

Access to Justice in Eastern Europe

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Editor-in-Chief's Note

ABOUT THE SPECIAL ISSUE ON ACCESS TO JUSTICE IN UKRAINE AMID WAR

In this issue, we have collected articles and notes written by authors on various topics related to the war in Ukraine.

Among the research articles, we have a few contributions on the most requested issues.

Our authors studied topical questions and tried to find solutions where they found a lack of proper regulations, gaps, and insufficient information on the reality of the war in Ukraine, using the experience of other war conflicts, modern doctrines, and approaches to argue for their conclusions and recommendations.

War is a horrible thing by its nature, even though we must ensure the protection of rights and appropriate regulation for all who are involved. Even when we are talking about prisoners of war – military personnel – who were captured, we have to reflect the essence of humanity and the rule of law. This is particularly the case when legitimising the exchange of prisoners of war in national legal systems, which is extremely important as this requires the coordination of the national regulations, international humanitarian law, and international human rights law, which 'should have an integrative effect on national legal systems.' All this may be found in the article of **Oksana Kaplina**, one of the leading and prominent Ukrainian scholars in the field of criminal procedure. The author's conclusions are illustrated by a concrete, practical example of the first sentence of the Ukrainian court against a combatant, which makes the article absolutely exclusive.

The article of **Brad Fisher**, a young American researcher, on the topic of Malign Legal Operations or lawfare, gives readers an in-depth analysis of the practice of legal exploitation, particularly as it relates to international security. Moreover, in this article, the author argued that Russia's attack on Ukraine this year was predictable and even obvious. We still believe that the best form of conflict resolution is prevention; therefore, any well-argued research related to the prevention of war is a valuable contribution to the efforts to achieve peace. Please enjoy reading this article and the author's recommendations for responding to illegal behaviour in the form of the Counter-MALOPs Toolkit: Identify; Disrupt; and Defend.

Investigation of war crimes committed in Ukraine during this war is a hard task not only for the national bodies but for the international community as well. In this case, joint investigative groups are carrying out activities using cooperation between pre-trial investigation bodies of Ukraine through the Prosecutor General and the International Criminal Court. In the article of **Oksana Kaluzhna and Kateryna Shunevych**, readers may learn about important issues of ICC jurisdiction in Ukraine (which has not ratified the ICC Rome Statute), as well as the ICC model of administration of justice, the rules of admissibility of evidence, the status of experts, and the features of expert involvement during ICC trials.

We would like to draw attention to the authors' conclusions that aim to help justice prevail and to overcome gaps in criminal procedure regulation in Ukraine.

Our next article sets out the issues of protection of the right to health, which was analysed by authors from both perspectives – citizens and medical staff. Due to the war in Ukraine, the issues of the international and national instruments protecting the right to health have become even more relevant and important. In this study, readers may find evidence of gaps and inconsistencies in the existing system of regulatory and institutional means of protection for human rights to health, both at the international and national levels. The authors' conclusions concerning the reconsideration of the existing approaches to the protection of the right to health are worth reading and could help to develop a more efficient system of defence for the rights of the population and medical staff during the war.

Some of the most horrible crimes committed during wars are those related to sexual violence. Special attention is paid to such crimes against women due to their widespread and long-lasting effects on their health and the significant impact on society. In *Maya Khater's* article, a comprehensive analysis of laws prohibiting sexual assault against women with a particular focus on international law to address these crimes may be found. Her findings address the practical implementations of these laws, which are absolutely necessary for the protection of the vulnerable rights of women.

During the war, the number of people who have disappeared has increased significantly. It is hard to express the grief of families who have lost people amid military conflict; therefore, it is extremely important for the law to provide a clear and simple way to recognise the person as missing or disappeared, which is a novelty in Ukrainian law. The difference between a person who has disappeared and a missing person is primarily aimed at protecting these persons due to guarantees of protection of his/her rights and assisting in the search for that person. Gaps in the implementation of this procedure were found by authors *Oksana Uhrynovska and Yurii Onyskiv* and should attract the attention of policymakers, as well as experts in this field and lawyers.

Among the notes, one of the most interesting and valuable is a study focused on territorial integrity, which is one of the most requested issues even in times of peace, though today, it has become absolutely essential during the war. In this study, the nature and meaning of the unamendable provisions of the constitution were analysed, with particular focus on the issue of territorial integrity of states as regards the military aggression, occupation, and unacknowledged annexation of part of Ukrainian territory by Russia – Crimea. The co-authors of this note, *Hryhorii Berchenko, Tetiana Slinko, and Oleh Horai*, argued for the need for the protection of the territorial integrity of states and the lack of any justification for its violation.

Notably, Ukraine's environmental damage due to the unjustified war sparked the interest of scholars from other states. In this issue, the note by *Mohamad Albakjaji* from Saudi Arabia analyses the responsibility for environmental damages caused by war. Significant losses of natural resources cannot go unpunished. The author discusses the issue at the international level, particularly regarding the responsibility of the aggressor state for the environmental damages incurred to the victim state, as well as the specific responsibility for the environmental damages incurred in Ukraine.

Two opinion articles were included in this issue due to their interesting approaches and valuable conclusions. *Luiza Romanadze*, one of the most passionate Ukrainian mediators and president of the 'Ukrainian Academy of Mediation', contributes a discussion of the permanent and stable functioning of mediation in Ukraine and cooperation between courts and mediators in a post-war reality.

Maryna Stefanchuk, a member of the project '*Justice in the context of sustainable development*', discussed the issue of judiciary restoration in Ukraine and shared her views

on the modernisation and optimisation of the judiciary in Ukraine, in particular, the prevention of the duplication of powers among the bodies and institutions and the effective use of resources.

In their note, **Oleh Yaroshenko and Olena Lutsenko** discussed the changes that have affected working life under martial law in 2022. Analysis of Ukrainian law and international documents, as well as their own experience, gave the authors a basis to identify gaps in the regulation of labour relations in wartime and propose ways to improve the implementation of labour rights.

One of the most painful issues amid war is the issue of children. The protection of children's rights is a key element of human civilization, and their vulnerability requires more attention to all the essential parts of their existence. The adoption of a child is one of the oldest and most effective institutions to help to realize the right to be raised in a family. Nevertheless, the reality of war brings many nuances, and **Yuliia Hartman's** research helps to highlight these. You may find the comprehensive study of adoption regulations in the context of martial law, as well as the most recent issues, such as: the reunification of adoptive parents with an adopted child evacuated outside of Ukraine; the transfer of child placement processes to a digital format; the adoption conditions and registration of children during martial law; the peculiarities of registration of candidates for adoptive parents; the circle of subjects who can be adoptive parents during martial law; the functioning of the institute of temporary placement of children in Ukraine and the institute of guardianship and care during martial law; the peculiarities of the procedure for trial of adoption cases; and the existing national control mechanisms for displaced children. There should be no child left without parents as a result of the war with the help of transparent and effective mechanisms of prevention in practice.

In Ukraine, we are very aware of what fake justice means – the history of the Soviet occupation has taught us lessons. In this incredible article, co-authors **Volodymyr Makarchuk, Ivan Terlyuk, Yaryna Bohiv, Olena Romtsiv, and Mykhailo Parasiuk** were so brave to raise issues of so-called 'collective courts', which were held for propaganda purposes, where 'saboteurs', marauders, and rapists were sentenced by show of hands. They analyse the so-called 'Criminal Code' with its death penalty for 'especially serious crimes' without specifying their list of self-proclaimed republics. The authors raise the issue of formal 'justification' and direct practice of the death penalty in certain areas of the Donetsk and Luhansk regions of Ukraine affected by the uprising and subjected to Russian aggression. Please enjoy reading this valuable contribution and share it to help protect human rights.

I would like to express my endless thank to my colleagues, scholars from Ukraine who are working amid the war on topics that are important for all – for the protection of human rights and to develop Ukrainian law and mechanisms for its implementation. I thank all our international authors for their valuable contributions to this discussion. I truly believe that all the conclusions will be useful for further reforms and the main goal – to help prevent war and minimise losses in ongoing conflicts.

I am also happy to have the opportunity to announce a joint discussion with the participation of our authors and our audience – we would be happy to share results and exchange opinions with all who are interested. Please see the announcement on our website.

Slava Ukraini!

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