POWs to provide only basic personal information and protects them from any coercive methods of interrogation (Article 17 of the GC III).¹⁴ There were examples of more serious IHL violations. POWs were taken from the front line to improvised temporary detention centers, including military headquarters and police stations, to be interrogated by various Ukrainian authorities, such as the Armed Forces, Security Service, intelligence, or police officers. A total of 66 POWs claimed that their interrogators, who were mainly military personnel, subjected them to torture and mistreatment in order to extract information, punish, embarrass, intimidate them, or obtain access to their bank account details. In some instances, physical abuse was used to accompany every question asked. The majority of POWs who experienced torture or mistreatment reported being beaten with rifle butts, sticks, wooden bats, and fists on their faces, legs, and torsos. They were also forced to kneel for hours during interrogation.¹⁵ Overall, OHCHR observed a repeated occurrence of torture and mistreatment (in other words, a pattern of violations) inflicted on male POWs at transit camps located far from the frontline during the onset of the armed conflict from March to May 2022, with a spike following the public disclosure of civilian killings in Bucha. In particular, OHCHR documented six cases of torture and mistreatment at Dnipro penal colony No 89, where male prisoners were subjected to ‘welcome beatings’ upon arrival.¹⁶

As to the conditions of internment, in mid-April 2022, Ukraine established one POW camp in the Lviv region, on the site of a previous penitentiary facility. POWs are also held in such places of internment as SIZOs (detention wards) in Dnipro, Kharkiv, Kyiv, Kryvyi Rih, Odesa, Poltava, and Zaporizhzhia. Russian POWs are kept away from the frontline and are escorted to a shelter during air alerts. They are housed in barracks with enough space per person, provided with hygiene items, bedding, and three meals daily. The prisoners also have access to recreational and educational facilities.¹⁷

The report states that most of the male POWs did not have any complaints about their treatment, but 40 reported inadequate conditions and ill-treatment. Some of the prisoners interviewed claimed military police or guards beat them in various detention centers in Ukraine. The report also reveals the existence of an unofficial place of internment in Kyiv, where a significant number of POWs were interned for extended periods, and the Ukrainian authorities have not responded to this

¹⁴ OSCE (n 3) 14 .

¹⁵ OHCHR (n 7) 27.

¹⁶ Ibid 28.

¹⁷ Ibid.

claim. According to GC III, all POWs must be officially recorded (Article 122) so they cannot be held in secret locations without contact with the outside world. The report notes that despite the establishment of one POW camp by the Ukrainian government, a considerable number of prisoners are still held in pre-trial detention and penitentiary facilities, which violates the rules of internment.¹⁸ Article 22 of the GC III requires that '[...] Except in particular cases which are justified by the interest of the prisoners themselves, [POWs] shall not be interned in penitentiaries'.

In June and December of 2022, OHCHR conducted visits to the POW camp in the Lviv region. During the second visit, complaints were received from prisoners about the conditions of their internment. Most of the grievances were related to low temperatures in the barracks in autumn/winter times, inadequate warm clothing until mid-October, and insufficient food quantities (the latter breaches Article 26, requiring basic daily food rations sufficient in quantity, quality, and variety to keep POWs in good health).¹⁹ As to clothing, Article 26 of the GC III states that 'clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, **which shall make allowance for the climate of the region where the prisoners are detained** [emphasis added]'. However, in a 2023 report, the OSCE found that the conditions in Ukrainian detention centers met the requirements of the GC.²⁰

POWs also stated that, except for those in the infirmary, all prisoners were engaged in physical labor every day (8 hours a day) and, therefore, required additional food. Some POWs reported constant hunger and losing between 10 and 30 kg during their captivity. Again, this is in breach of Article 26, which mentions that the detaining power (Ukraine in this case) should provide POWs with a sufficient amount of food also to 'prevent [their] loss of weight'. Additionally, the items available for purchase at the canteen did not meet the needs of the prisoners.²¹ The fact that Russian POWs are forced to work is legally acceptable according to Article 49 of the GC III.²² For example, some of the prisoners are making garden furniture. They are paid for their work in accordance with Article 54 of GC III.²³ They can buy sweets and cigarettes at the camp canteen with that money. What is, however, disturbing are the public statements that Russian POWs will be put to use by helping rebuild Ukraine, which may signify that the prisoners would not

¹⁸ Ibid 30.

¹⁹ Ibid 32.

²⁰ OSCE (n 13) 16.

²¹ OHCHR (n 4) 32.

²² Updated ICRC Commentary (n 6) paras 2655–2660.

²³ James Waterhouse, 'Ukraine war: Inside a prisoner of war camp for Russians' (2023) BBC <<https://www.bbc.com/news/world-europe-64637928>> accessed 3 May 2025.

be repatriated at the end of active hostilities, as dictated by IHL (Article 118 of GC III).²⁴

Regarding the possibility of contact with the outside world, the Ukrainian government enabled communication between POWs and their families through letters and modern means of communication, exceeding the requirements of the GC III, which in Article 71 enables POWs to send four cards and two letters a month. For example, at POW Camp ‘Zakhid-2’ in the Vinnytsia region, Russian POWs reported better opportunities for staying in touch with their families, as they have been allowed one phone call per month since February 2024. The State Penitentiary Service informed OHCHR that it has encouraged POWs to exercise their right to send letters and cards – a practice that the interviewed prisoners confirmed.²⁵ Russian POWs can also receive parcels, entirely in accordance with Article 72 of GC III. An IP-telephone service was introduced for POWs in permanent transit camps and the Lviv camp in the fall of 2022 (they can call their families once or twice a month). However, during OHCHR’s interviews with POWs in pre-trial facilities, they were not aware of this service, and the facility administrations reported facing technical difficulties in its implementation.²⁶

POWs held in fixed locations were given basic medical care, which included routine doctor visits, X-ray examinations, general medicine, and dental treatment. Medical care was provided to them when they entered the facility, on a scheduled basis, or when they asked for it. If a prisoner of war needed ongoing medical care, they were moved to the medical unit of the permanent transit sites or the POW camp in Lviv. Alternatively, they were admitted to hospitals for urgent or specialized treatment.²⁷ Such a treatment is compliant with Ukraine’s obligations under Articles 30–31.

III. UKRAINIAN LAW AND PROSECUTIONS FOR MISTREATMENT OF PRISONERS OF WAR

The full-scale aggression of the Russian Federation forced the Ukrainian lawmakers to systematize the procedures relevant to holding POWs due to their growing number. As President Zelensky claimed at the meeting with the Prosecutor of the International Criminal Court (ICC) Karim Khan in March 2022 (i.e., a month

²⁴ OSCE (n 3) 15.

²⁵ OHCHR (n 9) 20.

²⁶ OHCHR (n 4) 32.

²⁷ Ibid.

after the commencement of military activities), in Ukraine, there were approximately 2000 members of the Russian armed forces captured by the Armed Forces of Ukraine.²⁸

The basic Ukrainian legal act regulating the issues of ill treatment of POWs is the Criminal Code of the Republic of Ukraine, whose Article 434 states:

Repeated ill-treatment of prisoners of war, or any such treatment combined with exceptional cruelty or committed in respect of sick or wounded persons, and also negligent performance of duty in respect of sick or wounded persons by persons required to provide medical treatment and care to them, where it involved no elements of a more grave criminal offence shall be punishable by imprisonment for up to three years.²⁹

According to the Law on Defense of Ukraine and its Article 9, it falls within the Council of Ministers' remit to establish how to hold POWs in compliance with the norms of international law. Such law was adopted by regulating the cabinet of ministers of 5 April 2022. According to its provisions, the State budget reserve fund finances the camps and prisoner of war containment areas. The duties related to the conditions in which Russian POWs are interned are split among the ministries: of justice (organization of lodging, holding and health care), of foreign affairs (external relations and issues connected with prisoners' return), of infrastructure (transport and postal services), defense (escorting – jointly with the ministry of infrastructure and of justice), and of the interior (photographing and fingerprinting).³⁰ The temporal aspect of the discussed decree covers the period from the introduction of martial law to the end of military activities and partially to the rebuilding stage. The legal act defines a prisoner of war as a person entitled to this status in the light of Article 4 of the GC (III) on Prisoners of War of 1949 and Article 44 of Protocol Additional to the GCs relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977. A camp is considered to be an institution established by the Ministry of Justice in order to place and intern POWs. At the same time, Ukraine is under martial law for the duration of the war and partially during the reconstruction after the military activities end.³¹

²⁸ Президент України провів зустріч із прокурором Міжнародного кримінального суду (2022) <<https://www.president.gov.ua/news/prezident-ukrayini-proviv-zustrich-iz-prokurorom-mizhnarodno-73605>> accessed 3 May 2025.

²⁹ Criminal Code of Ukraine (2001) Art 434 <<https://zakon.rada.gov.ua/laws/show/2341-14#Text>> accessed 3 May 2025.

³⁰ The Law on Defense of Ukraine (1992) Art 9 <<https://zakon.rada.gov.ua/laws/show/1932-12#n205>> accessed 3 May 2025.

³¹ Decree of the Cabinet of Ministers of Ukraine on the approval of the procedure for keeping military forces (2022) <https://zakon.rada.gov.ua/laws/show/413-2022-%D0%BF?fbclid=IwAR2CDcoO_IdJMqQOFdug_lj7WzNjR2HwcEp9s975xmwHKJY8FOMML3y5Ic#Text> accessed 3 May 2025.

According to the adopted legal act, POWs are to be constantly treated in a humane way, which does not allow for violence, bullying, torture, insulting, humiliation, exposure to the eyes of the public, and punishment without a previous decision of an appropriately constituted court. In particular, it is forbidden to maim, torture, and conduct medical or scientific experiments that are not necessary for treatment purposes and are not in the interest of prisoners. The decree expressly puts the responsibility for the treatment of POWs on the state, making clear that this issue is not the responsibility of individuals and military units. Prisoners can complain directly or through an intermediary to the camp administration, the Ministry of Justice, or the protecting power to lodge a motion or a protest regarding the conditions of their internment. According to the decree, POWs (with the exclusion of officers) are obliged to salute all the officers of the detaining State and express respect. It is allowed to wear medals, signs, and chevrons. The use of weapons against escaping POWs is allowed as an extraordinary means, after signaling the intention to use them. Interrogations are conducted in the language the prisoners understand, without torture or other coercive means. POW camps are clearly marked with the letters 'PW' and 'PG', visible from the air.³²

From the perspective of Ukrainian law, a more complex issue is the punishment of war crimes committed by Russian soldiers who are now POWs. While the Criminal Code of the Republic of Ukraine does not use the terms 'war crime' or 'crime against humanity', in Article 438, it introduces the notion of 'violation of the laws and customs of warfare', which are in fact war crimes. Of course, the burden of punishing international crimes lies mainly with States, and the role of the ICC is complementary (Ukraine ratified the ICC Statute in 2024); the Ukrainian State has the means and possibilities to bring the perpetrators to justice in such cases. The mentioned article enables investigators and courts to implement international law directly and provides a penalty of 8 to 15 years of imprisonment. The war crime is defined as:

[c]ruel treatment of prisoners of war or civilians, deportation of civilian population to engage them in forced labour, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare stipulated by international treaties, ratified by the Verkhovna Rada of Ukraine, and also issuing an order to commit any such actions.³³

The preliminary question is, why is Ukraine prosecuting Russian POWs in civilian courts? This is because Ukraine eliminated its military justice system in 2010 and integrated military-related provisions into its domestic Criminal Code. As

³² Ibid.

³³ Criminal Code of Ukraine (2001) Article 348.

a result, both Russian and Ukrainian armed forces members are now prosecuted exclusively through civilian courts. This approach aligns with the requirements of the III GC (Article 84), which stipulates that military courts should generally try POWs, unless the detaining power's laws explicitly allow for civilian court trials for specific offenses.³⁴

The OHCHR closely monitored multiple legal proceedings and reviewed over 100 verdicts in criminal cases involving Russian POWs within the Ukrainian judicial system. During this process, they detected recurring violations of fair trial rights, particularly related to self-incrimination, confessing guilt, and the right to mount a defense. Articles 105 and 106 of the III GC articulate a robust framework for ensuring the right of prisoners of war to a fair trial. They guarantee access to legal assistance, either by counsel of the prisoner's choice or, failing that, by appointment through the Protecting Power or the Detaining Power, with adequate time and facilities to prepare the defence. The accused must be informed of charges and provided with relevant documents in a language he understands, ensuring both effective participation and equality of arms. Apart from exceptional State security cases, the presence of the Protecting Power's representatives serves as an additional safeguard of transparency and impartiality. Finally, the right of appeal or petition, equal to that afforded to the Detaining Power's own armed forces, reinforces the principle that justice must not only be done but must also be seen to be done.

Russian-affiliated armed group of POWs³⁵ captured after 24 February 2022, were typically sentenced to prison terms ranging from 12 to 15 years for various offenses like trespass against territorial integrity, State treason, involvement in terrorist organizations, unlawful armed formation membership, and illegal fire-arm possession. While IHL does not explicitly forbid prosecuting defectors³⁶ for State treason, the practice of convicting Russian-affiliated armed group members under the aforementioned charges for their involvement in hostilities contradicts the principle of combatant immunity. This principle means that POWs cannot be

³⁴ Chris Jenks, 'Ukraine symposium – the atrocity crimes advisory group & Ukrainian prosecutions of Russian POWs – Part 1' (2022) <<https://lieber.westpoint.edu/atrocity-crimes-advisory-group-ukrainian-prosecutions-russian-pows-part-1/>> accessed 3 May 2025.

³⁵ OHCHR broadly uses the term 'Russian armed forces' to cover all entities fighting on behalf of the Russian Federation. This includes the official Armed Forces and National Guard and affiliated formations such as armed groups from the former self-proclaimed 'republics' and Wagner Group contractors, all deemed to operate under Russia's overall control. Accordingly, 'Russian POWs' refers to captured members of any of these forces, irrespective of their nationality – OHCHR (n 4) 3 (fn 2).

³⁶ A defector is a person – usually a soldier, officer, or other member of an armed force or affiliated group – who abandons their allegiance to the side they are serving and joins, or seeks protection from, the opposing side – Rosas (n 1) 388. In the case of Ukraine, these would be members of the armed groups of the Donetsk and Luhansk people's republics.

prosecuted for merely taking a direct part in hostilities (in other words, acts of violence that are legal according to IHL) but for possible war crimes.³⁷ Notably, as of 2025, OHCHR has not encountered any instances where judges invoked international norms and standards on combatant immunity to acquit individuals facing charges related to such conduct.³⁸ Some of these controversies will be reflected in the cases analyzed below.

The cases in which the Ukrainian judiciary deals with punishing international crimes can be divided into two groups: trials in absentia,³⁹ where the accused are absent but there are no doubts as to their guilt, and trials of Russian prisoners whose participation in the described violation has been proven. In the first case, the practice dates back to the war of 2014. During the ongoing full-scale aggression of the Russian Federation, two significant verdicts regarding violations of international law have been passed in the first fifteen months of the conflict – in February 2023 against Konstantin Kacharov and in April 2023 against Alexander Kabashny. Both men are the so-called military commissars of the occupation authorities in Crimea. Since the illegal annexation of the peninsula, they have been organizing forced conscription, which constitutes a breach of international law. Kacharov was sentenced in absentia to 11 years of imprisonment, and Kabashny to 8 (Darnytsky District Court of Kyiv, Judgment in the case of Konstantin Kocharov dated 09 February 2023; Darnytsky District Court of Kyiv, Judgment in the case of Alexander Kabashnyi dated 25 April 2023⁴⁰).

The problem with the other type of cases is the scale of Russian terror in Ukraine and the fact that, in this context, the court system is unprepared to give fair trials. According to the information from the Prosecutor General of Ukraine, Ukrainian law enforcement authorities are trying almost thirteen thousand cases related to war crimes. No system can be capable of simultaneously processing such a volume of work. Nevertheless, attempts are made to try the accused.⁴¹

³⁷ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (CUP 2004) 28; Rosas (n 1) 82.

³⁸ OHCHR (n 4) 33.

³⁹ IHL does not explicitly prohibit trials in absentia. The permissibility of such trials depends on the specific legal framework of the tribunal and safeguards to ensure a fair trial. While tribunals like the ICTY and ICTR grant the accused the right to be present, the Special Tribunal for Lebanon explicitly allows trials in absentia, showing that IHL does not impose a blanket prohibition – Mohammad H Zakerhossein, ‘In Absentia Proceedings’ in *Max Planck Encyclopedias of International Law* (2021) <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3314.013.3314/law-mpeipro-e3314?print=&utm_source=chatgpt.com> accessed 27 September 2025.

⁴⁰ For more details, see <https://reyestr.court.gov.ua/Review/110409601?fbclid=IwAR1RHF OZVuBXkcz7WUIZ6K7WN3_8v9e21ULAyrd0Hn1pJ0LozXqqhY4mE> accessed 3 May 2025.

⁴¹ Jenks (n 34).

Due to space constraints, only one case will be presented, the first widely publicized case that became a precedent for prosecuting war criminals among the Russian military forces – the case of 21-year-old Vadim Shishimarin. He was sentenced by the Solomanskiy District Court in Kyiv to life imprisonment for violating the rules of warfare and killing a 62-year-old resident of Sumy Oblast, Oleksandr Fedorovych Shelipov. Sergeant Shishimarin, the tank team leader of the 4th Guards Kantemirovskaya Tank Division, participated in combat operations in northeastern Ukraine from 24 to 28 February 2022. During a counterattack that left his unit without a vehicle, his group split and, while seizing a civilian Volkswagen Passat, encountered Oleksandr Shelipov – an unarmed civilian on a bicycle. Under pressure from one of his comrades, who believed Shelipov was signaling to the enemy, Shishimarin eventually shot and killed him despite his initial reluctance and his claim that he was forced by officers Makeev and later by Kufakov (whose exact rank was questioned by Private Maltisov). After suffering further casualties during an attack by villagers, his group surrendered on 1 March 2022. On 11 May, the Security Service of Ukraine charged Shishimarin under Article 438 of the Ukrainian Criminal Code with violating the laws and customs of warfare and murder. Although the prosecution noted that he was a combatant according to the GCs, his partial admission of guilt and expressed remorse were deemed insufficient, and the court ultimately sentenced him to life imprisonment. The defense argued that, under Russian regulations, Shishimarin was obliged to follow orders – suggesting that responsibility should instead fall on Makeev and Kalinin – citing his youth and inexperience; however, the court rejected these claims, determining that he had carried out a ‘criminal order’.⁴² The defense of superior orders, often termed the ‘Nuremberg defense’, is codified in Article 33 of the Rome Statute of the International Criminal Court (ICC). It provides that a person is not relieved of criminal responsibility for committing a crime under international law merely because they acted on orders, except where the person was legally obliged to obey, did not know the order was unlawful, and the order was not manifestly unlawful.⁴³

The court decided that Shishimarin fulfilled ‘a criminal order’ given by a soldier of a superior rank. At the same time, the defendant’s claim that he had not intended

⁴² See also Patrick Jackson and James Waterhouse, ‘Ukraine war: Russian soldier Vadim Shishimarin jailed for life over war crime’ (2023) <<https://www.bbc.com/news/world-europe-61549569>> accessed 3 May 2025.

⁴³ ICC Statute (1998), Art 33; Charles Garraway, ‘Superior orders and the International Criminal Court: Justice delivered or justice denied’ (1999) 81(836) *International Review of the Red Cross* 185–794; Paolo Gaeta, ‘The Defence of Superior Orders: The Statute of the International Criminal Court versus Customary International Law’ (1999) 10 *European Journal of International Law* 172–191.

to kill was considered to lack credibility. As mentioned, in the eyes of the court, the admission of guilt was only partial, and thus the remorse was not honest. The only extenuating circumstance recognized by the court was cooperation with the Ukrainian law enforcement institutions. The sentence was life imprisonment as the court declared that due to the nature of the offense as ‘a crime against peace, security, humanity and the international legal framework’, a more lenient prison term was deemed unfeasible. However, the minutiae of the proceedings contain no mention of the prosecution proving that Shishimarin committed a crime against peace, security, humanity and international legal order, and these premises are not listed by the Ukrainian Criminal Code as aggravating factors.⁴⁴

The interesting aspect here is the prosecution’s acknowledgment of mitigating factors while simultaneously seeking the maximum sentence, especially within the context of the Ukrainian Criminal Code. According to Article 69-1 of the Code, if an offender has surrendered, shown genuine remorse (which appears to apply to Shishimarin), and admitted guilt (a concession made by the prosecution), the punishment term cannot exceed two-thirds of the maximum duration of the most severe prescribed penalty.⁴⁵ Shishimarin’s defense exercised the right to appeal, and in a new trial, the sentence was mitigated to 15 years of imprisonment.⁴⁶

Regarding violations of Shishimarin’s rights and controversies connected with his trial, Chris Jenks indicates, *inter alia*:

1. Lack of clear notification of the charges (as required by Article 105 of the Geneva Convention III) – in order to sufficiently notify the accused of the charge, the prosecution was required to clearly indicate the specific rule of warfare that Shishimarin was accused of violating. However, the charges against him were not specified as required by law. While the charge of murder can be considered relatively specific, the same does not apply to ‘violating a rule of warfare’. The specific rule/s in question was/were not specified. Shishimarin would only have sufficient notice of the charge, enabling him to prepare a defense or decide whether to plead guilty, if the specific offense was detailed with its

⁴⁴ See also Patrick Jackson and James Waterhouse, ‘Ukraine war: Russian soldier Vadim Shishimarin jailed for life over war crime’ (23 May 2023) <<https://www.bbc.com/news/world-europe-61549569>>. See also the facts of the case in the trial verdict, Shishimarin (n 35).

⁴⁵ Jenks (n 34); Первый российский военный, которого судят за убийство гражданского украинца. Дело Вадима Шишимарина (2022) <<https://graty.me/ru/online/pervyj-rossijskij-voennyj-kotorogo-sudyat-za-ubijstvo-grazhdanskogo-ukrainca-delo-vadima-shishimarina/>> accessed 3 May 2025.

⁴⁶ Суд пом’якшив вирок російському військовому Шишимарину (2022) <https://www.dw.com/uk/cud-pomiakshyv-vyrok-rosiiskomu-viiskovomu-shyshymarinu/a-62647875?fbclid=IwAR-2R6pkLncGTqDh18RiEjBtDHgDfZlaoF_y7M7174s5ySgESd14-PEzRcsM> accessed 3 May 2025.

constituent elements.⁴⁷ First instance judgment suggests that the charge of the violations of the laws and customs of warfare meant directly attacking a civilian as the court invoked Articles 50, 51, and 85 (2)(a) of the Additional Protocol I stating that civilian populations and individual civilians must not be attacked, and acts or threats of violence intended to terrorize civilians are prohibited.⁴⁸

2. Lack of due consideration of ‘direct participation’ in armed hostilities – the court’s decision labeled the directive for Shishimarin to shoot Mr Shelipov as a criminal instruction. During the trial, Shishimarin was asked if he was obligated to obey an ‘obviously illegal’ order, to which he responded negatively. However, Shishimarin’s response did not reveal whether he had considered the order illegal. The core of the case revolved around the legality of the order and whether Shishimarin knew or should have known about its legality. Maltisov’s testimony implies that he believed the order was unlawful, but it is unclear whether he formed this opinion at the time or afterward. The prosecution admitted that the directive to shoot Mr Shelipov was issued due to an incorrect assumption that he was using his mobile phone to communicate the location of Russian forces, which would constitute direct participation in hostilities. Yet, there was no discussion about a mistake of fact. Importantly, there was no recognition that real-time transmission of tactical information, such as location, even by unarmed civilians, might constitute direct participation in hostilities, making an unarmed civilian a legitimate target for lethal force.⁴⁹ And this argument was taken up by the defence at the appeals stage which requested to consider that Shishimarin and other individuals in the car had real grounds to believe that the victim was informing Ukrainian military personnel about their location via mobile phone. Since Shishimarin was in a combat situation and perceived Mr Shelipov as a combatant (these are the words of the court, although strictly speaking he would be a civilian directly participating in hostilities), he fired shots due to the immediate threat to his life posed by Shelipov’s actions aimed at disclosing his location.⁵⁰

⁴⁷ Jenks (n 34).

⁴⁸ Shishimarin trial, Category of case No 760/5257/22 (23 May 2022) <<https://reyestr.court.gov.ua/Review/104432094>>.

⁴⁹ Jenks (n 34).

⁵⁰ Shishimarin appeal, Case Category No 760/5257/22 (29 July 2022) <<https://reyestr.court.gov.ua/Review/105669005>>; Суд пом’якшив вирок російському військовому Шишимаріну (29 July 2022) <https://www.dw.com/uk/cud-pomiakshyv-vyrok-rosiiskomu-viiskovomu-shy-shymarinu/a-62647875?fbclid=IwAR2R6pkLncGTqDhl8RiEjBtDHgDfZlaoF_y7M7l74s5yS-gESd14-PEzRcsM>.

Interestingly, the International Committee of the Red Cross addressed a comparable situation in its Interpretive Guidance on Direct Participation in Hostilities: '[f]or example, an unarmed civilian sitting in a restaurant using a radio or mobile phone to transmit tactical targeting intelligence to an attacking air force would probably have to be regarded as directly participating in hostilities'.⁵¹ To clarify, there is no evidence that Mr Shelipov was reporting the Russians' location; the belief that he was appears to be erroneous. This belief could even be objectively unreasonable. However, determining this necessitates thorough examination, not just a conclusion. If the belief, while false, was not unreasonable, the implications are substantial – both the order to shoot Mr Shelipov and the act of shooting him would not be illegal.⁵²

The broader context of Ukrainian civilians directly participating in hostilities should be considered when examining the above belief. One way of such participation is using a tool called 'ePPO', a mobile application that enables Ukrainian civilians to report the locations of incoming missiles or other aerial threats using their cell phones. This app appears quite effective; for instance, on 22 October 2022, Ukrainian forces utilized information from the app to successfully intercept a Kalibr cruise missile with a mobile air defense system. Kalibr cruise missiles and explosive-laden drones are among Russia's primary weapons for attacking critical infrastructure. However, the use of this app introduces a potential issue: Ukrainian civilians who download and use it to report threats might be considered as directly participating in hostilities, which could make them legitimate targets for Russian forces under international humanitarian law,⁵³

3. Lack of due consideration of the defence of superior orders – despite the potential illegality of the order, the Ukrainian Code provides exemptions under certain circumstances, such as obeying orders according to Article 41. Surprisingly, the trial did not thoroughly analyze the application of Article 41, which could determine Shishimarin's liability and potentially involve Makeev. The Code states that if a person was unaware of an order's criminal nature and could not have been aware,

⁵¹ International Committee of the Red Cross, Interpretative guidance on the notion of direct participation in hostilities under international humanitarian law (2009) <<https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf>> 81. See also Jenks (n 34).

⁵² Jenks (n 34).

⁵³ Michael N Schmitt, William Casey Biggerstaff, 'Ukraine symposium – are civilians reporting with cell phones directly participating in hostilities?' (*Articles of War*, 2 November 2022) <<https://lieber.westpoint.edu/civilians-reporting-cell-phones-direct-participation-hostilities/>>.

criminal liability rests with the person issuing the order. This implies that if Shishimarin was unaware that the order to shoot Mr Shelipov was illegal at the time, he would not be held criminally responsible, unlike Makeev and Kufakov. If an order is blatantly criminal, there is no defense under the Ukrainian Code. The court might not have considered Article 41 due to a belief that the order was blatantly criminal, even though this assumption lacks support. Such an assessment without explanation appears unreasonable. According to the ICRC's stance, the order might not have been illegal and, therefore, could not be classified as patently criminal. Moreover, the proceedings did not establish whether Shishimarin believed the order was unlawful at the time of the shooting. Admittedly, the accused explained that when he first saw the victim, he knew he was a civilian and realized he could have acted differently, such as scaring him instead. He admitted the act was unacceptable and criminally punishable, deserving the highest punishment. During the court proceedings, and not contested by the defense, it was established that Shishimarin indeed, following the order of a person unknown to him, fired several shots in succession from an automatic weapon at Mr Shelipov. As a result of these actions, one bullet hit the head of the victim, and he died on the spot. Despite the accused's assertion that he allegedly accidentally shot the victim, the court was convinced that his murder was committed with direct intent. The court stated that while explaining the circumstances of the event, the accused showed that he had the opportunity not to comply with the order of an unknown person and not to shoot a civilian. According to the court, the unknown person who gave this order had no recognizable features reflecting their military rank, the accused personally did not know them, the order was illegal, and therefore, he should not have obeyed it, but he still did so to avoid repercussions.⁵⁴

According to the court's conviction, understanding that the order given to the accused was clearly criminal and not wishing to obey it, the accused could have refused to obey, which would not have had any negative consequences for him. Furthermore, the accused could not perceive the unknown person as an officer, especially not as a direct commander, as he did not know their surname or military rank, and the commanding tone of the conversation is not a criterion for subordination for military personnel. As the accused stated, he had the opportunity to exit the vehicle and take the phone from Mr Shelipov, but he did not do so. According to Ukrainian law, the question of intent must be resolved based on a combination of all the circumstances of the action, including the method, means of crime,

⁵⁴ Shishimarin trial (n 48).

the number, nature, and localization of injuries and other physical harm, reasons for stopping criminal actions, behavior of the perpetrator and victim preceding the event. The behavior of the accused confirms the circumstances stated in the indictment, namely that Shishimarin, by firing shots at the victim, was aware of the socially dangerous nature of his actions, anticipated their socially dangerous consequences in the form of the victim's death, and desired their occurrence. Thus, based on the content of Part 2 of Article 24 of the Criminal Code of Ukraine, the accused acted with direct intent. This circumstance was proven in court and does not raise doubts for the court.⁵⁵

Therefore, the court did not trust the testimony of the accused and rejected the defense's arguments that the order given to the accused was aimed not at the intentional killing of an innocent civilian but at saving their own lives. This witness stated that the reaction of the senior lieutenant (Kalinin) to this event was negative. After the murder, he asked why they did it and ordered everyone to put their rifles on the safety to prevent similar incidents in the future. Such behavior of the senior lieutenant also indicates the absence of a threat to Russian military personnel from civilian Shelipov.⁵⁶ Still, as Chris Jenks claims, the problem is that the proceedings did not establish whether Shishimarin believed the order was unlawful at the time of the shooting but rather did so concerning the time after the shooting.

Like the discussion on direct participation in hostilities, the issue of obeying orders necessitated further exploration and more clarity. It also matters that Ukraine exchanged Kalinin and Makeev before the trial and did not inform the defense about this until an attempt was made to call them as witnesses. Both Shishimarin and Maltisov testified that Makeev initially ordered Shishimarin to shoot, and when Shishimarin refused, Kufakov reiterated the order. The court found the order to shoot criminal. Considering the outcome, with Mr Shelipov's death and Shishimarin's life sentence, why was Makeev not charged for issuing the order? This decision is especially puzzling given that Article 438 Part 1 includes 'giving an order to commit such actions' as a criminal act. The trial did not establish the rank hierarchy within the car. At times, it appeared that Maltisov and Shishimarin suggested Lieutenant Kalinin, who was in the trunk, was the senior officer. If that was true, why didn't Kalinin override Makeev's and Kufakov's orders? Makeev's order to shoot Mr Shelipov could be classified as a war crime under Additional Protocol I. Kalinin's inaction in preventing the shooting should have been further investigated and might also be a breach of the same Protocol's command responsibility. As a signatory to the Geneva Conventions and Additional Protocol I, Ukraine was

⁵⁵ Ibid.

⁵⁶ Ibid.

required to investigate any serious breaches and possible failures in command responsibility. If the investigation found Makeev and/or Kalinin responsible for these violations, Ukraine would have the legal duty to prosecute them.⁵⁷

According to the court, the convicted men fulfilled the crime conditions described in Article 438. However, Shishimarin's case reveals the weaknesses of the Ukrainian judiciary system – the experts criticized the proceedings for their hasty form, witnesses lacking credibility, and negligent interrogations of defendants.⁵⁸ The OHCHR reached the same conclusions, indicating a pattern in legal proceedings where courts issued guilty verdicts either on the same day or shortly after the preliminary hearing. In these instances, defendants participated in their trials through videoconferencing, and the courts predominantly based their verdicts on the defendants' confessions during the trial, without thoroughly examining the case's specific facts.⁵⁹ These instances also involve charges brought against individuals solely for taking part in hostilities and infringements of the right to a fair trial, such as the right to legal counsel of one's preference and the opportunity to prepare a defense. Additionally, there were instances of confessions being extracted by promising prompt release during prisoner exchanges, and hasty trials conducted by potentially biased courts.⁶⁰

It is evident that the Ukrainian judiciary is unable to cope with the new situation despite all stopgap attempts of the lawmakers; this is due both to a lack of relevant procedures and to the scale of the Russian terror in the country. Another problem is the issue of transparency – the primary source of information on the above cases are journalists' reports, while the investigations are conducted with a high degree of secrecy, making it difficult to formulate an honest assessment. However, such cases are valuable practice – after the end of the armed conflict, the materials collected by Ukrainian courts can support the work of the ICC, particularly as, despite all the flaws, it would be difficult to claim that the right to fair trial had been entirely overturned – it is worth noting that Shishimarin was provided with defence, translators and the possibility to appeal.

Hence, the way in which the Ukrainian judiciary treats POWs by no means resembles the bizarre practices of the aggressor, particularly towards the defenders of Azovstal. At the initial stage, following the surrender at Azovstal in May 2022, Russian authorities allowed the International Committee of the Red Cross (ICRC) to register Ukrainian prisoners of war, which formally complied with the Geneva

⁵⁷ Jenks (n 34).

⁵⁸ Эксперти критикуют судебный процесс над войсковым РФ (2022) <<https://www.dw.com/uk/sud-nad-viiskovymy-rf-v-ukraini-eksperty-zasterihaiut-vid-pospikhu/a-61920111>> accessed 3 May 2025.

⁵⁹ OHCHR (n 4) 34.

⁶⁰ Ibid 5.

Conventions. However, serious violations soon emerged during detention, including widespread reports of torture and ill-treatment in Russian custody.⁶¹ The most notorious incident was the explosion at the Olenivka penal colony in July 2022, which killed more than 50 Ukrainian POWs and injured many others.⁶² Holding prisoners close to the frontline and denying access to independent monitors highlighted a sharp departure from international humanitarian law. The situation further deteriorated during the judicial phase, when Russian and proxy authorities in Donetsk announced sham trials against Azovstal defenders. Such proceedings, conducted without guarantees of fairness and independence, directly violated the Geneva Conventions. Thus, while the initial registration of POWs reflected formal compliance, subsequent detention practices and judicial measures revealed systemic violations of international humanitarian law.⁶³

IV. CONCLUSIONS

The article evaluates the treatment of Russian POWs in Ukrainian custody during the ongoing conflict, using IHL and Ukrainian law as its benchmarks. It reveals that Ukraine has established formal POW registration and family communication mechanisms, indicating progress toward compliance with IHL. While early trials of Russian soldiers in 2022 were criticised for certain shortcomings in ensuring full fair trial guarantees, subsequent judicial practice has demonstrated gradual progress. By 2025, Ukrainian courts have increasingly incorporated international humanitarian law standards into their reasoning, particularly with respect to the distinction between combatant privilege and individual criminal responsibility. Reforms in the criminal code and procedure, greater transparency, and the presence of international monitors reflect a stronger adherence to both IHL and international human rights law. This evolution indicates Ukraine's intention to align its judiciary with international expectations even under the conditions of armed conflict.⁶⁴ However, significant violations persist.

⁶¹ OHCHR, Report on the Human Rights Situation in Ukraine, 1 February–31 July 2023 (2023) <https://ukraine.un.org/sites/default/files/2023-10/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf?utm_source=>.

⁶² OHCHR, 'Olenivka: Two Years Since the Deadly Strike That Killed Dozens of Ukrainian POWs, a Continued Call for Accountability' (2024) <https://ukraine.ohchr.org/en/Olenivka-two-years-since-the-deadly-strike?utm_source=>.

⁶³ Amnesty International, 'Ukraine: Russian sham trials of prisoners of war in Mariupol "illegal and unacceptable"' (2022) <https://www.amnesty.org/en/latest/news/2022/08/ukraine-russian-sham-trials-of-prisoners-of-war-in-mariupol-illegal-and-unacceptable/?utm_source=>.

⁶⁴ Ukrainian Legal Advisory Group (2024) Needs Assessment of Ukraine's Justice System. Kyiv: ULAG <https://ulag.org.ua/wp-content/uploads/2024/09/na-web.pdf?utm_source=chatgpt.com>.

At the start of the war, Ukrainians viewed all POWs as potential criminals. However, the Prosecutor General's Office has started supervising the conditions of POWs' detention, ensuring compliance with IHL, and establishing standards for investigating war crimes. The Prosecutor General's Office considered participation in the war a war crime, but according to IHL, combatants have the right to participate directly in the fight (combatant immunity). The protection of GC III extends to POWs suspected of war crimes, but the detaining power can prosecute them for such crimes, and not just for belonging to a military unit or service. The Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine clarified to the OSCE Mission that Russian detainees would only be prosecuted for war crimes, and not for mere participation in the war.⁶⁵

As to the research aim and questions, the general conclusion is that Ukraine has mostly complied with international humanitarian law and Ukrainian law rules on treating POWs. The continuing violations, such as exposure to public curiosity and cruel treatment, are not committed systematically. Still, Ukraine should cease such behavior. Also, one should state that Ukrainian law is compatible with international humanitarian law. As mentioned, the most serious accusations against Ukraine refer to a pattern of violations (torture and mistreatment) during interrogations and criminal proceedings of the Russian soldiers. Some of those controversial or illegal Ukrainian acts were later rectified by the statement of the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine.

The Ukrainian government has consistently stressed its adherence to international humanitarian law and the Geneva Conventions with respect to Russian POWs. In response to allegations of mistreatment, Ukrainian authorities, including the Ministry of Defence and the Commissioner for Human Rights, publicly announced investigations and reiterated that such violations would not be tolerated. Moreover, Ukraine has emphasized its cooperation with the ICRC and contrasted its approach with Russia's systemic denial of POWs' rights. This indicates that, at least at the official level, the Ukrainian government's position has been to acknowledge the allegations and frame its conduct as compliant with IHL.⁶⁶

It must be acknowledged that legal proceedings conducted under war conditions are not devoid of imperfections as indicated above. In the case examined in this article, an additional significant constraint arose from the unavailability of consular support for the defendants, owing to the closure of the Russian Embassy

⁶⁵ OSCE (n 3) 12; Jenks 2022 provides further details – 'Ukraine symposium – the atrocity crimes advisory group & Ukrainian prosecutions of Russian POWs – Part 1 and Part 2' (2022) <<https://lieber.westpoint.edu/articles-of-war/>> accessed 3 May 2025.

⁶⁶ Coordination Headquarters for the Treatment of Prisoners of War, About the Coordination Headquarters (Government of Ukraine) (nd) <<https://koordshtab.gov.ua/about?utm>>.

in Ukraine. Moreover, a pivotal element of the Shishimarin defense's strategy, involving the testimony of two intended witnesses (Kalinin and Makeev), was hindered due to their involvement in a prior prisoner exchange, rendering them unattainable for summons. While logistical constraints likely rendered their attendance unfeasible, it raises contemplation over the potential influence their testimonies could have exerted on the case's outcome.⁶⁷

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⁶⁷ For more details, see Jenks (n 34); Sergey Vasiliev, 'The Reckoning for War Crimes in Ukraine Has Begun' (2022) Foreign Policy <<https://foreignpolicy.com/2022/06/17/war-crimes-trials-ukraine-russian-soldiers-shishimarin/>> accessed 3 May 2025.