

THE TYPOLOGY OF CRIMES COMMITTED IN DONBASS

from the point of view
of international humanitarian law
and national laws of Ukraine
and Russia



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Authors:

Dmytro Koval, International Expert on humanitarian and criminal law, associate professor of the Department of International and European Law of National University of “Kyiv-Mohyla Academy” (Ukraine)

Anna Malyar, PhD in Law, Lecturer at the National School of Judges of Ukraine (Ukraine)

Olga Gnezdilova, lawyer (Russia)

Alexander Baum, lawyer (Russia)

Design and layout: Mykhailo Fedyshak

English translation: Olena Miskun, amiskun@gmail.com

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INTRODUCTION

Within the framework of the CivilM+ platform, this brochure opens a series of publications devoted to various issues related to the responsibility of individuals for violating international humanitarian law during an armed conflict in East of Ukraine.

Responsibility for committing of a crime is individual. Whatever structure a person works for — state or informal, whatever orders he or she receives, if he or she has committed an offense that qualifies as a war crime, then he or she is individually liable for those actions. Crimes against international law are committed by individuals, not by abstract entities.

The inevitability of punishment for committed war crimes is one of the basic principles of transition period justice, which opens the way for justice and makes possible real reconciliation between the parties.

The four articles of the first publication are devoted to the types of crimes that took place during the armed conflict in the East of Ukraine in the context of international humanitarian law, as well as the peculiarities of the national legislation of Ukraine and Russia regarding the prosecution of persons who committed war crimes.





TPOLOGY
OF CRIMES
COMMITTED ON
DONBASS IN
CONTEXT OF
INTERNATIONAL
HUMANITARIAN
LAW

1

At least since the mid-twentieth century, international law explicitly prohibits war as a way of conducting foreign policy. Nevertheless, in the case of a declaration of war or the beginning of an armed conflict, its potential victims fall under the protection of perhaps the most pragmatic branch of international law — international humanitarian law or, using alternative terminology, the law of war.

Serious violations of international humanitarian law, committed both during international as well as in the context of non-international armed conflict, are classified as war crimes. The most comprehensive, and generally, universally recognized catalog of war crimes in international law, is enshrined in the Statute of the International Criminal Court, or, as it is called by the place of adoption, in the Rome Statute.

Article 8 of the Rome Statute divides all war crimes into four groups:

- Grave violations of the Geneva Conventions of 1949;
- other grave violations of the laws and customs of war;
- Grave violations of article 3 common to the four Geneva Conventions of 1949;
- Other grave violations of the laws and customs of war applicable to armed conflicts of a non-international nature.

The first two groups combine war crimes committed during an international armed conflict. War crimes within the framework of a non-international armed conflict are cataloged in the third and fourth groups from article 8.

Qualifying some of the criminal acts as war crimes does not depend on the type of armed conflict. These include, for example, the following: murder, torture, encroachment on the human dignity of persons who are not actively involved in hostilities; deliberate attack on civilian objects, civilian population, objects destined for religious and cultural purposes; rape; the destruction and seizure of the property of the enemy, not dictated by urgent military necessity, etc.

For a number of war crimes, the qualification of a form of armed conflict is of paramount importance, since it can only be committed in the context of an international armed conflict. Such crimes include, for example, the use of prohibited weapons or ammunition; recruitment of children; forcing nationals of the opposing side to participate in hostilities against their own country; the announcement as canceled or inadmissible in court the rights and actions of nationals of the opposing party; deliberate committing an attack when it is known that such an attack will cause the accidental death or injury of civilians or damage to civilian objects and some others.

In accordance with the requirements of the Rome Statute, in order to qualify an act as a war crime, there must be three compulsory elements in the wrongful act:

- *actus reus*;
- *mens rea*;
- *Contextual circumstances*.

Actus reus is defined for each individual type of war crime in article 8 and in the so-called Elements of crime, an addition to the Rome Statute, which contains a detailed description of the components of all international crimes. Accordingly a war crime under article 8 (2)(b) (iv), in the form of “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects” *actus reus* will consist in launching an attack that causes incidental loss of life or injury to civilians or damage to civilian objects.

Mens rea is a mental element of a crime, that is, an element characterizing intention and consciousness when committing an act (*actus reus*). In the case of the above mentioned military offense as an example, the *mens rea* is characterized by the perception of the executor that the attack will cause the incidental loss of life or injury to civilians or damage to civilian objects, as well as the understanding that such injuries and damage are clearly incommensurable with the expected concrete and direct military advantage.

Contextual circumstances for this crime (as well as for other war crimes from the first two groups from article 8) is the commission of an act in the context of an international armed conflict and the perception of the perpetrator of the fact that such a conflict exists.

On the example already used, it can be shown that the absence of any of the above elements makes it impossible to qualify an act as a war crime. For example, the absence of civilian casualties or damage to civilian objects indicates the absence of an *actus reus* element. This means that even those shelling of military objects that could potentially lead to civilian casualties will not be considered a war crime under article 8(2)(b)(iv).

Similarly, ignorance by the perpetrator about the possible presence of a significant number of civilians next to the attacked military object excludes criminal liability for his/her act due to the absence of the *mens rea* element. The act described in article 8(2)(b)(iv) in the context of a non-international armed conflict is not qualified to be criminally punishable in terms of the Rome Statute because of the absence of a contextual circumstance (such as the existence of an international armed conflict).

The Rome Statute also regulates the question of the so-called forms of liability of perpetrators. This implies that the level of involvement in committing a crime, that gives grounds to speak about the possibility to bring criminal action against specific person. Articles 25 and 28 of the Statute form a kind of hierarchy of forms of responsibility:

- the responsibility of the immediate perpetrator, or the perpetrator through the third person;
- responsibility of persons who order or incite to commit crimes;
- the responsibility of the accomplices or other persons who contribute to the commission of the crime;
- responsibility of commanders.

Hierarchy principle of the listed forms of responsibility foresees that each subsequent level of liability applies only in the event of impossibility to apply higher one. In other words, if one succeeds in establishing and proving that the person is the direct perpetrator of a war crime, then it makes no sense to speak about his/her responsibility as an accomplice or a commander. Accordingly, it is more difficult to bring to responsibility the accused one as a perpetrator than the commander, since in the first case direct evidence is required of his/her direct involvement in the commission of a crime.

The primary obligation to prosecute the war crimes listed in the Rome Statute lies with States and, above all, with the State in whose territory the crimes are committed. Other states of the world can also prosecute for committing such crimes, because of their international commitment to prevent impunity for international crimes, and due to the principle of universality. The latter gives jurisdictional grounds for states that are not directly interested in investigating crimes, either because of the territory in which the crime is committed, nor on the basis of the subject or object of the crime. In other words, any state of the world can prosecute the perpetrators of crimes that are of concern to all mankind. One of the types of such crimes are war crimes.

Taking about an international court that could get involved the event of inaction from the side of States or their inability to respond effectively to war crimes, the only universal court of such type is the International Criminal Court (ICC). The ICC in its activities is guided by the principle of complementarity, which means it gets involved the investigation and judicial review of cases only if the State or States concerned do not or can not conduct an investigation at the national level.



The length of the investigation and trial in the ICC varies from case to case, but definitely significantly exceeds the timing of national court procedures. It also happens because the ICC don't have its own bodies of inquiry on the local level, the dependence of the Court on the cooperation of national services, the workload of the Office of the Prosecutor of the ICC and the Court itself with cases from different regions of the world. The ICC's activities focus not only on conducting of an international investigation of crimes within its jurisdiction, but also on encouraging national judicial and investigative bodies to carry out their part of the work on combating impunity.

When investigating situations in which war crimes could have occurred, the ICC Prosecutor's Office uses information from international organizations, states and non-governmental organizations. In most cases, information from international organizations, including organizations involved in monitoring the conflict in the East of Ukraine, is provided in a neutral way. This means that international organizations do not state the commission of any other war crime, but consolidate facts about the events in the region. National law enforcement agencies and non-governmental organizations, on the contrary, submit information in an already processed form, indicating what are the war crimes, in their opinion, and where they were committed.

In the situation with Ukraine, the Office of the Prosecutor of the International Criminal Court received dozens of appeals from non-governmental organizations and from the Office of the Prosecutor General of Ukraine with information on thousands of episodes that could have resulted in war crimes.

The collection and verification of information on war crimes in Donbass is a complex and lengthy process. The number of shelling, seizure of property, physical injuries and other acts is estimated by thousands. In the variety of cases it is necessary to concentrate on those that can be classified as war crimes, from the point of view of the presence of three obligatory elements: *actus reus*, *mens rea* and *contextual circumstances*. It is often that reporters do not see a complete picture of events and therefore can not correctly judge whether all three elements are present in a particular situation or not. Let's say, representatives of non-governmental organizations do not have information on the location of military facilities and do not know if a particular attack was directed against a military or civilian object. In turn, representatives of the Prosecutor General's Office of Ukraine are not always aware of the damage to civilian objects from attacks and do not have enough evidence to relate to a specific episode.

The process of gathering of information is complicated as well by the inaccessibility of certain territories due to frequent shelling, sometimes the lack of the willingness of the witnesses to describe the experienced traumatic events and the influence of ideological prejudices on the memories of witnesses about events. Nevertheless, due to the use of various sources of information and the meticulous evaluation of many testimonies, usually it is possible to reconstruct a real picture of the incident.

Now, four years after the decision of the Verkhovna Rada of Ukraine to recognize the jurisdiction of the ICC, the Prosecutor's Office is at the second of four stages of preliminary study of the situation in Ukraine. At this stage, the Office is investigating the presence of military offenses in the acts that it has information about. After passing two more stages (checking whether similar cases are being investigated in Ukraine, and assessing the interests of justice), the prosecutor will be able to decide on the commissioning of a full investigation on the situation in Ukraine. After conducting such an investigation, the hearing in the specially created Chamber of the International Criminal Court may begin.

Dmytro Koval,

International Expert on humanitarian and criminal law, associate professor of the Department of International and European Law of National University of "Kyiv-Mohyla Academy"

**ANALYSIS OF
LEGISLATION IN
THE CONTEXT
OF BRINGING TO
RESPONSIBILITY
FOR MILITARY
CRIMES AND
CRIMES AGAINST
HUMANITY
COMMITTED
DURING ARMED
CONFLICT.**

**PECULIARITIES
OF NATIONAL
LEGISLATION
OF UKRAINE**

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Bringing criminal responsibility for war crimes and crimes against humanity is possible on two levels — **national and international**. According to the four Geneva Conventions of 1949, the two Additional Protocols of 1977, the Rome Statute of the International Criminal Court, the UN Charter, the definition of aggression, approved by the UNSC Resolution in 1974, the armed conflict in Ukraine has signs of international crimes — against international peace and security, humanity, war crimes. This means that legal assessment of the armed conflict and bringing the offenders to criminal responsibility is to be done in the interaction of national and international criminal justice bodies. For this purpose, the Ukrainian criminal law should be harmonized with international legal acts on war crimes and crimes against humanity.

National level

In order to bring a person to criminal responsibility in Ukraine, his/her actions should fall under the norms of the Criminal Code of Ukraine. The problem of prosecution in Ukraine for war crimes and crimes against humanity is that the provisions of international criminal law are not incorporated into Ukrainian legislation.

As of February 2019, the Ukrainian Criminal Code does not criminalize crimes against humanity and those war crimes that violate international customary law rather than contractual international humanitarian law. However, on December 20, 2018 in the Verkhovna Rada of Ukraine the Law No. 9438 was registered, which aims to eliminate gaps and inaccuracies in national legislation regarding war crimes and crimes against humanity. In particular, the law provides for a **new section of the Criminal Code “Crimes against the basics of international law”**, which will cover not only aggression, but also crimes against humanity, war crimes.

At the same time, it should be borne in mind that, in accordance with Art. 4 of the Criminal Code of Ukraine, prosecution is carried out in accordance with the law that was in force at the time of the commission of the crime. This means that, in the event of amendments to the Criminal Code concerning war crimes and crimes against humanity, they (changes) will apply only to crimes committed after the entry into force of new norms.

International level

At international level, the principle of prosecution for war crimes and crimes against humanity, just like in the national context, uses the principle of *Nulla poena sine*

lege, according to which no one can be charged without an earlier definition of the composition of the crime and the corresponding degree of punishment.

However, in international practice, there is a precedent for abandoning this principle in case of the most serious crimes that are of concern to the international community. Thus, during the Nuremberg process, two new, previously unpublished traditions of the item's proceedings were introduced, namely, "Preparing a military attack" and "Crimes against peace" that were used in sentencing.

In addition, the relative "flexibility" of the norms and principles of international law is laid down in the Rome Statute of the International Criminal Court (hereinafter referred to as the ICC). Thus, according to the Rome Statute, the ICC may exercise its jurisdiction over States that are party to this Statute. However, the Statute allows a deviation from this norm and the extension of the jurisdiction of the ICC to a State that is not a party to the Rome Statute, but has filed an application for recognition of the jurisdiction of the ICC and the exercise of jurisdiction by a court in respect of a specific offense.


Thus, international criminal prosecution for war crimes and crimes against humanity committed during the international armed conflict in Ukraine has a legal perspective.

As of May 2019 Ukraine has not ratified the Rome Statute of the ICC. According to the changes in art. 124 of the Constitution of Ukraine from June 30, 2019 Ukraine can recognize the jurisdiction of the International Criminal Court under the terms of the Rome Statute. But in order to recognize the jurisdiction of the ICC, the Verkhovna Rada's decision on the ratification of the Rome Statute is needed.

That is, Ukraine is not a member of the Rome Statute, and the jurisdiction of the ICC does not fully apply to it. But at the moment, partial jurisdiction of the ICC is spreading over Ukraine in terms of war crimes and crimes against humanity. The basis for this was **the Statement of the Verkhovna Rada of Ukraine of February 4, 2015** "On the recognition by Ukraine of the jurisdiction of the International Criminal Court of crimes against humanity and war crimes by the highest officials of the Russian Federation and the leaders of the terrorist organizations "DNR" and "LNR", which led to the grave consequences and the massacre of Ukrainian citizens".

Since the Russian Federation is not a party to the Rome Statute, and the jurisdiction of the ICC does not extend to its territory and nationals, this international judicial body can be used only to bring the nationals of Ukraine to justice.

Another tool to bring person to responsibility on international level for crimes against international peace and



security is the International Court of Justice. However, the use of this legal mechanism in relation to the Russian Federation is complicated by the fact that the Russian Federation is a permanent member of the UN Security Council. According to Art. 94 of the UN Statute, it is the Security Council that is the body that can be contacted if one of the parties fails to comply with the decision of the International Court of Justice. And it is the Security Council that is authorized to apply measures to enforce the decision of the International Court of Justice. Thus, there is no actual mechanism of control and enforcement to make the the Russian Federation execute the decisions of the International Court of Justice.

Difficulties in terms of criminal prosecution

The prosecution of war crimes and crimes against humanity during a continuing armed conflict is extremely difficult both from a legal and practical point of view. The experience of international armed conflicts of the XX-XXI centuries shows that full-fledged criminal prosecution for war crimes, aggression and crimes against humanity often occurs after the end of a conflict or, at least, its armed phase. This is a feature of the legal assessment of international conflicts, which is finally formed after the cessation of aggression. In addition, annexation, occupation, and hostilities are a direct obstacle to investigations and justice.

Ukraine is in a state of ongoing armed conflict, and therefore, bringing to criminal responsibility for war crimes and crimes against humanity is fraught with a number of difficulties and objective obstacles.

1. Ukrainian legislation was not ready for its use in conditions of aggression, annexation of a part of the territory of Ukraine, commission of war crimes and crimes against humanity.

Representatives of the Ukrainian government, employees of law enforcement and judicial systems as of 2014 did not have the experience and knowledge necessary for a legal assessment of aggression and related crimes. This was one of the reasons for the initially erroneous qualification of the actions of the aggressor and other crimes that accompany an international armed conflict. From 2014 (from the beginning of the events in Crimea and at the east of Ukraine) to 2018, the armed conflict was officially qualified as terrorism, and the Ukrainian armed forces and law enforcement agencies operated within the framework of the norms on antiterrorist activities. Investigative and judicial practice also gave a legal assessment of the crimes committed in the combat zone

and on the territory of the ORDLO¹, in the context of terrorist activity and counteraction to it. Thus, part of the crimes that show signs of military or anti-humanity were qualified as crimes of a terrorist nature. As of January 1, 2019, 674 convictions entered into force, in which crimes committed in the zone of armed conflict are qualified as crimes of a terrorist nature.

In addition, the initial erroneous legal assessment of events in the east of Ukraine led to a lack of status among prisoners of war, among victims of aggression among the civilian population. In this regard, the international legislation on the rules and customs of warfare, on the attitude to prisoners of war, on the protection of civilians has not been applied.

2. The unpreparedness of the law enforcement and judicial system to aggression and other crimes, which it naturally entailed.

Before 2014, military law has been completely eliminated in Ukraine: military prosecutor's office and military courts. After the start of aggression in 2014, this situation was partially corrected by the restoration of the military prosecutor's office. However, the lost of experts in the field of military law has not been restored. In addition, training programs for national lawyers do not include the subject of "international criminal law". Thus, the international legislation on war crimes and crimes against humanity is studied by lawyers of national law at general level. This amount of knowledge is not enough to apply them in investigative and judicial practice.

Therefore, in order to competently and effectively handle cases of the commission of war crimes and crimes against humanity it is necessary first of all to train judges, investigators, prosecutors, and lawyers. This refers not only to knowledge of the rules and customs of war, humanitarian law, but also deep knowledge of the specifics of people's behavior in armed conflict. For example, there are significant differences in the assessment of the heat of passion of civilians in peacetime and of the combatants in a combat zone.

In addition, the courts of general jurisdiction do not cope with the arisen load, especially in the eastern region of the country, which accounts for almost all cases related to international conflict. Because of this, the courts find it difficult to comply with the procedural deadlines.

3. It is necessary to investigate crimes committed in the zone of armed conflict, and to proceed them in court faster than in case of ordinary crimes at a peaceful territory.

¹ Separate districts of Donetsk and Luhansk regions.

This is due to the fact that the inspection of the crime scene is complicated, because it may at any time be physically inaccessible for law enforcement officials. Secondly, in such conditions both the civilian population and the military often change their place of stay, which complicates and often makes it impossible to question witnesses, victims and suspects. The system of courts of general jurisdiction, as well as law enforcement agencies, is unable to ensure proper promptness of the investigation and hearing of such cases.

4. Another feature of criminal prosecution for war crimes and crimes against humanity is that the majority of these cases are processed in the courts of Donetsk and Lugansk regions.

A lot of the judges of Donetsk and Lugansk regions have close relatives and family members at an uncontrolled territory, some of the judges are displaced persons. This circumstance makes the administration of justice unsafe for the judges themselves, which affects the independence and objectivity of the judge.²

5. The lack of physical ability of the law enforcement agencies of Ukraine to investigate crimes in the temporarily occupied territory of the ORDLO, to detain suspects on the territory not controlled by the Ukrainian government weakens the possibility of bringing the offenders to criminal responsibility for war crimes and crimes against humanity.

Thus, at the moment it is impossible to ensure equal prosecution of all actors who have committed war crimes or crimes against humanity in the course of an international armed conflict in Ukraine.

Extradition

The issue of extradition of offenders is regulated in Ukrainian legislation in accordance with international conventions to which Ukraine is a party. In particular, the European Convention on Extradition 1957, the Additional Protocol 1975 and the Second Additional Protocol 1978 of the Convention 1957 (signed under the auspices of the Council of Europe). According to Art. 25 of the Constitution of Ukraine, a national of Ukraine may not be extradited to another state. As for nationals of other countries, in Ukraine, in addition to these conventions, there are international bilateral agreements on legal assistance in criminal

² https://docs.wixstatic.com/ugd/ed94bc_of8b70203e8b46d391c802c10a31e0c9.pdf

proceedings, as well as norms of the Criminal Procedure Code. National legislation also provides for an abbreviated procedure for extradition of the requested persons.

With regard to the extradition of offenders between Ukraine and the Russian Federation, according to the statement of the Deputy Prosecutor General of Ukraine Yevgeny Yenin, over the past 4 years, Russia has issued over 90 offenders to Ukraine.³ Ukraine, in turn, also extradicts persons suspected of murder, robbery and other major offences.⁴ Such cooperation in criminal matters between the two countries is regulated both by the above-listed international conventions and the Agreement between the General Prosecutor's Office of Ukraine and the Prosecutor's Office of the Russian Federation on Legal Assistance and Cooperation of 21.05.1993.

However, this cooperation is carried out only in criminal cases with respect to ordinary crimes. The extradition of persons who committed war crimes and crimes against humanity during the international armed conflict in Ukraine is not carried out between the two countries.

Within the framework of the Minsk Agreements, an exchange of "hostages and illegally detained persons" is carried out between representatives of ORDLO and representatives of Ukraine. The Russian Federation takes an active part in the exchange negotiations and in the exchanges themselves. But these exchanges are made outside the legal field, both international and national, and are solely the result of the agreements of the parties.

Anna Malyar,

PhD in Law,

Lecturer at the National School of Judges of Ukraine

³ https://ru.espreso.tv/news/2018/09/17/za_poslednye_4_goda_rossyya_vydala_ukrayne_bolee_90_pravonarushyteley_gpu

⁴ <https://hromadske.ua/posts/za-ostanni-4-roky-rf-vydala-ukraini-ponad-90-pravoporushnykiv-henprokuratura>

RESPONSIBILITY FOR MILITARY CRIMES IN RUSSIAN LAW

The armed conflict in the east of Ukraine has been going on for more than 5 years; throughout this time it accounts of 12.8 thousand dead (including 3321 civilians) and 27 thousand wounded (including 7-9 thousand civilians), millions of refugees and internally displaced persons.⁵ It is obvious that the quantity of war criminals is already measured by hundreds. The law of international conflicts (hereinafter — International Humanitarian Law or IHL) provides that “effective punishment for war crimes and crimes against humanity is an important factor in preventing such crimes, protecting human rights and fundamental freedoms, building confidence, encouraging cooperation among nations and ensuring international peace and security”.⁶

This publication presents an analysis of what constitutes a war crime in international and Russian law, what responsibility is provided for, what responsibilities arise for a state in whose territory a war criminal is located, and how a criminal prosecution can be carried out in practice.

War crimes in Russian law

International humanitarian law can be conditionally divided into customary law, which is valid for the whole world and in any conditions, and contractual law, which applies to countries that have ratified the relevant international treaty and to the conditions specified in the document.

The types of war crimes are set, first of all, in the Geneva Conventions, in which Russia is a party and partly the initiator.⁷ For the qualification of a war crime it will matter whether the conflict is international or local one.

The armed conflict in the east of Ukraine has not yet received legal recognition as an international or non-international. This is largely due to the fact that so far not a single decision of international courts has been made. However, the International Criminal Court has already indicated that “the increased intensity of hostilities [in Ilovaysk in August 2014 and in Debaltseve from January

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⁵ OHCHR report on human rights situations in Ukraine November 16, 2018 — February 15, 2019, p. 8, reference 22 // https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_RU.pdf, last access May 15, 2019.

⁶ Convention on the Non-Applicability of Statutory to War Crimes and Crimes against Humanity *Approved with resolution 2391 (XXIII) of UN General Assembly on November 26, 1968.*

⁷ Agreements on IHL // <https://www.icrc.org/ru/war-and-law/treaties-customary-law>, last access May 14, 2019.

to February 2015] is explained by the alleged influx of troops, vehicles and weapons from the Russian Federation to strengthen the positions of armed groups”.⁸ And the European Court of Human Rights in its communication on the complaint of the relatives of the victims of the Malaysian Boeing raises the question of whether Russia exercises control over the territory of Ukraine, not controlled by its government.⁹ A positive response from the Court to it will lead to a conclusion about the international nature of the conflict. However, the final decision on the status of the conflict is to be made by the International Criminal Court.

International humanitarian law distinguishes combatants — persons who are currently involved in hostilities and non-combatants, which include all civilians, as well as combatants who laid down their arms, were wounded, captured, or for other reasons are currently defenseless.

In the face of both international and local armed conflict such crimes against non-combatants as murder, torture and all forms of ill-treatment, hostage taking, and punishment without trial are always qualified as war crimes.¹⁰ The statute of limitations for prosecution is not applied to such crimes.¹¹

If the court establishes an international character of the conflict such crimes as unlawful, senseless and large-scale destruction and misappropriation of property, not caused by military necessity; forcing a prisoner of war or other protected person to serve in the armed forces of a hostile state; willfully depriving a prisoner of war or other protected person of the right to fair and regular trial and unlawful deportation or transfer or unlawful deprivation of liberty are also qualified as war crimes.¹²

A separate issue is the war crimes under the Rome Statute.¹³ The treaty character of the Statute provides that each state independently solves the issue of accession to

⁸ ICC, Report on Preliminary Examination Activities 2017, 4 December 2017, para 92, 95 // https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf, last access May 15, 2019.

⁹ *Aley and Others v. Russia*, Application No(s) 25714/16, 56328/18, communication from April 3, 2019.

¹⁰ Article 3, common to all Geneva Conventions.

¹¹ Convention on the Non-Applicability of Statutory to War Crimes and Crimes against Humanity *Approved with resolution 2391 (XXIII) of UN General Assembly on November 26, 1968*.

¹² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

¹³ Rome Statute of the International Criminal Court, entered into force on July 1, 2002 A/CONF.183/9.

the document. Since Russia has not ratified it and even withdrew the signature put earlier, the effect of the Statute does not apply to the Russian Federation.¹⁴

In the same way, persons are not liable for the use of prohibited weapons, such as cluster munitions during the shelling of Kramatorsk on February 10, 2015, since Russia is not a party to the Convention that has prohibited their use.¹⁵ However, this does not exclude liability for serious violations of IHL against non-combatants.

International courts are subsidiary to national judicial systems, they prosecute war criminals, if it is impossible to do at the national level — in the country where the crime was committed or the accused is detained. Therefore, an adequate qualification of war crimes in national criminal law is essential.

There is a separate chapter in the Criminal Code of the Russian Federation providing for responsibility for crimes against the peace and security of mankind. Partly the war crimes under the Geneva Convention are covered by Article 356 of the Criminal Code.¹⁶ Thus, the punishment is provided for the cruel treatment of non-combatants, the deportation of civilians, the looting of national property in the occupied territory, the use of means and methods in weapons of mass destruction, and weapons of mass destruction prohibited by an international treaty of the Russian Federation.

Responsibility of Russian nationals for war crimes

As a general rule, a state has the right to prosecute a person who has committed a crime on the territory of that state. However, the jurisdiction of a criminal law can also be extraterritorial. Extraterritorial jurisdiction means the possibility to prosecute a person who has committed a crime that is not directed against the interests of the country or the nationals of this country, who by himself/herself is not its national.

Extraterritorial jurisdiction applies when due to one reason or another, usually political one, it is not possible to prosecute person in the country of citizenship or the country where the offence took place. This provision is enshrined in Part 3 of Art. 12 of the Criminal Code and

¹⁴ Presidential Order No. 361-dated November 16, 2016 rp “On the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court”

¹⁵ Convention on cluster munitions: Dublin, 30 May 2008

¹⁶ Art. 356 of the Criminal Code. The use of prohibited means and methods of warfare.

has limited, not universal nature. In legal literature such jurisdiction is called the one that is based on the “principle of protection”.¹⁷ Russia has the right to prosecute not any persons for the commission of any crimes outside their territory, but only if they are committed against a national of the Russian Federation, stateless persons living in the territory of the Russian Federation, or are directed against the interests of the Russian Federation.

The second paragraph provides a wide scope for use during the armed conflict in the east of Ukraine, because Russia on a daily basis demonstrates its interest in influencing the decisions taken by the Ukrainian authorities.

In 2014, in the structure of the Main Investigation Department of the Investigative Committee of the Russian Federation, a department was established to investigate crimes involving the use of prohibited means and methods of warfare.¹⁸

Thus, the Criminal Code of the Russian Federation does not provide for the possibility to prosecute all persons who have committed war crimes outside its territory, and only if the nationals of Russia suffered or the country has its own political interest in this conflict. It can be concluded that the legislator conducts a clear dividing line between war crimes against the interests of the Russian Federation and those committed in the interests of the Russian Federation. War criminals acting in the interests of the Russian Federation, according to the Criminal Code of the Russian Federation, cannot be prosecuted.

Hence the answer to the question of why criminal cases are instituted only on episodes of violation of the rights of the civilian population of the so-called “DNR” and “LNR”, but not of the civilian population of the controlled territory of Ukraine, who suffered from attacks from the so-called republics.¹⁹ The most widespread example is the shelling of Kramatorsk on February 10, 2015, during which cluster munitions were used, which resulted in the wounding of 60 people, including children, and death of 17 people.²⁰ Representatives of the victims, turning to the RF IC, were denied initiation of a criminal case, despite that the shelling of civilians was a war crime.

¹⁷ Shubin V.V. Cambodia: Court of the people. M., 1980. Pp. 25-35.

¹⁸ Official site of the Investigative Committee of Russia // <https://sledcom.ru/cases/item/1168>, last access May 10, 2019.

¹⁹ Ibid.

²⁰ The anniversary of the bloody shelling of Kramatorsk: victims want to forget this day, but can not // <https://ru.tsn.ua/ato/godovschina-krovavogo-obstrela-kramatorska-postradavshie-hotyat-zabyt-tot-den-no-ne-mogut-577178.html?authstate=6>, last access May 14, 2019.

The selectivity of the prosecution can be traced to two similar crimes committed by both parties to the conflict against Russian journalists. Thus, the RF IC filed a criminal case on the fact of illegal detention in the period from 05/18/2014 to 05/25/2014 and harsh treatment of journalists of the TV channel “Life News”.²¹ However, the same RF IC refused to initiate a criminal case in connection with the damage to the equipment, illegal detention, and cruel treatment of the journalists of the TV channel “Rain”, Sergey Yerzhenkov and Vasily Polonsky.²²

At first glance, this approach seems to be political, while the RF IC when making a decision on criminal prosecution is guided by the “interests of the Russian Federation”, as prescribed by the national criminal law, the Criminal Code of the Russian Federation.

Mercenary and participation in illegal armed groups

The Criminal Code of Russia provides for liability for Mercenary²³ and Participation in illegal armed groups (hereinafter — IAG), which in themselves are not war crimes.²⁴

Article 359 of the Criminal Code of the Russian Federation provides for liability for mercenarism, which occurs in the case of recruitment, training, financing or other material support of a mercenary, or use in armed conflict or hostilities.²⁵ A more serious sanction is provided for mercenaries committed through the use of official position or against a minor.²⁶

Participation of a mercenary in an armed conflict is prosecuted by law²⁷ only if he/she is not a national of a state participating in an armed conflict, or does not

²¹ The investigative committee initiated a case against the head of the Security Service of Ukraine, December 19, 2014. // <https://meduza.io/news/2014/12/19/sledstvennyy-komitet-vozbudil-delo-protiv-glavy-sbu>, last access May 10, 2019.

²² How the DNR MSS detained Rain journalists, November 30, 2016 // https://tvrain.ru/teleshov/vechernee_shou/dnr-422192/, last access May 15, 2019.

²³ Article 359 of the Criminal Code of Russian Federation.

²⁴ Article 208 of the Criminal Code of Russian Federation.

²⁵ Is punished with imprisonment from four to eight years with restriction of freedom for up to two years or without it.

²⁶ Is punished with imprisonment from seven to fifteen years with a fine of up to five hundred thousand rubles, or in the amount of wages or other income of the convicted person for a period of up to three years or without imprisonment of one to two years .

²⁷ Is punished with imprisonment for the term from three up to seven years with restriction of freedom for the term up to one year or without it.



reside permanently on its territory and was not sent to perform official duties.

May 5, 2014, a few months after the annexation of the Crimea and at the time when the armed conflict flared up in east of Ukraine, the part 2 of Art. 208 of the Criminal Code of the Russian Federation has been amended to exempt a member of an illegal armed group from criminal responsibility under one interesting condition. A participant of an illegal armed formation on the territory of a foreign state is not subject to criminal liability if the aims of an illegal armed group are not contrary to the interests of Russia.

Since Russia does not recognize its participation in the armed conflict in the east of Ukraine, under this article Russian mercenaries may be prosecuted, fighting on both sides. However, the media did not report the sentences against Russian nationals who fought on the side of the so-called “DNR” and “LNR”.

If the conflict is recognized as international, Russian nationals who fought on the side of the so-called “DNR” and “LNR” will be exempted from liability, unless they have committed other crimes. At the same time, the Russians, who fought on the side of Ukraine, will be subject to criminal liability for mercenaries.

If the international nature of the conflict is recognized, then the responsibility under Art. 359 of the Criminal Code does not occur, since it applies only to nationals of third countries who are not parties to the conflict.

Article 208 of the Criminal Code of the Russian Federation — Organization of an illegal armed group — provides for responsibility for two levels of involvement — organization or participation.

The creation, management and financing of an armed group that is not stipulated by federal law is punished²⁸ regardless of whose interests the illegal armed groups operate. The same applies to the organization of illegal armed groups in Russia.²⁹

If there is a participation on the territory of a foreign state in an armed group not stipulated by the legislation of this state, then the Criminal Code of the Russian Federation makes a distinction in whose interests the formation was created. Thus, participation in an illegal armed formation that contradicts the interests of Russia

²⁸ Is punished by imprisonment for the term from ten up to twenty years with restriction of freedom for the term from one year up to two years.

²⁹ Part 2 of Article 208 of the Criminal Code of Russian Federation.

is punished³⁰ in a criminal order and is not prosecuted if there is no such contradiction.

Thus, in March 2018, by the sentence of the Babushkinsky District Court of Moscow, which entered into force in August 2018, the Russian national has been convicted for participating in an armed conflict in east of Ukraine³¹, who said in an interview that he was a fighter of the Azov Battalion. The verdict emphasized that the armed conflict had a non-international character. The court of appeal rejected the argument of the defender that the accused took part in the hostilities on the side of the people of Ukraine, fighting for freedom and independence, which would relieve him from criminal liability under this article.³²

Persons who committed this crime for the first time and voluntarily surrendered their weapons if they did not commit other crimes are exempted from responsibility for participation in the illegal armed groups.

Prosecution of Russian nationals for war crimes committed abroad

International humanitarian law provides that each state “undertakes to search for persons accused of having committed or ordered one of the mentioned gross violations [the Geneva Conventions]”.³³ It also provides for the obligation of States to take all necessary domestic measures, legislative or otherwise, aimed at creating conditions for the extradition of war criminals in accordance with international law.³⁴ Experts point out that “in practice, the sanction should be applied as close as possible to the crime scene and the persons involved in its commission in order to optimize its deterrent effect”.³⁵

³⁰ Is punished by imprisonment for the term from eight up to fifteen years with restriction of freedom for the term from one year up to two years.

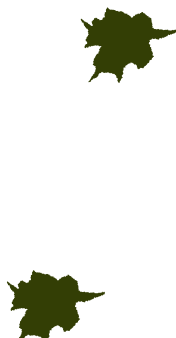
³¹ Part 3 of Article 359 of the Criminal Code of Russian Federation.

³² <https://www.mos-gorsud.ru/mgs/services/cases/appeal-criminal/details/7af75b78-ec4d-43fd-b9bb-2e5992bde933>

³³ Common to the four Geneva Conventions Article 49, 50, 129 or 146 respectively.

³⁴ Convention on the Non-Applicability of Statutory to War Crimes and Crimes against Humanity *Approved with resolution 2391 (XXIII) of UN General Assembly on November 26, 1968.*

³⁵ Anne-Marie La Rosa and Carolin Wuerzner. Armed groups, sanctions and the implementation of international humanitarian law // <https://www.icrc.org/ru/doc/assets/files/other/167-186.pdf>, last access May 15, 2019.



With regard to both international and non-international armed conflicts, states are obliged to investigate war crimes committed by their nationals or armed forces, or on their territory, and, if necessary, prosecute suspects.³⁶ States should also cooperate with each other to ensure the investigation of war crimes and the prosecution of suspects.³⁷

The subject of extradition is not defined by military or ordinary crimes, but by the citizenship of the persons who committed them. The Constitution of the Russian Federation, as well as of Ukraine, prohibits the extradition of nationals even in the case of crimes against humanity. The same principle dominates international law. For example, the European Convention on Extradition of 1957 in paragraph a) part 1 of Art. 6 establishes that “a Contracting Party shall have the right to refuse extradition of its own nationals”.

Russian legislation does not allow the extradition of its own nationals, regardless of how grave crime they have committed in the territory of the requesting state. This principle is enshrined in the Constitution of the Russian Federation³⁸, the Minsk Convention governing the relations of extradition between Russia and Ukraine³⁹, and is traditional for the legislation of most countries.

The same principle of non-extradition of its nationals is enshrined in the European Convention on Extradition.⁴⁰ In this case, citizenship can be obtained by the alleged war criminal after the formation of the request for extradition, even in this case, it will be subject to immunity.⁴¹ In its Declaration to the Convention, Russia indicated that a national of the Russian Federation could not be extradited to another country.⁴²

However, this does not mean that Russia is freed from the obligation to prosecute war criminals in its own country. Cases must be instituted, a search be conducted and judicial proceedings are to end with a fair sentence.

³⁶ Jean-Marie Henckaerts: Study on customary international humanitarian law, Norma 158 // Journal of the International Red Cross, Volume 87 Issue 857 March 2005.

³⁷ Ibid, Norma 161.

³⁸ Part 1 of article 61 of the Criminal Code of the Russian Federation.

³⁹ Article 57 of the Minsk Convention.

⁴⁰ Clause a) of Part 1 of Article 6 of the European Convention on Extradition.

⁴¹ Clause c) of Part 1 of Article 6 of the European Convention on Extradition.

⁴² Declaration contained in the instrument of ratification deposited on December 10, 1999. // // https://www.coe.int/ru/web/conventions/full-list/-/conventions/treaty/024/declarations?p_auth=tQEiuMET, last access April 24, 2019.

Prosecution of foreign nationals and stateless persons for war crimes committed abroad

In 1993, Russia and Ukraine, like the rest of the CIS countries, signed the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (hereinafter — the Minsk Convention).⁴³ The Minsk Convention is a regional document, which at the time of its creation was designed to preserve legal ties between the former Soviet republics, and now — the neighboring states.

The Minsk Convention provides that member states provide each other with legal assistance, including through the search for and extradition of offenders.⁴⁴

According to the Minsk Convention, the state has the right to refuse legal assistance if this can damage sovereignty or security or contradicts its legislation.⁴⁵

Extradition of non-nationals may also be denied if the statute of limitations for criminal responsibility has expired, if the requesting country has already passed a sentence or discontinued the case, or if the crime falls under the category of private prosecution (at the request of the victim).⁴⁶

The International Convention on Extradition can be attributed to an international treaty extending its actions outside the CIS.⁴⁷

Under this convention, extradition is applied to nationals who have committed acts that are crimes and are punishable by imprisonment in both countries — by the requesting and by the requested.⁴⁸

The Convention is valid in all 47 member states of the Council of Europe and additionally in Israel, the Republic of Korea and Chile.

The request for extradition must be accompanied by an indictment and a verdict, or a decision on absentee arrest. Documents must also contain any information that will help to establish the identity of the offender. Thus, the request for extradition can be sent even in the absence of accurate personal data and the requested state should

⁴³ Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention), January 22, 1993

⁴⁴ Article 6 of the Minsk Convention.

⁴⁵ Article 19 of the Minsk Convention.

⁴⁶ Article 57 of the Minsk Convention.

⁴⁷ European Convention on Extradition, 1957.

⁴⁸ Part 1 of Article 2 of the European Convention on Extradition.

facilitate its identification and search.⁴⁹

Along with the extradition of the person who committed the criminal offense, the request may also be directed to the issuance of property representing evidence in the case.⁵⁰

In addition to the usual reservations prohibiting extradition to a country where the accused may be subjected to torture and other violations of his/her rights, Russia stated that “it reserves the right not to extradite persons whose extradition may affect its sovereignty, security, public order or other essential interests. Crimes that cannot lead to extradition are established by federal law”.⁵¹

Since the European Convention on Extradition prohibits the extradition of political offenders, the Additional Protocol of 1975, to which Russia is a party⁵², made it clear that war crimes cannot be considered political.⁵³

Bilateral extradition treaties have been concluded with 65 countries.⁵⁴

Russian law also provides that foreign nationals can, but do not necessarily, need to be extradited to a foreign state for criminal prosecution. A prerequisite is the existence of an international treaty on extradition with this country.⁵⁵

Olga Gnezdilova,
lawyer, Russia

⁴⁹ Part 2 of Article 12 of the European Convention on Extradition.

⁵⁰ Article 20 of the European Convention on Extradition.

⁵¹ Reservation contained in the instrument of ratification deposited on December 10, 1999 // https://www.coe.int/ru/web/conventions/full-list/-/conventions/treaty/024/declarations?p_auth=tQEiuMET, last access April 24, 2019.

⁵² Ratified by Federal Law of the Russian Federation of October 25, 1999 N 190-ФЗ.

⁵³ Additional Protocol to the European Convention on Extradition.

⁵⁴ See the full list on the Ministry of Justice website. // <https://minjust.ru/ru/perechen-mezhdunarodnyh-dogovorov-rossiyskoy-federacii-po-voprosam-pravovoy-pomoshchi-i-pravovyh-28>, last access April 24, 2019.

⁵⁵ Article 13 of the Criminal Code.

**RESPONSIBILITY
PROVIDED
BY RUSSIAN
LEGISLATION FOR
PARTICIPATION
IN THE ARMED
CONFLICT IN THE
EAST OF UKRAINE**

Russian criminal law provides for various elements of offenses related to crimes against public safety (Chapter 24 of the Criminal Code of the Russian Federation), including organizing or participating in an illegal armed group (Article 208), organizing a criminal association (criminal organization) or participating in it (Article 210), as well as a whole range of crimes related to the arms, explosives or explosive devices trafficking (Articles 222 – 226.1).

In addition, chapter 34 of the Criminal Code of the Russian Federation provides for liability for committing crimes against the peace and security of mankind, including mercenary (article 359).

As the analysis of open information sources shows, Russian criminal justice most often persecutes participants in hostilities on the territory of foreign states or individuals who joined prohibited and (or) illegal formations (organizations) specifically under articles 208 of the Criminal Code of the Russian Federation and 359 of the Criminal Code of the Russian Federation.

Under the notion of illegal armed group in Article 208 of the Criminal Code of the Russian Federation, an association, detachment, squad or other armed group established for the realization of certain purposes (for example, to commit terrorist acts, forcibly change the fundamentals of the constitutional system, or violate the integrity of the Russian Federation) should be understood. Paragraph 23 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated February 9, 2012 No. 1 draws the attention of law enforcement agencies to the fact that armament as a mandatory sign of an illegal formation implies that its participants have any type of firearms or other weapons, ammunition and explosive devices, including handicrafts, as well as military equipment.

Article 208 of the Criminal Code of the Russian Federation includes two parts that establish responsibility for (1) the creation of an armed unit and (or) the management of such a unit or its financing⁵⁶ and (2) participation in an armed unit not provided for by federal law, as well as participation in foreign territory states in an armed unit not provided for by the laws of the given state for purposes contrary to the interests of the Russian Federation.⁵⁷ In turn, Article 359 of the Criminal Code of the Russian Federation includes three different elements of

⁵⁶ responsibility in the form of imprisonment for a term of ten to twenty years with restriction of freedom for a term of one to two years

⁵⁷ punishment of imprisonment for a term of eight to fifteen years with restraint of liberty for a term of one to two years

a crime: (1) the recruitment, training, financing or other material support of a mercenaries, as well as its use in armed conflict or military actions⁵⁸; (2) committing the same acts using own official position or against a minor⁵⁹, and (3) participation of a mercenary in an armed conflict or military actions.⁶⁰

In accordance with the note to article 359 of the Criminal Code of the Russian Federation, a mercenary is a person who is acting for the purpose of receiving material remuneration and who is not a national of a state participating in an armed conflict or hostilities, who does not reside permanently in its territory, and who is not performing his/her official duties.

In 2014, 236 people were convicted under article 208 of the Criminal Code of the Russian Federation, of which 10 under part 1 (creation of an armed unit not provided for by federal law), and 226 persons under part 2 (participation in an armed unit not provided for by federal law, as well as participation on the territory of a foreign state in an armed formation, not provided for by the legislation of this state, for purposes contrary to the interests of the Russian Federation).

In 2015 – 2017, the dynamics in these categories of cases remained the same, but in 2018 the number of convictions decreased significantly.

The first sentence under Article 359 of the Criminal Code of the Russian Federation was passed in 2015 – four people were convicted for mercenary, who by means of deceit sent former Russian soldiers to the war in the Syrian Arab Republic. The Supreme Court of the Russian Federation upheld the said verdict.⁶¹

In total, over the past five years, 16 people have been convicted of mercenarism in Russia, of whom 11 were accused of participating in hostilities.

⁵⁸ liability in the form of imprisonment for a term of four to eight years with restriction of freedom for up to two years or without it;

⁵⁹ punishment of imprisonment for a term of seven to fifteen years with a fine of up to five hundred thousand rubles or in the amount of wages or other income of the convicted person for a period of up to three years or without and with restriction of liberty for a term of one to two years or without such

⁶⁰ is punished by imprisonment for the term from three up to seven years with restriction of freedom for up to one year or without it

⁶¹ <https://www.rbc.ru/rbcfreenews/54b63a8c9a7947cd46bd3fc0>



Crime statistics according to information posted on the official website of the Judicial Department at the Supreme Court of the Russian Federation:

	2014	2015	2016	2017	2018	Total
Article 208 of the Criminal Code of Russian Federation	236	241	254	251	126	1108
part 1	10	11	8	14	6	49
part 2	226	230	246	237	120	1059
<hr/>						
Article 359 of the Criminal Code of Russian Federation	0	8	3	3	2	16
part 1	0	4	0	0	0	4
part 2	0	0	0	0	0	0
part 3	0	4	2	3	2	11

It is virtually impossible to identify crimes related to the participation of Russian nationals in illegal armed groups (article 208 of the Criminal Code of the Russian Federation) on the territory of foreign states.

Information published in open sources, as a rule, indicates that the defendants of criminal cases under article 208 of the Criminal Code of the Russian Federation are persons who either tried to join or joined illegal (including prohibited in Russia) armed groups.

Thus, in 2015, the **Investigation Department of the OFSS (Office of the Federal Security Service) for the Voronezh Region** initiated a criminal case against a 25-year-old resident of Voronezh. A woman was suspected of having committed a crime, as stipulated by part 2 of article 208 of the Criminal Code of the Russian Federation, for participation in the territory of a foreign state (Syrian Arab Republic), in an armed unit not provided for by the laws of this state.⁶²

⁶² <https://regnum.ru/news/polit/1935856.html>

In 2019, the **North Caucasian Military Court**⁶³ sentenced a resident of Dagestan to six years in penal colony for inviting a minor acquaintance to participate in the Syrian conflict on the side of an anti-government armed group — a subdivision of the “Islamic State”.⁶⁴

In the course of the study, there was found the only mention in public sources of the sentence for participation in an illegal armed group. It was the sentence of a resident of Crimea found guilty of participating in the Asker battalion operating in the border areas of the Kherson region of Ukraine.⁶⁵

At the same time, according to this article, organizers or participants of illegal armed groups created in Russia are also persecuted — for example, in Dagestan, the court sentenced the head of an armed gang for a number of crimes, including part 1 of article 208 of the Criminal Code of the Russian Federation.⁶⁶

In 2016, the **Moscow District Military Court** sentenced schoolboy Kirill Benetsky to 6 years and 6 months in a standard regime penal colony (the Supreme Court of the Russian Federation, having revised the sentence, softened it to 6 years and 4 months).⁶⁷ The young man was found guilty of committing crimes under articles 280 (public calls for extremist activity) and 208 (participation in illegal armed groups) on the side of the Right Sector organization⁶⁸ — the court found that the schoolboy has been trained in the organization for “physical and ideological sabotage, after which he joined the ranks of the illegal armed formation”.

As for article 359 of the Criminal Code of the Russian Federation (“Mercenary”), the first criminal case in the history of modern Russia was initiated at the end of 2014 against the nationalist Roman Zheleznov, who was suspected of participating in military operations as part of the Azov battalion.⁶⁹ On March 29, 2018, the **Babushkinsky District Court of Moscow** sentenced Zheleznov in absentia to four years in a penal colony.⁷⁰

⁶³ <https://www.kavkaz-uzel.eu/articles/333457>

⁶⁴ Organization recognized as terrorist one and is banned in the Russian Federation

⁶⁵ <https://www.novayagazeta.ru/news/2019/01/25/148679-zhitelya-kryma-prigovorili-k-10-5-godam-kolonii-za-uchastie-v-deyatelnosti-ukrainskogo-natsbatalona>

⁶⁶ <https://news-r.ru/news/dagestan/295371>

⁶⁷ http://www.rapsinews.ru/judicial_news/20161222/277423491.html

⁶⁸ an organization whose activity in the Russian Federation is prohibited

⁶⁹ <https://www.gazeta.ru/social/2016/06/10/8298287.shtml>

⁷⁰ <https://www.mk.ru/politics/2018/03/29/neonacist-roman-zheleznov-poluchil-zaochnyy-srok-v-35-goda-za-naemnichestvo.html>



In September 2015, the **Moscow City Court** sentenced to seven years in prison a blogger Alexander Razumov, who, according to the prosecution, tried to recruit police officers acquaintances to the “Right Sector”⁷¹, then to send them to the conflict zone.⁷² In the same 2015, a resident of the Ivanovo region was conditionally convicted for two years — during correspondence with a recruiter, the young man agreed to take part in hostilities in Ukraine as part of the Right Sector as a mercenary. He twice tried to leave the territory of Russia, but was detained by border guards.⁷³

A criminal case was also instituted against Sergey Bukreev, a resident of the Stavropol region, on suspicion of mercenarism in connection with joining the Azov battalion.⁷⁴

In 2016, the **Kirov Regional Court** sentenced a 24-year-old local resident to a prison term of 2 years and 6 months, with a 1-year restriction of liberty for committing a crime as stipulated by part 3 of article 359 of the Criminal Code of the Russian Federation.⁷⁵ The court found that from February 2015 to January 2016 the young man served in the Ukrainian battalion “Azov” and participated in the hostilities, receiving a material remuneration of at least 21 thousand Ukrainian hryvnias.

In 2017, the **Soviet District Court of Samara** convicted in absentia Artem Shirobokov guilty of mercenary for participating in the armed conflict in Ukraine as part of Azov and sentenced to five years in prison.⁷⁶

The Kopeisk City Court of the Chelyabinsk Region found a Russian citizen guilty of having participated in hostilities in Ukraine as part of the Azov battalion in 2014 and sentenced him to imprisonment for three years and three months.⁷⁷

In the same year, the **Investigation Committee of the Russian Federation** opened a criminal case under article 282.2 of the Criminal Code (leading the activities of an extremist organization and participating in it) against Igor Chudinov, Gennady Khamrayev, Georgy Stotsky, Roman

⁷¹ an organization whose activity in the Russian Federation is prohibited

⁷² <https://mhg.ru/news/rossijskih-naemnikov-v-inostrannyh-vooruzhennyh-konfliktah-nakazyvayut-izbiratelno>

⁷³ <https://ivday.ru/gorod/v-ivanovskoi-oblasti-osuzhden-naemnik-kotoryi-khotel-voevat-v-sostave-pravogo-sekt.html>

⁷⁴ <https://www.kommersant.ru/doc/2800403>

⁷⁵ <https://www.sova-center.ru/racism-xenophobia/news/couneraction/2016/08/d35300>

⁷⁶ <https://www.kommersant.ru/doc/3319725>

⁷⁷ <https://tass.ru/proisshestviya/4692342>

Strigunkov and Alexander Valov for participation in the activities of the Right Sector organization.⁷⁸ According to investigators, the defendants at various times went to the territory of Ukraine, where they joined the Right Sector. At the same time, Chudinov and Khamrayev, as part of one of the combat units, took part in military operations, and Stotsky, Strigunkov and Valov participated in rallies, processions and other events, as well as campaigned on the Internet. They were arrested in absentia and put on the international wanted list.⁷⁹

In May 2017, a criminal case was opened in the Murmansk region against a local resident suspected of a crime under part 3 of article 359 of the Criminal Code of the Russian Federation. According to investigators, in 2014, a young man joined the ranks of the Azov battalion, where “he attach for administration, supplied with communication equipment, ammunition, firearms and ammunition, which he used for combat operations”.⁸⁰ In a press release, the Investigation Committee indicated that “for participation in armed conflicts, he constantly received monetary remuneration in foreign currency (US dollars), which in total amounted to more than 920 thousand rubles”.

In 2018, the **Supreme Court of the Chuvash Republic** sentenced to three and a half years of a general regime penal colony resident of Stavropol Sergey Ilyin, who was found guilty of participating as a mercenary in an armed conflict on the territory of Ukraine in the ranks of the Organization of Ukrainian Nationalists (OUN).⁸¹

In addition, in 2018, the **Investigation Committee of Russia**, in absentia, charged the citizen of the Russian Federation Anton Korolev — he was charged with committing crimes stipulated by part 3 of article 359 of the criminal code of the Russian Federation (participation of a mercenary in an armed conflict), part 1 of article 280, part of article 282 of the criminal code of the RF public calls for extremist activity and incitement of hatred and hostility, as well as the humiliation of human dignity). According to investigators, in the fall of 2014 Korolev left for the territory of Ukraine, in March 2015 voluntarily joined the Ukrainian nationalist battalion “Azov” and “takes part in

⁷⁸ <https://www.sova-center.ru/racism-xenophobia/news/counteraction/2017/01/d36227/>

⁷⁹ <https://news.rambler.ru/other/38791059-sud-v-moskve-zaochno-arestoval-dvuh-uchastnikov-pravogo-sektora/>

⁸⁰ <https://www.sova-center.ru/racism-xenophobia/news/counteraction/2017/05/d37197/>

⁸¹ <https://tass.ru/proisshestiya/5838836>

hostilities in the territory of southeast Ukraine against the militia forces of the self-proclaimed Donetsk and Lugansk people's republics".⁸²

Based on the analysis of open sources of information, it can be concluded that Russian law enforcement agencies initiate criminal proceedings against persons participating in hostilities on the territory of Ukraine solely on the side of the Ukrainian authorities.

At the same time, the **Investigation Committee of the Russian Federation** also regularly reports on the initiation of criminal cases not only against Russian citizens, but also against Ukrainian military personnel.⁸³ So the Russian law enforcement agencies there initiated or are currently initiating criminal cases, both on the facts of the use of weapons by the armed forces and security forces of Ukraine, and criminal cases on committing crimes against the peace and security of mankind, in particular, against 20 high-ranking officials of the Ministry of Defense Of Ukraine.⁸⁴ In their actions, the investigation sees signs of crimes under articles 356, 357 of the Criminal Code of the Russian Federation (the use of prohibited means and methods of warfare, genocide).

In turn, the only information found in public sources about the actions of Russian law enforcement agencies in relation to individuals suspected of mercenary in the formations fighting on the side of the self-proclaimed Donetsk and Lugansk People's Republics concerns the detention of Ruslan Babazhanov who is not a Russian citizen — September 2018, a man was detained at the airport in Nizhny Novgorod for extradition to Uzbekistan at the request of Interpol.⁸⁵

Moreover, in the sentence in criminal case No. 1-56/2015 dated November 26, 2015, the justice operator of Court Sector No. 4 of the **Dimitrovgrad District of the Ulyanovsk Region** found the fact of "participating in the militia in the DNR" as a reason to mitigate the punishment — according to the text of the court decision Suleymanov convicted of driving while ability-impaired by alcohol has been staying on the territory of Ukraine from February to May 2015.

Alexander Baum,
lawyer, Russia

⁸² <https://sledcom.ru/news/item/1246435/>

⁸³ <https://sledcom.ru/cases/item/1168/>

⁸⁴ <https://sledcom.ru/news/item/1162812/>

⁸⁵ <https://www.spb.kp.ru/daily/26888.5/3932505/>

This publication is developed in the framework of the activity of CivilM+ platform.

CivilM+ is an independent international civil society platform, which mission is to active integration of civil initiatives to restore the Donetsk and Luhansk oblasts as peaceful, integrated and developed regions as part of a democratic Ukraine and a united European space, with the active participation of the region's population and those who have left the region due to the conflict.

The CivilM+ platform offers its participants the opportunity to collaborate as part of joint initiatives and projects, to develop and express joint positions, provide mutual support and solidarity, systematise knowledge, raise levels of qualification and improve coordination.

Platform CivilM + was launched in December 2017 thanks to the joint effort of the civil society representatives from Ukraine, Russia, Germany and France.

More about the platform and it's members on the web-site civilmplus.org

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