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ANALYTICAL REPORT

ON THE FUNCTIONING OF THE JUDICIAL SYSTEM OF UKRAINE IN CONDITIONS OF FULL-SCALE WAR AND MARTIAL LAW



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ACRONYMS AND DEFINITIONS

AGE	Advisory Group of Experts
CCU	Constitutional Court of Ukraine
CJU	Council of Judges of Ukraine
Constitution	Constitution of Ukraine
HACC	High Anti-Corruption Court
HCIP	High Court of Intellectual Property
HCJ	High Council of Justice
HQCJ	High Qualifications Commission of Judges of Ukraine
IAC	International armed conflict
ICC	International Criminal Court
ICL	International criminal law
IHL	International humanitarian law
Law	Law of Ukraine No. 1402-VIII dated 2 June 2016 «On the Judiciary and the Status of Judges»
Law on CCU	Law of Ukraine No. 2136-VIII dated 13 July 2017 «On the Constitutional Court of Ukraine»
Law on Sanctions	Law of Ukraine No. 1644-VII dated 14 August 2014 «On Sanctions»
NABU	National Anti-Corruption Bureau of Ukraine
OACK	District Administrative Court of the city of Kyiv
Sanction	collection of assets provided in Article 4(1)(1-1) of the Law of Ukraine «On Sanctions»
SC	Supreme Court
SJA	State Judicial Administration

I. INTRODUCTION

1. On 24 February 2022, the Russian Federation started full-scale aggression against Ukraine. This violent military operation is carried out also against the civilian population of Ukraine in violation of the laws and customs of war.
2. Despite that, the Ukrainian judicial system continues to operate, playing a central role in some of the government's most important wartime actions. Many judges uphold the principle of the rule of law and protect fundamental human rights during this crisis.
3. In pursuit of effective support of the judiciary, it is crucial to explore its functioning in conditions of day-to-day hostilities, missile attacks, electricity cuts, damaged critical civilian infrastructure etc.
4. This Analytical Report contains the analysis of the functioning of the judicial system of Ukraine in conditions of full-scale war and martial law. The Report covers both war and safety issues, as well as institutional problems the judicial system has faced in recent years. The structure of the Report is as follows:
 - i. Background section covers the main events associated with the stage of the judicial reform that commenced in 2016 and explains the state of play as until 23 February 2022.
 - ii. Section «War and safety issues» covers the impact of the full-scale war on the judicial system of Ukraine, e.g., various damages, peculiarities of martial law, and initial steps taken following the Russian invasion. It also explains in detail the situation with the delivery of justice both in the territory under the control of the Ukrainian government and in the areas of hostilities and in the occupied territories.
 - iii. Section on Institutional issues covers problems not specifically related to war and safety (process of relaunching the main judicial government bodies, crisis with the judicial staff and undue financing etc.). All these issues exacerbated during the war, but their roots stem back to the pre-war period.
 - iv. Section «Other challenges» explains challenges in resolving certain types of cases. These are mostly related to the Russian aggression (cases of war crimes, compensation of damages caused by the Russian Federation and sanction cases).
 - v. The last section covers the peculiarities of the operation of the Constitutional Court of Ukraine (the «CCU») in the time of war.
5. The facts and conclusions in the Report are based on various public sources, official statistics, the information provided by the relevant stakeholders in response to the EU Project Pravo-Justice requests, and expert opinions.
6. Information provided in this Analytical Report is accurate as of May 2023 or, where it is stated otherwise, another date.
7. This Analytical Report was produced with the financial support of the European Union. Its contents are the sole responsibility of the EU Project Pravo-Justice and do not necessarily reflect the views of the European Union.

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8. Prior to Russia's unprovoked and unjustified military aggression, reform of the Ukrainian judicial system had been ongoing since 2016.
9. Despite some progressive steps (e.g., modifying a four-tier judicial system into a three-tier system; instituting (i) the Supreme Court (the «**SC**»), as the new highest court, (ii) the High Anti-Corruption Court (the «**HACC**») and (iii) the High Council of Justice (the «**HCJ**»); changing the procedure for appointment of judges; introducing the qualification assessment; adoption of the new law on the CCU and the new procedural codes; introducing the electronic services in the administration of justice), before 24 February 2022, the state of the Ukrainian judicial system was very complicated.
10. Following the series of developments on the judicial system, including:
 - i. Due to the legislative changes from 2019 the High Qualification Commission of Judges (the «**HQCJ**») was dissolved which resulted in the inability to select and appoint judges and finalise qualification assessments of sitting judges; consequently, a number of vacant positions in the system increased significantly, which has a negative impact not only on the access to justice, but also on its quality;
 - ii. Because of the vetting of sitting members of the HCJ with the law from 2021, 10 out of them resigned shortly before the full scale invasion of Russia against Ukraine, which made the HCJ non-capable of performing its constitutional competences, including the ones related to transfer and dismissal of judges, or exercising disciplinary powers against them;
 - iii. Long-lasting backlog of cases, including in the SC, has increased;
 - iv. First and appellate instance courts have been understaffed with judges and faced constant problems with financing;
 - v. Implementation of «electronic court» has been very slow;
 - vi. The High Court of Intellectual Property (the «**HCIP**») has not been established;
 - vii. The reorganisation of the first instance courts network has not been conducted;
 - viii. The urgent reform of the CCU on introducing the competitive selection of its judges has not been completed.
11. Following the Russian aggression on 24 February 2022, martial law had been introduced in Ukraine. It has been prolonged several times and is still in effect. According to the Constitution, the right to access courts cannot be restricted during martial law. The powers of courts in Ukraine cannot be terminated even during the period of martial law in effect.

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12. In the first days and weeks of the invasion the Council of Judges of Ukraine (the «**CJU**») and the SC developed recommendations on the functioning of courts during martial law, in case of occupation of the territory and/or court or imminent threat of occupation. However, considering the dynamic situation with the occupation of certain Ukrainian territories, not all courts had time to implement them. For instance, not all courts managed to get case files out of the occupied territories.
13. Furthermore, following these recommendations:
 - i. A majority of the first instance and appellate courts located in the endangered areas (e.g., Kharkiv, Kyiv, Mykolaiv regions) temporarily suspended their work or restricted access to the court premises;
 - ii. In March-April 2022, local and appellate courts on the territories where no active hostilities took place were considering the most urgent cases (e.g., matters related to criminal proceedings such as detention, extending the term of detention etc.). Since May 2022, the majority of these courts have resumed consideration of all types of cases;
 - iii. The SC, which is located in Kyiv, had not officially suspended its operation. In fact, in February and March 2022 its functioning was limited: no open hearings were conducted; all procedural applications were filed only electronically or by post. In April 2022, the SC returned to «full-time work»;
 - iv. At the same time, the HACC, which is also located in Kyiv, was operating in the «usual regime» without suspending its operation.
14. After the first shock and initial steps taken to ensure the safety of the judges and court employees, the judicial system faced the challenges (i) of administration of justice on the territory under the control of the Ukrainian government under the constant threat of missile attacks, air raid sirens, and since October 2022 – electricity cuts, and (ii) of impossibility to administer justice in areas of hostilities and in the occupied territories.
15. The constant missile and drone attacks on civilian buildings at all Ukrainian territories are typical characteristics of Russian aggression. Some courts were also damaged as a result of such missile attacks, for instance, the Commercial Court of Mykolaiv region on 29 March 2022, in which two court employees were killed.
16. When there is a threat of or actual attack, the air raid siren is on. Between 24 February 2022 and 12 June 2023 air raid sirens went off 773 times in Kyiv. This amounts to approx. 913 hours or 38 calendar days. According to the security protocols, the courts should not operate when the air raid siren is on; all employees and visitors should ensure their safety, in particular, by relocating to a special shelter and staying there until the air raid ends.
17. Many courts introduced local rules (plans, orders) for informing about and responding to the air raid sirens. In essence, they prescribe that court employees should (i) switch off the computer and all office equipment; (ii) close the windows, switch off all electrical appliances and lights in the office; (iii) close the office and go to the nearest shelters. Moreover, it is not allowed for visitors to enter the court premises during the air raid siren. The court visitors are obliged to immediately relocate to the nearest shelter. At the same time, only 48 shelters are available directly within the courts' premises as of 1 April 2023, which covers only 7.12% from all courts' premises. The premises of the State Judicial Administration of Ukraine (the «**SJA**»), the HQCJ, the HCJ, the HACC (except for its Appellate Chamber) and the CCU have shelters. The SC premises do not have fully functional shelters.
18. Between October 2022 and February 2023 the Ukrainian judicial system faced electricity cuts, which made proper administration of justice impossible. Due to a lack of funding as of mid-November 2022, the vast majority of courts were not equipped with generators or other backup sources of power. Some courts managed to purchase alternative sources of power by themselves, while others received them from international organisations.
19. Safety issues led to the discussion about introducing remote justice. The first and foremost aspect there is the possibility for all interested parties (judge, court support staff, all participants to the

proceedings) to have virtual hearings outside the courtrooms. A few years before the full-scale invasion, parties to the case and their representatives were granted with a right to participate in hearings by videoconference using their technical means (computers, laptops or smartphones) from any place. Meanwhile, the judge, court support staff and some other participants, for instance, witnesses and forensic experts, were supposed to participate in hearings from court premises. There are some legislative initiatives in this regard (in particular, draft law No. 9090). But they are still not enacted by Parliament. Notwithstanding the fact that no legislation related to remote justice has been adopted, some courts near the frontline have already been operating remotely since 2022.

20. Comparing the statistics on the administration of justice in 2022 with those of 2021, the following trends can be pointed out:
 - i. the number of incoming cases has decreased significantly;
 - ii. the number of pending cases as of the end of relevant periods has decreased, while the length of proceedings has increased;
 - iii. clearance rate has increased (significantly within the SC – 107.9% in 2022, while in 2021, it was only 77.9%).
21. Administration of justice in the areas of hostilities and in the occupied territories is impossible. That is why:
 - i. In 2022 the territorial jurisdiction of 135 local and appellate courts was changed to the courts at the territories controlled by Ukraine. As of 12 June 2023, jurisdiction of 58 courts has been restored.
 - ii. Prior to the full-scale Russian invasion, between 2014 and 24 February 2022, jurisdiction of 84 local and appellate courts of the Autonomous Republic of Crimea, certain territories of Donetsk and Luhansk regions was changed. Accordingly, the territorial jurisdiction of 169 local and appellate courts in total was changed as of the end of 2022. This is more than 22% or more than one-fifth of all local and appellate courts in Ukraine.
 - iii. As of 1 March 2023, 468 judges were seconded to the courts in the territories controlled by Ukraine, including 126 judges from Kherson region, 116 judges from Donetsk region; 73 judges from Luhansk region; 68 judges from Zaporizhia region; 65 judges from Kharkiv region; 13 judges from Mykolaiiv region; three judges from Poltava region; two judges from Dnipropetrovsk region; one judge from Zhytomyr region, and one judge from Khmelnytskyi region.
 - iv. No specific legislative rules were adopted concerning the relocation of the court staff from the occupied territories and endangered areas.
22. The problem of collaborators within the judicial system, though not publicly articulated, holds substantial relevance. There is no accurate information on the number of collaborators, but according to publicly available information these cases are rather rare. The situation differs in the territories occupied since 2014. There are grounds to believe that (i) out of the 488 judges who held offices in Crimea 436 collaborated with the occupation authorities; and (ii) 76 judges who held positions in courts in the occupied territories of Donetsk and Luhansk regions collaborated with the occupation authorities.
23. Russia recently has attempted to create its own «courts» on the occupied territories. There is little information about the operation of the abovementioned newly established «courts». In Donetsk and Luhansk regions, there is some infrastructure for the institution of so-called «courts», where some of them have been operating since 2014-2015. However, the launch of «courts» in Kherson and Zaporizhzhia regions is much slower.
24. Along with direct consequences of war, the judicial system has been and is being affected by serious institutional problems.

25. The courts of the first and second instances are severely understaffed:
- i. As of 3 April 2023, there are 1 903 vacant positions of judges out of 6 490 judicial posts. 856 judges had no powers to administer justice (due to the transition from 5-year terms of the first appointment to lifetime appointment of judges introduced in 2016; election (appointment) to a judicial government body; failure to take the judicial oath; suspension in connection with the qualification assessment; termination of a court due to liquidation or transfer of jurisdiction to another court in connection with military actions).
 - ii. 330 judges retired from 1 January 2021 until 20 April 2023. This systematic retirement of judges has speeded up after the HCJ was relaunched, which is another challenge for the functioning of the judiciary.
 - iii. As of early June 2023, there were 2 351 vacant court staff positions in the first instance courts, and 585 – in the appellate courts.
26. All courts in Ukraine are financed from the state budget of Ukraine to ensure the proper functioning of the judiciary. In practice, this guarantee is not fully enforced. As reported by the SJA, the rate of meeting the financial needs of the first instance, appellate courts and the SJA's bodies in the state budget was 63.4% in 2022 and only 51.4% in 2023. In other words, the SJA's financial needs in 2022 for constituted approx. UAH 26.7 billion (EUR 685.5 million), while the funding received amounted only to approx. UAH 16.9 billion (EUR 433.9 million). The rate of meeting the financial needs of the HACC, the SC, and the CCU in the state budget is not 100% either.
27. The main expenditure line within the judiciary budget is salaries. The share of these «personnel costs» keeps increasing (64% in 2018, 67% in 2019, 77% in 2020, 80% in 2021, 79% in 2022, and 80% in 2023). A major part of this expenditure is judicial remuneration.
28. There is a huge difference between the salaries of judges and the court staff. There is no correlation whatsoever between the salary of a judge and his/her office staff. Moreover, the court staff salaries are defined in bylaws, while the judicial remuneration is guaranteed by Law of Ukraine No. 1402-VIII dated 2 June 2016 «On the Judiciary and the Status of Judges» (the «Law»).
29. The remuneration of judges in first instance courts is more than twice less than the appellate court judges and three times less than the SC judges. The court staff of the first instance courts and appellate courts is seriously underpaid compared to the CCU, the HACC, and the SC staff. Moreover, the average salary of the court staff in various local courts may significantly vary. In many courts an average monthly salary of the court support staff is less than UAH 6 000 (approx. EUR 150). In this context, the parliament proposes (draft laws No. 9159 and No. 8312) to introduce a cap on remuneration (salary) during martial law of 10 minimum gross wages, which as of May 2023 is UAH 67 000 gross (approx. EUR 1 700).
30. Ukraine has managed to resume the HCJ operation in January 2023 and the HQCJ operation on 1 June 2023. Both the HCJ and the HQCJ are expected to face an enormous workload in the nearest future. They will be under the intense public scrutiny as key reformed actors of the judiciary.
31. There are also some institutional challenges to the operation of certain courts:
- i. In December 2022 the District Administrative Court of the city of Kyiv («OACK») was liquidated. The OACK judges lost powers to administer justice but retained their status as judges. Over 60 000 cases were pending before the court as of mid-December 2022. Those cases should have been transferred to the Kyiv District Administrative Court within 10 days (i.e., by 25 December 2022), but only 8 825 cases have been transferred as of 17 March 2023. A significant delay in trial of the remaining cases is expected. A Ukrainian MP is considering proposing a draft law that would allow to transfer OACK's cases to other local administrative courts located near Kyiv.
 - ii. As of June 2023, (i) the HCIP is not operational; (ii) the selection of judges has not been finished, and it is unclear when it may be completed. Moreover, since much time has passed since its establishment was initiated, there may be a need for new legislation to facilitate proper functioning of the HCIP.

32. Russian aggression has given rise to new types of court disputes that the Ukrainian judicial system would not otherwise have faced.

- i. Between 24 February 2022 and 8 June 2023, a total of 89 351 criminal proceedings were initiated for violations of the laws and customs of war (as per Article 438 of the Criminal Code of Ukraine). As of 8 June 2023, only 121 cases under Article 438 of the Criminal Code of Ukraine are pending in the courts of the first instance, with 35 cases considered, 86 cases yet to be considered, and 3 cases considered in the appellate instance, with no cassation proceedings reported.

It is obvious that there are gaps in knowledge on the fundamental elements of war crimes and challenges in reaching well-grounded conclusions about specific violations of international humanitarian law (the «IHL»), in particular, judges are not sufficiently aware of customary rules as a source of IHL or fail to establish sufficient evidence of the commission of serious violations of IHL.

There is a pressing need to enhance the judges' capacity to consider war crime cases. This includes enhancing their knowledge and improving their skills in the fundamentals of IHL and international criminal law («ICL»), as well as developing of user-friendly manuals on IHL and ICL that would provide practical guidance; categorise war crimes and other international crimes; define the constituent elements of each crime, and offer relevant excerpts from the case law of international criminal tribunals such as the ad hoc tribunals or the ICC. Furthermore, it is crucial to involve higher court judges in the process of drafting a Codified Manual on War Crimes, ensuring their expertise and perspective are incorporated into the final document. Lastly, there is a need to provide detailed provisions on war crimes within the Criminal Code of Ukraine, thereby establishing a comprehensive legal framework to address and prosecute such crimes effectively.

- ii. Another type of cases refers to compensation of damages caused by the Russian Federation. In April-May 2022 the SC ruled that judicial immunity of the Russian Federation should be ignored. This position allows to consider claims on compensation for damage caused by the Russian Federation. However, the SC's novelty in addressing the issue of judicial immunity of a foreign state is controversial. This approach formally contradicts the effective Article 79(1) of the Law of Ukraine «On International Private Law». Moreover, it is not clear whether the final decisions of Ukrainian courts against Russia will be enforced by authorities of foreign states.

There is no official statistics on the number of cases on damages brought against the Russian Federation following the SC decisions. According to one source, as of 30 January 2023 (i) Ukrainian first instance courts were considering cases against the Russian Federation for at least UAH 173 million (EUR 4.4 million) of damages; (ii) there are at least 209 pending cases for compensation of damage to Ukrainians and Ukrainian companies against Russia. It may be preliminary estimated that, as of June 2023, at least several hundred more similar claims have been filed in Ukrainian courts.

- iii. Following the invasion, the legislative framework was introduced making the HACC competent to decide on sanction cases on collection of assets to the benefit of the state budget (the «Sanction»). As of 26 April 2023, the HACC considered 18 Sanction cases, with one case is pending.

33. As of June 2023 the CCU is composed of 13 judges having 5 vacant positions. One of the main issues relating to the CCU is the implementation of a competitive procedure for the selection of CCU judges, as one of the main conditions to be met by Ukraine on its EU integration path. As of June 2023, the effective legislation has not been adopted yet.

34. From 24 February 2022 until 1 May 2023, the CCU issued decisions on the merits in 18 cases, including 4 cases based on constitutional petitions, and 14 cases – based on the constitutional complaints. For comparison, in 2021, the CCU delivered decisions on the merits in 10 cases, including 3 cases based on constitutional petitions, and 7 cases based on constitutional complaints.

35. The CCU has already accumulated a significant backlog of cases. The average duration of cases submitted to the CCU remains excessive.

36. The operational guidelines for the CCU amidst martial law were developed in a series of orders issued by the CCU President and the Head of the CCU Secretariat. Although public access to these orders in view of security reasons is not available yet, according to the information received, the CCU adopted decisions related to ensuring the safety of both judges and employees of the Secretariat. Later, the CCU developed recommendations on the action plan in case of air raids. In particular, the employees of the CCU Secretariat shall immediately stop working and move to the nearest publicly accessible shelter or to the basement of the building of the CCU. Visitors shall immediately leave the building of the CCU and move to the nearest publicly accessible shelters.
37. After more than a year of full-scale war on Ukrainian territory, it is fair to say that the judicial system has withstood. The courts have been delivering justice and making contribution to Ukraine's resistance and long-awaited victory.
38. As of 1 April 2023, 407 representatives of the judicial system, including 54 judges, joined Ukrainian Armed Forces or other military units. Both judges and members of the HCJ are financially supporting the Armed Forces of Ukraine by transferring part of their remuneration. Judges of local and appellate courts have donated over UAH 590 million, judges of the SC – over UAH 350 million, and members of the HCJ – over UAH 3 million, which totals to over UAH 1 billion (EUR 25.6 million).
39. As of 25 April 2023 (i) 12 judicial staff members were killed (3 judges and 9 members of the court support staff); (ii) premises of 15 courts were destroyed; (iii) premises of 99 courts were damaged. The preliminary estimated property losses inflicted to the judicial system (destroyed and damaged premises, looted assets) constitute UAH 1.88 billion (EUR 48.1 million).

III. BACKGROUND

41. Prior to Russia's military aggression, the reform of Ukrainian judicial system had been ongoing.
42. The most recent stage of this reform commenced in 2016. Since then, three fundamental laws were adopted, including amendments to the Constitution of Ukraine (the «Constitution») regarding the judiciary¹. They introduced substantial institutional changes, in particular:
 - i. a four-tier judicial system was modified into a three-tier system. The new highest court was instituted – the SC, which replaced the Supreme Court of Ukraine, the High Administrative Court of Ukraine, the High Commercial Court of Ukraine and the High Specialised Civil and Criminal Court of Ukraine. For the first time, the lawyers without judicial experience were allowed to enter the selection process. In 2017-2019 as a result of two selection processes 192 SC judges were appointed, including 35 scientists and 13 attorneys-at-law². However, according to the European Commission «some judges with questionable integrity have also been appointed»³;
 - ii. the basis for the institution of two specialised courts – the HACC and the HCIP was established. Those courts consist of both first and second instance divisions;
 - iii. the procedure for appointment of judges was changed. Judges are no longer elected by the Verkhovna Rada but are appointed by the President and pre-elected by the HCJ on a competitive basis. 5-year probation period for newly appointed judges was abolished;
 - iv. the judges of all levels had to be assessed for compliance with new requirements on integrity and professional ethics (qualification assessment);
 - v. the new judicial government body – the HCJ – was instituted. Its main powers include appointments and dismissals of judges, as well as initiating and conducting disciplinary proceedings. The HCJ was vested with the powers to conduct the selection procedures for new judges and qualification assessment onwards; the Public Integrity Council was established as a representative of civil society and an advisory body to the HCJ; it was allowed to evaluate judicial candidates' compliance with professional ethics and integrity criteria;
 - vi. the aim of reorganisation of the courts' network was declared;
 - vii. the CCU was defined as an independent and distinct institution separate from other courts, rather than a part of the Ukrainian judicial system as such⁴.

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1 Law of Ukraine No. 1401-VIII dated 2 June 2016 "On Amendments to the Constitution of Ukraine (regarding judiciary)", <https://zakon.rada.gov.ua/laws/show/1401-19#Text>.
 Law No. 1402-VIII dated 2 June 2016 "On the Judiciary and the Status of Judges", <https://zakon.rada.gov.ua/laws/show/en/1402-19#Text>.
 Law No. 1798-VIII dated 21 December 2016 "On the High Council of Justice", <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.

2 The Supreme Court in 2019: Facts and Figures, p. 8. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Zvit_VS_angl_.pdf.

3 Commission Opinion on Ukraine's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0407>.

4 Explanatory note to the draft law No. 3524 dated 25 November 2015, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3524&skl=9.

43. In 2017 the Law No. 2136-VIII dated 13 July 2017 (the «**Law on CCU**»)⁵ was adopted to align the constitutional changes with the status of this judicial body. Moreover, procedural codes (civil, commercial, and administrative) were amended to unify and expedite the court proceedings. Electronic services in the administration of justice («electronic court») were introduced⁶.
44. In 2019, the HACC was established. That was achieved owing to the strong engagement of the Ukrainian civil society and the international community⁷.
45. Legislative changes introduced by Law No. 193-IX dated 16 October 2019⁸ provided for, in particular:
 - i. reduction of the number of SC judges from 200 to 100 and vetting of the SC judges;
 - ii. new rules on the structure and role of the HCJ, and on the composition and status of the HCJ;
 - iii. new rules on disciplinary measures (e.g., shortening the disciplinary proceedings).
46. Ukrainian professional community presented mainly negative feedback on most of the provisions of Law No. 193-IX. The Venice Commission also expressed significant concerns regarding some provisions of Law No. 193-IX⁹.
47. On 7 November 2019, immediately with the entry into force of Law No. 193-IX, all members of the HCJ were dismissed. All ongoing procedures of evaluation and assessment of judges were interrupted, including the urgent assessment of judges of the first and second instances¹⁰.
48. On 11 March 2020, the CCU rendered a decision No. 4-p/2020 which declared parts of Law No. 193-IX unconstitutional, in particular, regarding the reduction of the number of the SC judges, the establishment of a new HCJ and Integrity and Ethics Commission (additional vetting and disciplinary body under the HCJ)¹¹.
49. Three weeks prior to this decision, the CCU assessed the constitutionality of the judicial reform of 2016. While the CCU found that the establishment of the new SC complied with the Constitution, it also found that the liquidation process of the previous Supreme Court of Ukraine was partly unconstitutional. The CCU concluded that former Supreme Court of Ukraine judges should continue administering justice as judges of the new SC¹².
50. In July 2021, new legislation introducing integrity and professional ethics checks for the HCJ and the HCJ was adopted as recommended by the Venice Commission¹³.
51. Pursuant to the new legislation:
 - i. certain powers in disciplinary proceedings were delegated from members of the HCJ to disci-

5 Law on CCU, <https://zakon.rada.gov.ua/laws/show/en/2136-19#Text>.

6 Law of Ukraine No. 2147-VIII dated 3 October 2017 "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts", <https://zakon.rada.gov.ua/laws/show/2147-19#Text>.

7 Commission Opinion on Ukraine's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX-52022DC0407>.

8 Law of Ukraine No. 1629-IX dated 13 July 2021 "On amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and some laws of Ukraine regarding the resumption of the work of the High Qualification Commission of Judges of Ukraine".

9 Venice Commission opinion No. 969/2019, para. 20, <https://supreme.court.gov.ua/userfiles/media/document.pdf>.

10 Venice Commission opinion No. 969/2019, <https://supreme.court.gov.ua/userfiles/media/document.pdf>.

11 <https://zakon.rada.gov.ua/laws/show/v004p710-20#n2>.

SWD (2020) 329 final, 1 December 2020, p. 11, <https://data.consilium.europa.eu/doc/document/ST-13510-2020-INIT/en/pdf>.

12 <https://zakon.rada.gov.ua/laws/show/v002p710-20#n2>.

SWD (2020) 329 final, 1 December 2020, p. 11, <https://data.consilium.europa.eu/doc/document/ST-13510-2020-INIT/en/pdf>.

13 Law of Ukraine No. 1629-IX dated 13 July 2021 "On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and Certain Laws of Ukraine on the Restoration of the Work of the High Qualification Commission of Judges of Ukraine" <https://zakon.rada.gov.ua/laws/show/1629-20#n5>.

Law of Ukraine No. 1635-IX dated 14 July 2021 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice", <https://zakon.rada.gov.ua/laws/show/1635-20#n33>.

Commission Opinion on Ukraine's application for membership of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX-52022DC0407>.

plinary inspectors who were to be selected. Accordingly, on 5 August 2021, the HCJ suspended its disciplinary function¹⁴. Until now, disciplinary inspectors have not been selected;

- ii. the Ethics Council consisting of three international members and three Ukrainian members with the casting vote of the international members. Its function was to conduct a one-time assessment of acting members of the HCJ and scrutinise candidates for the appointing bodies.
 - iii. the Selection Commission, consisting of three international members and three Ukrainian members, with the casting vote of the international members, was established to preselect candidates for the membership in the HQCJ.
52. The Ethics Council officially started its work on 1 December 2021¹⁵ and initiated the selection process, including interviews with candidates running for the HCJ membership. On 26 January 2022, two members of the HCJ resigned to avoid the assessment by the Ethics Council¹⁶. That was followed by resignation of ten more members on 22 February 2022, and as a result the HCJ became non-operational¹⁷. On 24 February 2022, the Ethics Council notified about the postponement of the interviews, but officially never suspended its operation¹⁸.
 53. The Selection Commission officially started its work on 21 January 2022 and initiated the selection process¹⁹. The operation of the Selection Commission was officially suspended on 24 February 2022²⁰.
 54. Although the number of cases resolved by the SC in 2021 exceeded the number of incoming cases (101 000 and 96 000 respectively²¹), almost **26 000 cases remained unresolved** as of 31 December 2021²².
 55. The situation with the backlog of unresolved cases was even worse in the first instance and appellate courts: cases and applications received by these courts in 2020 amounted to approx. **3 657 000** and in 2021 – to approx. **4 237 000**²³. As of the end of 2020 approx. **760 000** cases and applications were pending, and as of the end of 2021 – approx. **870 000**²⁴.
 56. Insufficient budgeting was the distinctive feature of the pre-aggression years for the judicial system (probably, except for the SC and the HACC). As reported by the SJA, the rate of meeting the financial needs of the first instance courts, appellate courts, and SJA's bodies at the expense of the state budget **constituted only 42.5% in 2021 (the lowest since 2017**, with 79.1%; 77.9% in 2018; 72.4% in 2019, and 64.9% in 2020)²⁵. As the same time, the rate of meeting the financial needs at the expense of the state budget for the HACC constituted 85.4%²⁶ and for the SC – 77.7%²⁷ in 2021.
 57. As of 31 December 2021,
 - i. there were 2 068 vacant positions for judges out of 7 304 judicial posts. 431 judges had no powers to administer justice (due to the transition from 5-year terms of the first appointment to lifetime judicial appointment introduced in 2016 and for some other reasons)²⁸. With respect to the first and appellate instance courts, 2 017 out of 7 039 judicial posts remain vacant²⁹;

14 <https://court.gov.ua/press/news/1240789>.

15 <https://ec.court.gov.ua/ec/pres-centr/general/1222119/>.

16 "Tainted top judicial officials resign ahead of reform", <https://kyivindependent.com/tainted-top-judicial-officials-resign-ahead-of-reform/>.

17 <https://www.facebook.com/highcouncilofjustice/posts/320370866800027>.

18 <https://ec.court.gov.ua/ec/pres-centr/news/1259826/>.

19 <https://court.gov.ua/archive/1247213/>.

20 Announcement, 24 February 2022, <https://www.facebook.com/scomHQCJ/>.

21 The Supreme Court in 2021: Facts and Figures, p. 2. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/Zvit_VS_2021.pdf.

22 The Supreme Court in 2021: Facts and Figures, p. 15. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/Zvit_VS_2021.pdf.

23 Analytical tables on the state of administration of justice in 2021, https://court.gov.ua/inshe/sudova_statystyka/analit_tabl_2021_4_2021.

24 Analytical tables on the state of administration of justice in 2021, https://court.gov.ua/inshe/sudova_statystyka/analit_tabl_2021_4_2021.

25 According to a report on the activities of the State Judicial Administration of Ukraine for 2021, p. 2. https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

26 The HACC letter No. 03.10-01/32/2023 dated 6 June 2023.

27 The SC letter No. 2457/0/2-23 dated 5 June 2023.

28 Information from HQCJ in letter No. 28-390/23 dated 5 April 2023.

29 According to report on the activities of the State Judicial Administration of Ukraine for 2021, p. 26. https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

- ii. six first instance courts ceased to operate at all due to the absence of judges with powers to administer justice. At the beginning of 2021, there was only one court³⁰ in such situation³¹;
 - iii. 114 courts in Ukraine operated with only 50% of the prescribed number of judges or less (as of 1 January 2021 only 56 courts had this problem)³²;
 - iv. 3 551 out of 27 747 positions of the court support staff remain vacant in the first and appellate courts, 890 court employees quit during 2021³³ primarily due to a low salary and work overload.
58. Thus, just before 24 February 2022, the Ukrainian judicial system found itself in a very difficult situation. Following the ongoing reforming and recent legislative changes:
- i. two major judicial governance bodies (HCJ and HQCJ) became non-operational which resulted in the total inability to select and appoint judges; finalise qualification assessments; dismiss judges, and conduct disciplinary functions;
 - i. long-lasting backlog of cases, including in the SC, remained unsolved;
 - ii. the first and appellate instance courts were understaffed with judges and faced constant problems with financing;
 - iii. the process of implementation of «electronic court» was moving very slowly. In April 2021, the legislative amendments were introduced to launch it³⁴. As of the end of 2021, only three modules of the electronic court were launched³⁵, among them one which is widely used – a videoconference module;
 - iv. HCIP was not established;
 - v. the reorganisation of the first instance courts network never happened, although the district-level administrative and territorial structure was changed by the Parliament in July 2020³⁶.
59. **Situation with the CCU.** In August³⁷ and September³⁸ 2020, the CCU declared unconstitutional certain provisions of the law on the National Anti-Corruption Bureau of Ukraine (the «NABU») and the appointment of its director. This decision created legal uncertainty and undermined NABU's independence. On 27 October 2020³⁹, the CCU decided on the unconstitutionality of certain elements of the anti-corruption legislation in Ukraine related to the electronic declaration system and powers of the National Agency for Prevention of Corruption⁴⁰. Those decisions received significant criticism from both professional community and international partners.
60. Despite introducing in the Constitution the principle of competitive selection of the judges of the CCU in 2016 (as part of the constitutional reform), it was not properly implemented on the legislative level. Also, there was «a widespread perception that appointments are too often politically

30 Tsarychanskyi District Court of Dnipropetrovsk region according to Report on the activities of the State Judicial Administration of Ukraine for 2021, p. 27. https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

31 According to report on the activities of the State Judicial Administration of Ukraine for 2021, p. 26. https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf. Avdiivka City Court of Donetsk region, Luhyn District Court of Zhytomyr region, Ustyniv District Court of Kirovohrad region, Popasna District Court of Luchansk region, Anniiv District Court of Odesa region, Chutivskyi District Court of Poltava region.

32 According to report on the activities of the State Judicial Administration of Ukraine for 2021, p. 26. https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

33 According to report on the activities of the State Judicial Administration of Ukraine for 2021, p. 27. https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

34 Law of Ukraine No. 1416-IX dated 27 April 2021, <https://zakon.rada.gov.ua/laws/show/1416-IX#Text>.

35 Regulation "On the Operation of Individual Subsystems (modules) of the Unified Court Information and Telecommunication System", approved by the HCJ Decision No. 1845/0/15-21 dated 17 September 2021, <https://zakon.rada.gov.ua/rada/show/v1845910-21#Text>.

36 Resolution No. 807-IX dated 17 July 2020, <https://zakon.rada.gov.ua/laws/show/807-20#Text>.

37 Decision No. 9-r/2020 of 28 August 2020, <https://zakon.rada.gov.ua/laws/show/v009p710-20#Text>.

38 Decision No. 11-r/2020 of 16 September 2020, <https://zakon.rada.gov.ua/laws/show/v011p710-20#Text>.

39 Decision No. 13-r/2020 of 27 October 2020, <https://zakon.rada.gov.ua/laws/show/v011p710-20#Text>.

40 Association Implementation Report on Ukraine, SWD(2020) 329 final, 1 December 2020, p. 2, <https://data.consilium.europa.eu/doc/document/ST-13510-2020-INIT/en/pdf>.

motivated» among civil society organisations⁴¹. At the end of 2020, the Venice Commission noted that a reform of the appointment system might be the occasion to remedy that problem⁴². As of 24 February 2022, an urgent reform of the CCU had not been completed. The draft law⁴³ on the reform of the CCU did not contain any rules on the competitive selection of judges and a temporary raise of the quorum for decision-making (as recommended by the Venice Commission)⁴⁴.

41 New model for selecting constitutional court judges, <http://en.dejure.foundation/library/new-model-for-selecting-constitutional-court-judges>.

42 CDL-AD(2020)039, 11 December 2020, para. 75, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)039-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)039-e).

43 Draft law "On Constitutional Procedure" No. 4533 dated 21 December 2020, https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70729.

44 Association Implementation Report on Ukraine SWD(2022) 202 final, 27 July 2022, p. 2, <https://www.eeas.europa.eu/sites/default/files/documents/Association%20Implementation%20Report%20on%20Ukraine%20-%20Joint%20staff%20working%20document.pdf>.



IV. WAR AND SAFETY ISSUES

A. General information about the consequences of the full-scale war on the judicial system of Ukraine

61. After more than a year of full-scale war on the Ukrainian territory, it is fair to say that the judicial system has withstood. The courts have continued delivering justice.
62. Meanwhile, the war has terrible consequences. As of 25 April 2023:
- i. 12 representatives of the judicial system were killed (3 judges and 9 members of the court support staff);
 - ii. premises of 15 courts have been destroyed, which is 2% of the total number of all Ukrainian courts, in particular:
 - Commercial Court of Mykolaiv region,
 - Donetsk Appellate Court,
 - Volnovakha District Court of Donetsk region,
 - Krasnolimanskyi City Court of Donetsk region,
 - Borodianskyi District Court of Kyiv region,
 - Izium City District Court of Kharkiv region,
 - Kharkiv Appellate Court (part of the building is destroyed),
 - Luhansk Appellate Court,
 - Lysychanskyi City Court of Luhansk region,
 - Vysokopilskyi District Court of Kherson region,
 - Kupianskyi District Court of Kharkiv region (entrance group is destroyed),
 - Bereznehuvatskyi District Court of Mykolaiv region,
 - Vuhledar City Court of Donetsk region,
 - Avdiivka City Court of Donetsk region,
 - Snihurivskyi District Court of Mykolaiv region,
 - iii. the estimated value of the destroyed premises is approx. UAH 129.5 million (EUR 3.3 million)⁴⁵;

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⁴⁵ Hereinafter, unless otherwise stated in the text or footnotes, the amounts in EUR are converted, with rounding, using the official exchange rate of the National Bank of Ukraine as of the last day of the specified year. For the year 2023, the exchange rate used is as of 1 June 2023.

- iv. the premises of the 99 courts are damaged, which is 13% of the total number of all Ukrainian courts⁴⁶;
 - v. the preliminary estimated property losses suffered by the judicial system (destroyed and damaged premises, looted assets) are **UAH 1.88 billion (EUR 48.1 million)**⁴⁷.
63. It is also estimated by the SJA that **2 424 pieces** of equipment have been looted from the courts' premises with an approx. value of **UAH 55.2 million (EUR 1.4 million)** as of 1 May 2023⁴⁸. However, the abovementioned calculations of damages are only preliminary, since there is no accurate and up-to-date information about the courts' premises located on the occupied territories.
64. Moreover, **380** representatives of the judicial system, including **54 judges**, joined Ukrainian Armed Forces or other military units as of 1 January 2023. Their number increased to **407** as of 1 April 2023. Among them, there are 4 judges of the SC⁴⁹, 1 employee of the CCU⁵⁰, and 4 employees of the HACC⁵¹.
65. There are still some judges who has not left the occupied territories. Some of them have not been released by the occupying authorities and are being held in Russian captivity. The fate of some of these judges is unknown⁵².

B. Delivery of justice

- 66. Introduction of martial law.** Due to the Russian aggression, on 24 February 2022, the martial law was introduced in Ukraine⁵³. It has been prolonged several times and is still in effect up until 18 August 2023⁵⁴. It is expected, that the martial law will be prolonged at least up until the end of the war.
67. The Ukrainian legislative framework regarding the functioning of the judicial system provides that the right to access courts cannot be restricted during martial law⁵⁵. Accordingly, the powers of the courts in Ukraine cannot be terminated even for the period of martial law⁵⁶. In the territory under the martial law, justice shall be administered by courts only⁵⁷. Shortening or expediting any form of judicial proceedings is prohibited⁵⁸. The establishment of extraordinary or special courts is prohibited as well⁵⁹.
- 68. First days and weeks of operation of the justice system in war conditions.** As noted above, just two days before the full-scale Russian aggression, the HCJ stopped operating. In these circumstances, the CJU stepped in to contribute to the overall strategy. On 24 February 2022, it issued a decision which emphasised that even in the period of martial law, the constitutional right to justice cannot be limited. Meanwhile, in case of a threat to the life, health, or safety of the court's employees or visitors, it was recommended to **temporarily suspend** the administration of justice⁶⁰.
69. The decision also addressed all the main bodies of the judicial system with a proposal to immediately develop emergency plans in case of further escalation of the situation, which, in particular, should (i) include the preservation of court seals and stamps; (ii) determine the lists of court cases and documents to be preserved and evacuated; (iii) determine the lists of court cases and

46 Windows were smashed, some rooms had no electricity, heat, gas or water supply; the ceiling, courtrooms, and internal doors were damaged; internal walls between offices were destroyed, etc.

47 The SJA letter No. 16-5070/23 dated 27 April 2023.

48 The SJA letter No. 16-5696/23 dated 16 May 2023.

49 The SC letter No. 1674/O/2-23 dated 11 April 2023.

50 The CCU letter No. 001-16/3-19/2309 dated 26 May 2023.

51 The HACC letter No. 03.10-01/32/2023 dated 6 June 2023.

52 Ukrainian judge: vocation, profession, everyday life. Analytical report on the results of the study - Kyiv: Centre for Sociology of Law and Criminology, 2023, p. 78, <https://drive.google.com/file/d/1z1FOEB2zHsQLaS3eVzPJu6lmFazsPN5/view>.

53 Order of the President of Ukraine No. 64/2022 dated 24 February 2022, <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

54 <https://itd.rada.gov.ua/billInfo/Bills/Card/41865>.

55 Article 64(2) of the Constitution, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4348>.

56 Article 10(1) of the Law of Ukraine No. 389-VIII dated 12 May 2015 "On the legal regime of martial law", <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

57 Article 26(1) of the Law of Ukraine No. 389-VIII dated 12 May 2015 "On the legal regime of martial law", <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

58 Article 26(2) of the Law of Ukraine No. 389-VIII dated 12 May 2015 "On the legal regime of martial law", <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

59 Article 26(4) of the Law of Ukraine No. 389-VIII dated 12 May 2015 "On the legal regime of martial law", <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

60 The decision of the CJU No. 9 dated 24 February 2022, <https://ips.ligazakon.net/document/MUS36788?an=29>.

documents to be destroyed; (iv) determine the places to which the relevant cases and documents should be moved; (v) develop appropriate routes for moving them, and identify the persons who would be responsible for this.

70. On 24 February 2022, the general access to the Unified State Register of Court Decisions and the subsite «Case Status» of the official website of the Ukrainian judiciary was closed. On 20 June 2022 the general access was restored⁶¹. At the same time, due to security issues general access to some subsites containing personal information about the judges is still restricted as of April 2023⁶².
71. On 2 March 2022, the CJU published further recommendations regarding the functioning of the courts during martial law. It recommended that⁶³:
- i. the assembly of judges or, if not possible, the president of court, promptly decide on the temporary suspension of court proceedings by a particular court until the circumstances that led to the suspension of proceedings are eliminated;
 - ii. all employees are to be transferred, if possible, to remote work;
 - iii. the courts should determine the specifics of their functioning during martial law given the current situation in a particular region of Ukraine;
 - iv. the minimum number of personnel who should be in the court premises during the working day is determined;
 - v. shifts of judges and court employees are organised;
 - vi. the court hearings are adjourned or the cases are withdrawn from consideration;
 - vii. only urgent cases are heard before the court with the written consent of all parties to the proceedings;
 - viii. the main focus should be on urgent proceedings (like detention and extension of detention).
72. On 4 March 2022, the SC also published recommendations for the administration of justice in the territory under martial law, where it mostly reiterated the above CJU recommendations⁶⁴.
73. Following these recommendations:
- i. Majority of the first instance and appellate courts located in the endangered areas (e.g., Kharkiv, Kyiv, Mykolaiv regions) issued press releases announcing the temporary suspension of work or restricted access to the court premises⁶⁵;
 - ii. in March-April 2022, local and appellate courts that delivered justice in the territories where no active hostilities took place resolved mostly urgent cases (e.g., matters related to criminal proceedings such as detention, extending the term of detention etc.)⁶⁶. Since May 2022, most of these courts have renewed consideration of all types of cases;
 - iii. the SC, which is located in Kyiv, had not officially suspended its operation. In February and March 2022, its functioning was limited⁶⁷: no open hearings were conducted; all procedural

61 "SJA restores access to the USRCD in test mode", 20 June 2022, https://jurliqa.ligazakon.net/news/211975_dsa-v-testovomu-rezhim-vdnovila-dostup-do-drsr.

62 For instance, https://kmm.km.court.gov.ua/sud2218/pro_sud/78/: "To prevent threats to the lives and health of judges and litigants during martial law, access is temporarily suspended."

63 "To all courts of Ukraine! The CJU published recommendations on the work of courts under martial law", 2 March 2022, <https://court.gov.ua/press/news/1261456>.

64 "Peculiarities of administration of justice in the territory under martial law", 4 March 2022, <https://supreme.court.gov.ua/supreme/pres-centr/news/1261727/>.

65 For instance, press releases of the Kharkiv Appellate Court, 3 March 2022, <https://hra.court.gov.ua/sud4818/pres-centr/news/1261496/>; the Commercial Court of the city of Kyiv, <https://ki.arbitr.gov.ua/sud5011/pres-centr/novyny/1261738/>; the Mykolaiv District Administrative Court, 3 March 2022, <https://adm.mk.court.gov.ua/sud1470/pres-centr/news/1261602/>.

66 For instance, press releases of the Rivne Appellate Court, 3 March 2022, <https://rva.court.gov.ua/sud4815/pres-centr/news/1261407/>; the Khmelnytskyi City District Court, 11 March 2022, <https://kmm.km.court.gov.ua/sud2218/pres-centr/news/1262618/>.

67 The Supreme Court in figures and facts for 2022, p. 3. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/Zvit_VS_2022.pdf.

applications were filed only electronically or by post⁶⁸. In April 2022, the SC returned to «full-time work»⁶⁹;

- iii. on 24 February 2022, the HACC, which is located in Kyiv, issued a press release informing that the court was “operating as usual”⁷⁰. According to the later publications, «`much of the Court’s public outreach was curtailed for security reasons»⁷¹. Under the threat of capture of Kyiv, an alternative plan was developed which provided for evacuation to the Transcarpathian Court of Appeals, located in the most western city of Ukraine⁷².
74. In February-March 2022, the number of new cases filed decreased by 80-90%⁷³.
 75. On 13 March 2022, the President of the Supreme Court approved recommendations addressed to the first and appellate courts in case of occupation of the territory and/or court or imminent threat of its occupation. Pursuant to these recommendations⁷⁴:
 - i. any president of court or judge shall act and make decisions to preserve human life and health;
 - ii. if a territory is occupied, judges and court staff shall await evacuation corridors established by the authorities;
 - iii. if possible, measures should be taken to transfer case files, especially those that are pending court proceedings or are of particular importance. Otherwise, arrangements should be made to ensure their safety in safes in the courtroom. If life or health are at risk, case files shall be left in the court;
 - iv. documents containing state secrets shall be destroyed;
 - v. it is recommended that steps are taken to copy the contents of the servers and evacuate them as soon as possible. Additionally, measures should be taken to evacuate gowns, badges, and court seals. If the latter cannot be done, they shall be destroyed;
 - vi. judges and court staff who are on the territory occupied by Russian forces shall avoid negotiations with the occupiers, not agree to offers of cooperation, and wait for the evacuation corridors.
 76. The SJA initiated a program to find housing for judges and other employees of the judicial system⁷⁵. During the first weeks of the war, judges from western Ukraine hosted families of their colleagues from other parts of the country in their homes. Judges from other European countries provided assistance, including housing⁷⁶.
 77. as to the case files, the judiciary did not manage to get a majority of cases out of the territories occupied at the very first stage of the war. Only due to the actions of chief justices, it was possible to take out documents of particularly serious crimes and high-profile cases.
 78. Thus, it can be assumed that as of 24 February 2022, there was no unified emergency plan for the judiciary. As one report states, the judicial system «was not logistically ready to operate during an armed conflict waged on most of its territory, including Kyiv, the capital»⁷⁷. Moreover, another

68 The Supreme Court has established a special working regime, 7 March 2022, <https://supreme.court.gov.ua/supreme/pres-centr/news/1261860/>.

69 The Supreme Court in figures and facts for 2022, p. 9. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/Zvit_VS_2022.pdf.

70 “HACC continues to administer justice”, 24 February 2022, <https://hcac.court.gov.ua/hcac/pres-centr/news/1259799/>.

71 ILAC Rule of Law Report. Under Assault: A Status Report on the Ukrainian Justice System in Wartime. Released on 27 July 2022, p. 10, <https://ilacnet.org/publications/under-assault-a-status-report-on-the-ukrainian-justice-system-in-wartime/>.

72 Bogdan Kryklyvenko, Chief of Staff of the HACC, Court Administrator in Wartime: Lessons Learned and Recommendations from Ukraine, 2023, <https://first.vaks.gov.ua/articles/bohdan-kryklyvenko-rozpoziv-fcca-journal-pro-vyklyky-sudovoho-administruvannia-pid-chas-vivny/?fbclid=IwAR0cK9XxLpTYeJitmrcl-4WhQWKNuD1s3q8PebRbuLxCDXGIBt53HDsluD-M>.

73 Chief of the Supreme Court Vsevolod Kniaziev: “I am ashamed of the decisions of the HCJ members who resigned two days before the war”, 12 April 2022, <https://court.gov.ua/eng/supreme/pres-centr/zmi/1267730>.

74 Order of the Chief of the Supreme Court No. 6/0/9-22 dated 13 March 2022, <https://rsu.gov.ua/uploads/news/rozp6vc130322-95d9ee902a.pdf>.

75 SJA of Ukraine introduces free housing search assistance service for employees of judicial authorities and institutions, 25 March 2022, <https://dsa.court.gov.ua/dsa/pres-centr/news/1264908/>.

76 Chief of the SC: “I am ashamed of the decisions of the HCJ members who resigned two days before the war”, 12 April 2022, <https://court.gov.ua/eng/supreme/pres-centr/zmi/1267730>.

77 The Ukrainian judicial system in a time of armed conflict. Briefing paper. November 2022, p. 13, para. 2.2. https://ici2.wpenginepowered.com/wp-content/uploads/2022/11/The_Ukrainian_Judicial_System_in_a_Time_of_Armed_Conflict_ICJ_briefing_paper_2022.pdf.

report even emphasises the «absence of any instructions and guidance from the state on how and where to evacuate judges and court staff and where and how to evacuate the case files»⁷⁸ in the first days of aggression.

79. Another important observation as to the first days of the full-scale invasion needs to be made. When the Russian forces poured across the border and missiles began striking the cities, judges rushed to protect their families like most Ukrainians did⁷⁹. Aiming to protect families, some judges and court employees were forced to leave Kyiv⁸⁰. Many judges – women with children – went to the Western Ukraine or abroad, including several SC judges⁸¹. As soon as the situation stabilised and Russian forces retreated from Kyiv, Sumy, Zhytomyr, and Chernihiv regions, judges began to return⁸².
80. After the first shock passed and some initial steps to ensure safety of judges and other employees of the judicial system were taken, the latter faced the challenge (i) of administration of justice on the territory under the control of the Ukrainian government under the constant threat of missile attacks, air raid sirens, and since October 2022 – electricity cuts and (ii) of impossibility to administer justice in areas of hostilities and in the occupied territories.

1) On the territory under the control of the Ukrainian government

81. **Constant threat of missile and drone attacks.** The missile and drone attacks were launched against all regions of Ukraine⁸³. Their targets were mainly objects of civilian infrastructure. Thus, there is no safe place in Ukraine at all. Constant missiles and drone attacks on civilian buildings in Ukrainian-controlled territories are one of the defining features of the Russian aggression. Some courts were also damaged following such missile attacks, for instance, the Commercial Court of Mykolaiv region on 29 March 2022, when 2 employees of this court were killed⁸⁴.
82. When there is a threat of an attack or it takes place, the air raid siren is on. Between 24 February 2022 and 12 June 2023, air raid sirens went off 773 times in Kyiv. This amounts to approx. 913 hours or 38 calendar days. The situation differs throughout regions of Ukraine: the western regions have fewer air raid sirens while regions located closer to the frontline (e.g., Odesa, Mykolaiv, Dnipropetrovsk, Poltava) have them even more often than in Kyiv. The duration of the alarm may last few minutes or 5-6 hours in a row. On average, they last for 1-1.5 hours.
83. The general approach is that the State and local authorities do not operate when the air raid siren is on; all employees and visitors should ensure their safety, in particular, by relocating to a special shelter and staying there until the air raid ends⁸⁵.
84. After months of constant threat of air attacks, people have started getting used to them. The nearest shelter often may be located quite far. Due to this, a lot of people ignore air raid sirens. There were cases when courts have continued holding hearings during the alarms.
85. On 5 August 2022, the CJU:
- i. emphasised on the impermissibility of ignoring air raid sirens;

78 Ukrainian judge: vocation, profession, everyday life. Analytical report on the results of the study – Kyiv: Centre for Sociology of Law and Criminology, 2023, p. 76, <https://drive.google.com/file/d/1z1FOEB2zHhsQLaS3eVzPJu6lmFazsPN5/view>.

79 ILAC Rule of Law Report. Under Assault: A Status Report on the Ukrainian Justice System in Wartime. Released on 27 July 2022, p. 17, <https://ilacnet.org/publications/under-assault-a-status-report-on-the-ukrainian-justice-system-in-wartime/>.

80 Bogdan Kryklyvenko, Chief of Staff of the HACC, Court Administrator in Wartime: Lessons Learned and Recommendations from Ukraine, 2023, <https://first.vaks.gov.ua/articles/bohdan-kryklyvenko-rozpoziv-fcca-journal-pro-vyklyky-sudovoho-administruvannia-pid-chas-viyny/?fbclid=IwAR0cK9XxLpTYeJjtmrcl-4WhQWKNuDis3q8PebRbuLxCDXGiBT53HDs1uD-M>.

81 Chief of the SC: "I am ashamed of the decisions of the HCJ members who resigned two days before the war", 12 April 2022, <https://court.gov.ua/eng/supreme/pres-centr/zmi/1267730>.

82 The Ukrainian judicial system in a time of armed conflict. Briefing paper. November 2022, p. 13, para. 2.2. https://icj2.wpenginepowered.com/wp-content/uploads/2022/11/The_Ukrainian_Judicial_System_in_a_Time_of_Armed_Conflict_ICJ_briefing_paper_2022.pdf.

83 "Only Chernivtsi region of Ukraine has not been shelled since the beginning of the war – MIA", 7 August 2022, <https://umoloda.kyiv.ua/number/0/2006/168506/>.

84 "Missile attack in Chernivtsi region: photos of destruction and details published", 31 October 2022, <https://tsn.ua/ato/raketnij-obstril-cherniveckoyi-oblasti-opublikovali-foto-ruynuvan-ta-povidomili-podrobici-2191681.html>.

85 "The building of the Commercial Court of Mykolaiv region is damaged as a result of an enemy attack", 29 March 2022, <https://supreme.court.gov.ua/supreme/pres-centr/news/1265499/>.

86 The CJU decision No. 23 dated 5 August 2022, <https://zakon.rada.gov.ua/rada/show/v0023414-22#Text>.

- ii. recommended that the courts of all levels and jurisdictions, all bodies and institutions of the judicial system developed emergency action plans for a period of martial law in Ukraine;
- iii. advised the SJA to consider the drafting and approval of a model emergency action plan for a period of martial law in Ukraine⁸⁶.

86. As reported by the SJA, on 6 October 2022, it advised⁸⁷ that the appellate and local courts, and other entities managed by the SJA introduce local rules (plans, orders) for informing about and responding to the air raid sirens⁸⁸. For instance, on 12 October 2022, the Pecherskyi District Court of the city of Kyiv published an instruction providing that the «court visitors are obliged to immediately relocate to the nearest shelter» in case of the air raid siren, which is Zoloti Vorota subway station⁸⁹.
87. The SJA approved the emergency action plan in response to air raid sirens for its Kyiv premises⁹⁰. In particular, its employees should (i) switch off the computer and all office equipment; (ii) close the windows, switch off all electrical appliances and lights in the office; (iii) close the office and go to the nearest shelters using the shortest route and without panicking⁹¹. Similar plans have been developed within the SC⁹², the HCJ⁹³, the HQCJ⁹⁴, the HACC⁹⁵, and the CCU⁹⁶.
88. 48 shelters are available directly within the courts' premises as of 1 April 2023, which covers **only 7.12%** from all courts' premises⁹⁷.
89. Generally, it is not allowed for the visitors to enter the court premises during the air raid siren⁹⁸.
90. There is no uniform approach to dealing with the adjournment of the court hearings that were supposed to be held during the air raid. The SC recommended to its justices to postpone the hearing until the end of the air raid⁹⁹ so that the hearing could still take place on the same day. Another approach provides that the hearing shall be postponed to a different day. In any event, the SC explained that when deciding the court should be guided by the priority of protecting human life and health; the court has to assist parties in exercising their procedural rights, including, the right to participate in the hearing; if the party failed to appear at the hearing, the court has to assume that it is for objective and valid reasons (i.e., the air raid siren), in the absence of a request to consider the case in the party's absence¹⁰⁰.
- 91. Electricity cuts.** Between October 2022 and February 2023 Ukrainian judicial system, as well as other Ukrainians, faced electricity cuts.
92. On 10 October 2022, Russia launched a new scheme of terrorising Ukraine: direct and planned missile attacks on the Ukrainian electricity infrastructure in all Ukrainian-controlled territory. In November and December 2022, most Ukrainian regions faced two blackouts. For a few days electricity, central heating and water supply were not available. There were major problems with mobile and Internet connection. As a result of these attacks, Ukraine's energy system could not produce enough electricity. Thus, all Ukrainian-controlled territories faced electricity cuts. On some days

86 The CJU decision No. 23 dated 5 August 2022, <https://zakon.rada.gov.ua/rada/show/v0023414-22#Text>.

87 The SJA letter No. 16-9153/22 dated 6 October 2022, https://dostup.pravda.com.ua/request/105970/response/366569/attach/1/20221118%20019.pdf?cookie_passthrough=1.

88 The SJA letter No. 16-4624/23 dated 19 April 2023.

89 12 October 2022, <https://pc.ki.court.gov.ua/sud2606/pres-centr/news/1311710/>.

90 The SJA Order No. 228 dated 11 July 2022.

91 The SJA Order No. 228 dated 11 July 2022.

92 The SC letter No. 1674/0/2-23 dated 11 April 2023.

93 The HCJ letter No. 3468/0/9-23 dated 24 April 2023.

94 The HQCJ letter No. 28-390/23 dated 5 April 2023.

95 The HACC letter No. 03.10-01/32/2023 dated 6 June 2023.

96 The CCU letter No. 001-16/3-19/2309 dated 26 May 2023.

97 The SJA letter No. 16-4624/23 dated 19 April 2023.

98 The SC letter No. 1674/0/2-23 dated 11 April 2023.

99 The SC letter No. 1674/0/2-23 dated 11 April 2023.

Pursuant to the Order of the Chief of the SC No. 110 dated 10 August 2022 "In the event of an air raid during a court session, panels of judges of the Supreme Court are recommended to adjourn the court session until the end of the air raid is announced".

100 Resolution of the Commercial Cassation Court of the SC in Case No. 910/2116/21 (910/12050/21) dated 22 December 2022, <https://reyestr.court.gov.ua/Review/108360142>.

electricity was available just for 1-2 hours, on other days – for 12 or more. The situation was different depending on a region and period.

93. Most courts also experienced power outages¹⁰¹. Even the SC was without electricity for some days¹⁰². In such circumstances, it was not possible to properly administer justice. For instance, as per the SJA recommendations, employees were advised to (i) cease using electronic systems and other software half an hour before the scheduled power disconnection, (ii) shut down all personal computers and other equipment with the subsequent disconnection of such equipment from the power supply network¹⁰³.
94. Due to the lack of funding, as of mid-November 2022, the vast majority of courts were not equipped with generators or other sources of backup power. The SJA territorial offices had only two Starlinks per region¹⁰⁴. Further, some courts managed to purchase the alternative sources of power by themselves¹⁰⁵. Some courts were supplied with such equipment by international organisations along with Starlinks¹⁰⁶.
95. Meanwhile, the SJA further addressed the government with a demand to ensure that the courts were classified as facilities of critical infrastructure¹⁰⁷. This status should have excluded the courts from electricity cuts or significantly decrease their apply number. As of 7 March 2023, the related formalities had not been finalised yet¹⁰⁸.
96. Although electricity cuts have not occurred since the end of February 2023 in most regions, there is no guarantee that this problem will not arise again.
- 97. Notifications of the participants to the court proceedings.** As a rule, notification of the participants to a case is done through the postal service of the Ukrainian national operator «Ukrposhta». It was reported in June 2022 that «Ukrposhta was unable to deliver notices and summonses to both temporarily occupied territories and territories where active hostilities were taking place»¹⁰⁹.
98. Moreover, millions of people in Ukraine were relocated abroad and to western regions. Thus, the issue of proper notification of the participants to the court hearings remains unsolved. It is of particular importance since without proper notification the courts are obliged to postpone court hearings. Otherwise, it gives a procedural ground for quashing a court decision in appellate¹¹⁰ or cassation¹¹¹ instances.
99. Since at least the end of 2017, there have been attempts to introduce legislative amendments to allow for alternative electronic ways of communication with participants such as official emails or dispatching notifications¹¹² as SMS messages or through messengers (since 15 February 2023)¹¹³. The latter option is available only if courts have a technical possibility, and the participant in question has agreed to receive notifications in such form by submitting the relevant application¹¹⁴.

101 "Kyiv courts without power: clerks' offices are not working, cases are postponed, there are no generators and no Starlink", 7 November 2022, <https://sud.ua/uk/news/publication/253525-stolichnye-sudy-bez-sveta-ne-rabotavut-kantselyarii-dela-otkladyvayutsya-net-generatorov-i-starlink>.

102 9 January 2023, Olena Kibenko's, the SC judge, social media post, <https://www.facebook.com/100000812918518/posts/pfbid033q4qqXVpmGA814V3oTEgqb-nZFPGLsjGerQx38ijAD1Lj2vYLR7GBNugFvhkgUoI/>

103 "List of measures for planned power outages", 23 November 2022, https://lb.vl.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/recom_blackout.pdf.

104 14 November 2022, <https://www.sud.ua/uk/news/publication/254239-zampredsedatelya-gsa-v-otvet-na-komentarii-sudov-sudua-obyasnil-pochemu-sudy-ne-snabzheny-starlink-i-generatorami>.

105 "Justice without electricity: will courts be classified as strategic facilities?", 8 December 2022, <https://sud.ua/uk/news/publication/256200-pravosudie-bez-sveta-otnesut-li-sudy-k-strategicheskim-obektam>.

106 "Power outages, water shortages - the consequences of another Russian missile strike on Ukraine", 24 November 2022, <https://dsa.court.gov.ua/dsa/pres-centr/news/1350131/>.

107 "Justice without electricity: will courts be classified as strategic facilities?", 8 December 2022, <https://sud.ua/uk/news/publication/256200-pravosudie-bez-sveta-otnesut-li-sudy-k-strategicheskim-obektam>.

108 "The State Judicial Administration of Ukraine has compiled a list of critical infrastructure facilities in the justice sector", 7 March 2023, <https://dsa.court.gov.ua/dsa/pres-centr/news/1392364/>.

109 "War is an emergency that has forced our judges to work differently", 24 June 2022, <https://pravo.ua/viina-ie-tiieiu-nadzvychainoiu-sytuatsiieiu-shcho-pry-musyla-nashykh-suddiv-pratsiuvaty-po-inshomu-holova-verkhovnoho-sudu-vsevolod-kniaziev/>.

110 Article 376(3)(2) of the Civil Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1618-15#Text>; Article 277(3)(3) of the Commercial Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1798-12#Text>; Article 317(3)(3) of the Code of Administrative Procedure of Ukraine, <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

111 Article 411(1)(5) of the Civil Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1618-15#Text>; Article 310(1)(5) of the Commercial Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1798-12#Text>; Article 353(3)(3) of the Code of Administrative Procedure of Ukraine, <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

112 Order of the SJA No. 28 dated 23 January 2023, https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/N_28_23.pdf.

113 Press release, 15 February 2023, <https://www.facebook.com/CourtSystems/posts/pfbid0Vh2WeY7inStijHvqgU1puUBf5iTu8VoKkjoQxJiYr3pTfHHg-pxGhgDhXpmi6I>.

114 Order of the SJA No. 28 dated 23 January 2023, https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/N_28_23.pdf.

100. The «official email» is an email address indicated by the user in the «electronic court» or the email address indicated in one of the state registers¹¹⁵. Certain persons, such as attorneys, notaries, private enforcement officers, insolvency trustees, forensic experts, state authorities, local self-government bodies, state and municipal business entities are obliged to have an «official email» address in the «electronic court». However, procedural legislation provides no sanctions for breaching this rule. Due to this fact, as of October 2022, only 22% of attorneys and 10% of the abovementioned legal entities have registered their «official emails»¹¹⁶.
101. The legislator has presented the draft law which suggests introducing sanctions and obliging all legal entities and individual entrepreneurs to register an «official email box» (draft law No. 7574-д dated 11 October 2022)¹¹⁷. The HCJ supports this draft law¹¹⁸. Another draft law, also supported by the HCJ, proposes that during martial law, the court may notify participants who do not have «official emails» by using phone calls, SMS messages, any e-mail, messengers, or if those are unavailable, by way of publication of an announcement on the official website of the judiciary of Ukraine^{119, 120}.
- 102. Slow implementation of the «electronic court» and current state of remote justice.** Russian military aggression has drawn special attention to the need to introduce electronic justice¹²¹. Its first and foremost aspect is giving the possibility to all interested parties (judge, support staff, all participants to the proceedings) to have distant hearings outside the courtrooms.
103. As noted above, «electronic court» has been slowly implemented as of 24 February 2022. In March 2023, a comprehensive audit of «electronic court» system was initiated. It shall consist of two parts: technical audit with specific recommendations for further development of the electronic system, and functional analysis of the system. The EU Project Pravo-Justice supports the national authorities in conducting the technical audit, which is scheduled to be completed by the end of August 2023. It is expected that the audit will contribute to determination of the future developments of «electronic court» in Ukraine¹²².
104. Quite a few initiatives in this regard have been presented since 24 February 2022¹²³. The most recent initiative is embodied in the governmental draft law No. 9090 dated 10 March 2023¹²⁴. It proposes to introduce the possibility for all interested parties to participate in virtual hearings from outside the courtrooms.
105. Notwithstanding the fact that no legislation on the remote justice has been adopted, some courts near the frontline are already operating remotely since 2022 (for instance, Selydivskiy City Court of Donetsk region¹²⁵, Kostiantynivskiy City District Court of Donetsk region¹²⁶, Luhansk District Administrative Court¹²⁷).
106. An extraordinary situation takes place in the local court in Avdiivka. Although being under Ukrainian control, the city of Avdiivka is located just a few kilometres from Donetsk outskirts. Since 2014 such location endangered administering justice here, so firstly in 2014¹²⁸ and later in 2016¹²⁹ the jurisdiction of the Avdiivskiy City Court has been transferred to other local courts that are further from the frontline. On 11 February 2022, just two weeks before the full-scale invasion, Avdiivskiy City Court

115 The decision of the HCJ No. 1845/0/15-21 dated 17 August 2021, <https://zakon.rada.gov.ua/rada/show/v1845910-21#Text>.

116 The explanatory note to Draft Law No. 7574-д dated 11 October 2022, <https://itd.rada.gov.ua/billInfo/Bills/Card/40629>.

117 Draft Law No. 7574-д dated 11 October 2022, <https://itd.rada.gov.ua/billInfo/Bills/Card/40629>.

118 The decision of the HCJ No. 448/0/15-23 dated 27 April 2023, <https://hcl.gov.ua/doc/doc/39654>.

119 Draft Law No. 8358 dated 13 January 2023, <https://itd.rada.gov.ua/billInfo/Bills/Card/41130>.

120 The decision of the HCJ No. 143/0/15-23 dated 23 February 2023, https://hcl.gov.ua/sites/default/files/field/143_23.02.2023.pdf.

121 "Digitalisation of justice: no more steps backwards", 20 March 2023, <https://zn.ua/ukr/reforms/tsifrovizatsija-pravosuddja-bilshе-zhodnikh-kroktiv-nazad.html>.

122 "Digitalisation of justice: no more steps backwards", 20 March 2023, <https://zn.ua/ukr/reforms/tsifrovizatsija-pravosuddja-bilshе-zhodnikh-kroktiv-nazad.html>.

123 Interview with Chief of the Commercial Cassation Court of the SC, 13 March 2023, https://sud.ua/uk/news/publication/264264-glava-kkhs-vs-larisa-ro-gach-prinyatie-zakonoproekta-ob-otmene-khozvystvennogo-kodeksa-ne-tolko-ne-reshit-suschestvuyuschie-problemy-no-i-porodit-novye-intervyu?fbclid=IwAR327NONYfJ8U5wmdv_CYBZWxgcV_gm0pWPJdeyuWtjn-jixLDmKnC_7su8.

124 Draft Law No. 9090 dated 10 March 2023, <https://itd.rada.gov.ua/billInfo/Bills/Card/41530>.

125 Press release, 16 May 2022, <https://sdm.dn.court.gov.ua/sud0543/pres-centr/news/1274701/>.

126 Press release, 28 April 2022, <https://ksm.dn.court.gov.ua/sud0527/pres-centr/novini/1271041/>.

127 "Courts in the conditions of war: Experience of setting up remote work at Luhansk District Administrative Court", 4 November 2022, <https://court.gov.ua/press/news/134235/>.

128 Order No. 2710/38-14 dated 2 September 2014, <https://zakon.rada.gov.ua/laws/show/v2710740-14#Text>.

129 Order No. 18/0/38-16 dated 31 March 2016, https://supreme.court.gov.ua/userfiles/rozp_18_0_38_16_2016_03_31_1.pdf.

resumed administering justice in Avdiivka¹³⁰. It also should be noted that since 2020 the capital renovation of the court's premises took place¹³¹. However, as of 24 February 2022, the city of Avdiivka became a frontline once again. On 17 May 2022, the Avdiivskiy City Court of Donetsk region «introduced remote work in a place accessible to the court staff in real-time via the Internet»¹³².

2) On the territory in the areas of hostilities and in the occupied territories

107. Changing jurisdiction of courts. If the administration of justice is impossible on the territory where martial law is introduced, the laws of Ukraine allow changing the territorial jurisdiction of courts or changing their location¹³³.

108. Considering (i) the absence of any statutory rules on changing the jurisdiction of courts during martial law and (ii) the non-operation of the HCJ, the amendments to the Law were adopted on 3 March 2022¹³⁴. The introduced novelties are as follows:

- i. if a court is unable to administer justice due to objective reasons during martial law or emergency (natural disasters, hostilities, measures to combat terrorism or other emergencies), the territorial jurisdiction of the court may be changed;
- ii. the territorial jurisdiction shall be shifted to a court which is located the nearest to the court that cannot administer justice, or to another designated court;
- iii. the HCJ, at the request of the President of the SC or, if the HCJ is unable to exercise its powers, the President of the SC himself/herself shall adopt the respective decision;
- iv. such a decision is a ground for transferring all cases considered by the court whose jurisdiction has been changed to the designated court.

109. In 2022 the territorial jurisdiction of 135 local and appellate courts was changed by orders of the SC President due to the inability to administer justice during martial law. Afterwards, the territorial jurisdiction of 50 local and appellate courts was restored¹³⁵.

110. Prior to the full-scale Russian invasion, between 2014 and 24 February 2022 jurisdiction of 84 local and appellate courts of the Autonomous Republic of Crimea, certain territories of Donetsk and Luhansk regions was changed. Accordingly, the territorial jurisdiction of 169 local and appellate courts has been changed as of the end of 2022. This is more than 22% of all local and appellate courts in Ukraine¹³⁶. These numbers mean that at least every 5th employee of the Ukrainian judicial system was directly impacted by the occupation of certain Ukrainian territories since 2014. As of 1 March 2023, jurisdiction of 117 courts, including those 84 that were occupied between 2014 and 2022, has been changed¹³⁷. As of 12 June 2023, the jurisdiction of 58 out of these courts has been restored¹³⁸.

111. Secondment of judges. Changing the jurisdiction of the courts does not result in secondment of the judges of the respective courts. According to the law, the HCJ should make separate decisions on this issue. Secondment is allowed upon the judge's consent, and should not last for more than one year with the possibility to extend this period for one more year¹³⁹.

130 Order No. 1 dated 19 January 2022, https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Rozp_1_2022_01_19.pdf.

131 <https://dn.gov.ua/news/miskij-sud-u-prifrontovij-avdivivci-vidnoviv-robotu-pislya-vimushenovi-perervi>.

132 Press release, 19 May 2022, <https://avm.dn.court.gov.ua/sud0501/pres-centr/news/1275854/>.

133 Law of Ukraine No. 389-VIII dated 12 May 2015 "On the legal regime of martial law", Article 26(3).

134 Law of Ukraine No. 2112-IX dated 3 March 2022, "On Amendments to Part Seven of Article 147 of the Law of Ukraine "On the Judicial System and Status of Judges" Concerning the Determination of Territorial Jurisdiction of Court Cases", <https://zakon.rada.gov.ua/laws/show/2112-20#Text>.

135 <https://dsa.court.gov.ua/dsa/pres-centr/news/1384015/>.

136 *Ibid.*

137 "Courts in evacuation: how the war has changed the map of Ukrainian courts (infographic)", 3 April 2023, <https://mipl.org.ua/sudy-v-evakuaciyi-yak-vij-na-zminyala-kartu-sudiv-ukrayiny-infografika/>.

See also, https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rozporjadjennya/Zagalna_tablica_sudiv_18_11_2022.pdf.

138 List of courts, the territorial jurisdiction of which has been restored, https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rozporjadjennya/01_06_2023_Vidnovleno_pidsudnist.pdf.

Order of the HCJ No. 566/O/15-23 dated 30 May 2023, <https://hcj.gov.ua/doc/doc/39780>.

139 Article 55 of the Law, <https://zakon.rada.gov.ua/laws/show/1402-19/ed20221223#Text>.

112. On 15 March 2022, the legislative changes were adopted that allowed the SC President to decide on the judges' secondment. The restrictions related to the secondment were abolished for the period of martial law¹⁴⁰.
113. On 19 July 2022, the law was adopted allowing to second judges without their consent during martial law¹⁴¹. New rules provide that the judge is seconded to a court to which the territorial jurisdiction of cases has been changed, and in the absence of vacancies in such court- to another court of the same level and specialisation. These legislative changes also allow conducting assemblies of judges in remote mode, except for those that require a secret ballot.
114. As of 1 March 2023, 468 judges were seconded, including 126 from Kherson region, 116 from Donetsk region, 73 from Luhansk region, 68 from Zaporizhzhia region, 65 from Kharkiv region, 13 from Mykolaiv region, three from Poltava region, two from Dnipropetrovsk region, one from Zhytomyr region, and one from Khmelnytskyi region¹⁴².
115. Since the end of March 2023, the HCJ, which became operational in January 2023, started adopting decisions on termination of the secondment of judges of courts the jurisdiction of which was restored following de-occupation¹⁴³. Accordingly, the judges have to return to their courts.
- 116. The situation with the court staff.** No specific legislative rules were adopted regarding relocation of the court staff from the occupied territories and endangered areas. Some judges and support staff decided to stay in the occupied territories. For others, the SC President prepared the following recommendations:
- i. a judge may dismiss their assistant from the former place of work and employ them at the new court. The SJA territorial department shall amend the personnel list of courts and provide the judge with an assistant;
 - ii. there are no competitive selections for vacant civil service positions during martial law. This means that judicial civil servants (i.e., all court support staff except for the judicial assistants) from courts under occupation can be rehired in courts located in the government-controlled territory¹⁴⁴.
- 117. Transfer of the case files.** One more important practical issue concerns transferring of the paper case required for the consideration of disputes. While efforts were made to transport the files wherever possible, various security obstacles arose. Some judges and court presidents and judges were able to evacuate some files, directing them to courts with appropriate jurisdiction. Unfortunately, files from many courts remain in the occupied territories.
118. As an example, on 14 March 2022, the court staff of the Appellate Court of Donetsk region located in Bakhmut managed to move to the Khmelnytskyi Appellate Court all equipment, server, and part of case files from Bakhmut. However, the case files from Mariupol, where the premises of the Appellate Court of Donetsk region were located, were not transferred¹⁴⁵.
119. If the case files were not transferred, the following options are available:
- i. if the first instance court has rendered a decision in a case on merits or terminated the proceedings therein, the interested party or the court itself may initiate a procedure of restora-

140 Law of Ukraine No. 2128-IX dated 15 March 2022 "On Amendments to Section XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and Status of Judges" to Ensure Sustainable Functioning of the Judiciary in the Time of the Non-Operation of the High Council of Justice", became effective on 22 March 2022, <https://zakon.rada.gov.ua/laws/show/2128-20#Text>.

141 Law of Ukraine No. 2461-IX dated 27 July 2022 "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding additional ways of informing about court cases and holding meetings of judges during the martial law or the state of emergency", became effective on 19 August 2022, <https://zakon.rada.gov.ua/laws/show/2461-20/card4#History>.

142 "Courts in evacuation: how the war has changed the map of Ukrainian courts (infographic)", 3 April 2023, <https://mipl.org.ua/sudy-v-evakuacziyi-yak-vij-na-zminyala-kartu-sudiv-ukrayiny-infografika/>.

143 For instance, Order No. 268/0/15-23 dated 28 March 2023, <https://hcj.gov.ua/doc/doc/39476>.

144 "War is an emergency that has forced our judges to work differently", 24 June 2022, <https://pravo.ua/viina-ie-tiieiu-nadzvychainoiu-sytuatsiieiu-shcho-pry-musylya-nashykh-suddiv-pratsiuvaty-po-inshomu-holova-verkhovnoho-sudu-vsevolod-kniaziev/>.

145 "Courts in evacuation: how the war has changed the map of Ukrainian courts (infographic)", 3 April 2023, <https://mipl.org.ua/sudy-v-evakuacziyi-yak-vij-na-zminyala-kartu-sudiv-ukrayiny-infografika/>.

tion of the case file¹⁴⁶;

- ii. if none of these procedural decisions was rendered, the plaintiff should file a claim once again to the court to which the jurisdiction was changed¹⁴⁷.

120. Collaborators in the judicial system. This problem, though not publicly articulated, is still present.

121. The recommendations dated 13 March 2022 envisaged that the judges and court staff who remain on the occupied territory should avoid negotiations with the occupiers and reject any offers of co-operation. Since 15 March 2022, collaboration became a criminal offence under Ukrainian law¹⁴⁸.

122. As reported by the Chair of the HCJ in February 2023 (i) there is no accurate information on the number of collaborators among judges; (ii) there are cases of collaboration and each of them requires a detailed investigation to define whether the cooperation was voluntary or under the duress; (iii) the cases of collaboration are rare¹⁴⁹. As of April 2023, the SJA has no such information either¹⁵⁰. It was reported in October 2022 about «up to a dozen of such cases» among judges¹⁵¹.

123. It should be pointed out that not all judges have been able to leave the territories falling under the control of the Russian Federation¹⁵². If there is no contact with a judge in the occupied territory, the assembly of judges decides to suspend the payment of their remuneration¹⁵³. Notably, there is no explicit provision allowing doing so before the HCJ suspends or dismisses such judge.

124. Indeed, since 24 February 2022 there is some information available regarding collaborators in the judicial system. It becomes official only when the prosecuting authorities announce the initiation of criminal proceedings against judges and court staff, as for instance, against:

- i. Larysa Bohomolova from Berdianskyi City District Court of Zaporizhzhia region¹⁵⁴;
- ii. Iryna Ukhanyova from Vovchanskyi District Court of Kharkiv region¹⁵⁵;
- iii. Olena Ivanova, president of the Novoaidar District Court of Luhansk region¹⁵⁶;
- iv. Volodymyr Kupin from Balakliyskyi District Court of Kharkiv region¹⁵⁷;
- v. unnamed judge and chief of the court staff of the occupied local court in the Luhansk region¹⁵⁸.

125. Meanwhile, the situation differs with Ukrainian judges in territories occupied since 2014. As one comprehensive report states:

- i. there are grounds to believe that out of the 488 judges who held office in Crimea 436 collaborated with the occupation authorities, i.e., took up the position of a «judge» of a «court» established by them, expressed willingness to take up the position or continued their legal career in another field there;

¹⁴⁶ Section X of the Civil Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1618-15#Text>; Section VIII of the Commercial Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1798-12#Text>; Section V of the Code of Administrative Procedure of Ukraine, <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

¹⁴⁷ "How to restore a court case left in the occupied territory?", 26 March 2022, <https://zib.com.ua/ua/151014.html>.

¹⁴⁸ Law of Ukraine No. 2108-IX dated 3 March 2022 "On Amendments to Certain Legislative Acts of Ukraine on Criminalisation of Collaboration Activity", <https://zakon.rada.gov.ua/laws/show/2108-20#Text>.

¹⁴⁹ "Chief of the HCJ: We do not have accurate information about judges-collaborators", 16 February 2023, <https://interfax.com.ua/news/general/891701.html>.

¹⁵⁰ The SJA letter No. 16-5070/23 dated 27 April 2023.

¹⁵¹ Interview with the Chief of the SCJ, 6 October 2022, https://censor.net/ua/resonance/3372008/golova_verhovnogo_sudu_vsevolod_knyazyev_z_vlasnoyi_init-siatyvy_za_zvernuvsya_do_slujby_bezpeky_ukrayiny.

¹⁵² The Ukrainian judicial system in a time of armed conflict. Briefing paper. November 2022, p. 27. Para. 3.7, https://icj2.wpenginepowered.com/wp-content/uploads/2022/11/The_Ukrainian_Judicial_System_in_a_Time_of_Armed_Conflict_ICJ_briefing_paper_2022.pdf.

¹⁵³ Interview with the Chief of the HCJ, 16 February 2023, <https://interfax.com.ua/news/interview/891705.html>.

¹⁵⁴ 27 April 2023, <https://www.pravda.com.ua/news/2023/04/27/7399717/>.

¹⁵⁵ 6 September 2022, <https://dbr.gov.ua/news/dbr-prityague-do-vidpovidalnosti-zradnikiv-ukraini-suditimut-suddyu-z-harkivshhini-shhe-odnomu-ekspravoo-horoncyu-povidomleno-pro-pidozru>; see also, https://censor.net/ua/news/3365402/golovu_vovchanskogo_rayionnogo_sudu_harkivschyny_uhanovu_sudytymut_za_derjavnu_zradu.

¹⁵⁶ <https://m.facebook.com/dejurefoundation/posts/1917798328426250/>.

¹⁵⁷ <https://www.chesno.org/traitor/1641/>.

¹⁵⁸ 4 April 2022, <https://www.gp.gov.ua/ua/posts/suddi-ta-kerivniku-aparatu-rajsudu-na-luganshchini-povidomleno-pro-pidozru-u-derzavnii-zradi>.

- ii. 326 judges who held office in Crimea were officially charged by Ukrainian authorities. Among them only 16 criminal proceedings were pending before Ukrainian courts and only 5 verdicts have already been rendered as of February 2020;
 - iii. there are grounds to believe that 76 judges who held positions in courts in the occupied territories of Donetsk and Luhansk regions collaborated with the occupation authorities;
 - iv. 33 judges who held office in the occupied territories of Donetsk and Luhansk regions were officially charged by Ukrainian authorities. Among them, 19 criminal proceedings were pending before Ukrainian courts and only 2 verdicts have already been rendered as of February 2020¹⁵⁹.
126. In 2023, Ukrainian prosecutors intensified their efforts to expedite the criminal prosecution of such judges. In particular, a number of trials against Crimean judges commenced in February-April 2023 alone¹⁶⁰.
- 127. Russia's attempts to create its own «courts» on the occupied territories.** Russia established the following «courts» in occupied Crimea at the end of 2014: the «Supreme Court of the Republic Crimea», «Sevastopol city court», 28 «district and city courts of general jurisdiction», «commercial courts», «military courts» and «magistrate judges». Between December 2014 and April 2015 15 «courts of general jurisdiction», two «specialised courts» and the «Supreme Court» started operating on certain occupied territories of Donetsk and Luhansk regions¹⁶¹.
128. At the end of 2022, appeared the first news on Russia's attempts to institute courts on certain territories of the four occupied Ukrainian regions (Donetsk, Luhansk, Kherson and Zaporizhzhia)¹⁶². In April 2023, the Russian Federation adopted 8 laws aiming to establish «courts» on these Ukrainian territories as part of the Russian judicial system¹⁶³:
- i. 39 «courts» of general jurisdiction, the «Supreme Court of the Donetsk People's Republic», the «Commercial Court of the Donetsk People's Republic», the «Donetsk military court»¹⁶⁴;
 - ii. 31 city and district «courts» of general jurisdiction, the «Supreme Court of the Luhansk People's Republic», the «Luhansk People's Republic Arbitration Court», and the «Luhansk military court» in the «Luhansk People's Republic»¹⁶⁵;
 - iii. 14 «courts» of general jurisdiction, the «Commercial court of Kherson region» and «Kherson military court» in the occupied territories of Kherson region¹⁶⁶;
 - iv. 6 «courts» of general jurisdiction, the «Commercial court of Zaporizhzhia region» and «Zaporizhzhia military court» in the occupied territories of Zaporizhzhia region¹⁶⁷.
129. On 5 April 2023, the HCJ officially stated that (i) «judgements of fake courts established in the occupied territories will be considered null and void» and (ii) «voluntary holding of office in these «courts» by Ukrainian citizens may constitute collaboration»¹⁶⁸.
130. There is little information about the operation of the abovementioned newly established «courts». In Donetsk and Luhansk regions there is some infrastructure for the institution of so-called «courts» where some of them have been operating since 2014-2015. However, the launch of «courts» in Kherson and Zaporizhzhia regions happened much more slowly¹⁶⁹.

159 "The werewolves in robes", May 2021, Dejure, <https://dejure.foundation/library/perevertni-v-mantiyakh#rec296935905>.

160 <https://ark.gp.gov.ua/news.html? m=publications& t=rec&id=332486>, <https://ark.gp.gov.ua/news.html? m=publications& t=rec&id=328850&fp=20>, <https://ark.gp.gov.ua/news.html? m=publications& t=rec&id=327296&fp=40>.

161 "The werewolves in robes", May 2021, Dejure, <https://dejure.foundation/library/perevertni-v-mantiyakh#rec296935905>.

162 30 November 2022, "Russians plan to 'legalise' repression in the temporarily occupied territories", <https://sprtyv.mod.gov.ua/2022/11/30/rosiya-ny-planuvut-legalizuvaty-represiyi-na-tymchasovo-okupovanyh-terytoriyah/>.

163 "Putin signs laws establishing courts in new regions", 3 April 2023, <https://eurasia.expert/putin-podpisal-zakony-o-sozdanii-sudov-v-novykh-regionakh/>.

164 <https://www.garant.ru/hotlaw/federal/1616921/>.

165 <https://www.garant.ru/hotlaw/federal/1616922/>.

166 <https://www.garant.ru/hotlaw/federal/1616924/>.

167 <https://www.garant.ru/hotlaw/federal/1616923/>.

168 5 April 2023, <https://hcj.gov.ua/news/zavava-vrp-u-zvyazku-z-povidomlennamy-shchodo-stvorennya-psevodosudiv-na-tymchasovo-okupovanyh>.

169 "Russians are preparing to launch a fake "justice" system in Zaporizhzhia and Kherson regions", 19 January 2023, <https://investigator.org.ua/ua/to-wnews/250827/>.



3) Statistics of delivery of justice

131. Based on the official statistical data provided by the SJA (for the first and second instance courts), the SC and HACC, the quantitative and qualitative indicators of the delivery of justice in 2022 are available. Comparing these statistics with the ones for 2021, one may notice the following trends:

- i. the number of incoming cases has decreased significantly;
- ii. the number of pending cases as of the end of relevant periods has decreased, while the length of proceedings has increased;
- iii. clearance rate has increased (significantly within the SC - 107.9% in 2022¹⁷⁰ while in 2021 this indicator was only 77.9%¹⁷¹).

132. These trends could be explained by the fact that in war circumstances people litigated less and the courts were not able to comply with procedural deadlines in the 2021 calendar year. At the same time, some decrease in incoming cases allowed increasing the ratio of resolved cases. There is still a significant backlog as of the end of 2022.

133. Detailed information is presented in the table below.

Instance and jurisdiction		number of incoming cases ¹⁷² in a given year (both new and not resolved in the previous periods)		number of pending cases at the end of the period (31 December)		clearance rate (the ratio of the number of resolved cases over the number of incoming cases in a given year)		length of proceedings (the time (in days) needed to resolve a case in court)	
		2021	2022	2021	2022	2021	2022	2021	2022
calendar year		2021	2022	2021	2022	2021	2022	2021	2022
1st ¹⁷³	civil	1 477 533	916 035	337 465	231 177	77.2% ¹⁷⁴	105.5% ¹⁷⁵	90	100
	criminal	1 079 113	738 651	133 718	110 637	87.6% ¹⁷⁶	99.5% ¹⁷⁷	54	39
	administrative offences	980 201	780 319	97 342	79 720	90.1% ¹⁷⁸	89.8% ¹⁷⁹	28	31
	administrative (local courts)	48 366	30 612	11 627	8 228	76% ¹⁸⁰	73.1% ¹⁸¹	93	99
	administrative ¹⁸²	635 664	523 042	176 310	119 471	88.2%	111.7%	78	112
	commercial	145 666	107 761	34 625	34 168	98.2%	97.6%	92	129
2nd	civil	108 378	75 887	26 989	23 218	75.1% ¹⁸³	101% ¹⁸⁴	89	114
	criminal	247 224	147 593	12 532	12 377	94.9% ¹⁸⁵	98.9% ¹⁸⁶	15	21
	administrative offences	31 500	26 475	3 903	3 488	87.6% ¹⁸⁷	86.8% ¹⁸⁸	47	60
	administrative	164 469	129 926	31 829	32 487	92.9%	99.1%	61	78
	commercial	34 865	22 885	7 022	6 446	98.2%	103%	99	109

¹⁷⁰ The ratio is calculated by dividing the number of resolved cases over the number of incoming cases in 2022: $70\,883 / 65\,707 \times 100 = 107.9\%$.

¹⁷¹ The ratio is calculated by dividing the number of resolved cases over the number of incoming cases in 2022: $101\,367 / 130\,048 \times 100 = 77.9\%$

¹⁷² "Cases" refers not only to proceedings commenced based on the statements of claims ("позовні заяви") but also to other procedural applications prescribed by the procedural legislation in the relevant jurisdiction and instance. For example, in the first instance court of civil jurisdiction "cases" include applications for summary procedure, applications for establishment of legal facts, applications for recognition of foreign court decisions, and others).

¹⁷³ The statistics can be found at the following links: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022; https://court.gov.ua/inshe/sudova_statystyka/IV_kvartal_21.

¹⁷⁴ The official statistical data regarding general courts of the first and second instances, as well as of the SC, only provide the information about general ratio, i.e., the clearance rate in respect of civil, criminal and administrative cases together. Thus, we have made our own calculations of the respective ratio by the following formula: dividing the number of resolved cases over the number of incoming cases in a given year multiplied by 100. In particular, for civil cases in the first instance courts for the 2021 calendar year, the ratio is the following: $1\,140\,068 / 1\,477\,533 \times 100 = 77.2\%$.

¹⁷⁵ The clearance rate of civil cases is calculated by dividing the number of resolved civil cases over the number of incoming civil cases in a given year multiplied by 100: $684\,858 / 648\,831 \times 100 = 105.5\%$.

¹⁷⁶ $945\,395 / 1\,079\,113 \times 100 = 87.6\%$.

Instance and jurisdiction		number of incoming cases ¹⁷² in a given year (both new and not resolved in the previous periods)		number of pending cases at the end of the period (31 December)		clearance rate (the ratio of the number of resolved cases over the number of incoming cases in a given year)		length of proceedings (the time (in days) needed to resolve a case in court)	
		2021	2022	2021	2022	2021	2022	2021	2022
calendar year									
3rd ¹⁸⁹	civil	33 625	22 500	8 094	5 732	74.6% ¹⁹⁰	113.3% ¹⁹¹	N/A	N/A
	criminal	13 626	8 506	2 312	1 745	72.4% ¹⁹²	99.1% ¹⁹³	N/A	N/A
	administrative	68 339	51 886	13 649	10 247	78.8% ¹⁹⁴	107.7% ¹⁹⁵	N/A	N/A
	commercial	14 455	8 746	1 903	1 528	87.8% ¹⁹⁶	105.6% ¹⁹⁷	54	N/A
HACC	criminal	9 165	7 009	274	344	97% ¹⁹⁹	95.1% ²⁰⁰	7	10
	civil	2	5	0	0	100%	100%	115	74
	administrative	N/A	9	N/A	4	N/A	55.6% ²⁰¹	N/A	14

177 628 014 / 631 350 x 100 = 99.5%.

178 882 859 / 980 201 x 100 = 90.1%.

179 700 599 / 780 319 x 100 = 89.8%.

180 36 739 / 48 366 x 100 = 76%.

181 22 384 / 30 612 x 100 = 73.1%.

182 By local administrative courts.

183 81 389 / 108 378 x 100 = 75.1%.

184 52 669 / 52 118 x 100 = 101%.

185 234 692 / 247 224 x 100 = 94.9%.

186 135 216 / 136 750 x 100 = 98.9%.

187 27 591 / 31 500 x 100 = 87.6%.

188 22 987 / 26 475 x 100 = 86.8%.

189 https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zvi/1_Zvit_1_VS_2022.pdf;
https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zakonodastvo/1_Zvit_1_VS_2021.pdf.

190 25 084 / 33 625 x 100 = 74.6%.

191 16 321 / 14 402 x 100 = 113.3%.

192 9 862 / 13 626 x 100 = 72.4%.

193 6 139 / 6 194 x 100 = 99.1%.

194 53 868 / 68 339 x 100 = 78.8%.

195 41 225 / 38 292 x 100 = 107.7%.

196 12 550 / 14 455 x 100 = 87.8%.

197 7 197 / 6 818 x 100 = 105.6%.

198 https://hcac.court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-O_2021.pdf; https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-O_2022.pdf.

199 8 891 / 9 165 x 100 = 97%.

200 6 665 / 7 009 x 100 = 95.1%.

201 5 / 9 x 100 = 55.6%.

V. INSTITUTIONAL ISSUES NOT SPECIFICALLY RELATED TO SAFETY PROBLEMS

134. Along with the consequences of war, the judicial system has been affected by serious institutional problems. Some of them were resolved during 2022-2023. For instance, the HCJ resumed its operation in January 2023, the selection of the new members of the HQCJ was completed on 1 June 2023. At the same time, such problems as the staff crisis and insufficient financing have only been intensifying. There is also an urgent need in restoring trust in the Ukrainian judiciary which has been weakened by the series of scandals within the judiciary

A. Worsening crisis with the staff

135. The courts of the first and second instances are severely understaffed with judges:

- i. As of 3 April 2023, there are 1 903 vacant positions of judges out of 6 490 judicial posts²⁰². 856 judges had no powers to administer justice (due to the transition from 5 year-terms of the first appointment to lifetime appointment of judges introduced in 2016, the disruption of the courts' operation due to occupation or active hostilities)²⁰³.

136. In January-May 2023, the HCJ dismissed 168 judges under general conditions:

- i. 157 judges were dismissed due to retirement allowing them to receive monthly lifetime allowance (approximately UAH 96 000 on average²⁰⁴, i.e., approx. EUR 2 400 at the exchange rate as of May 2023), including (1) 77 judges of local courts; (2) 64 judges of appellate courts; (3) 10 justices of the SC;
- ii. 11 judges have voluntarily resigned without monthly lifetime allowance, including 10 judges of local courts and 1 SC justice²⁰⁵.

202 Information from HQCJ in letter No. 28-390/23 dated 5 April 2023. The data **does not include the courts**, operation of which is suspended due to temporary occupation, and jurisdiction of which have been changed accordingly.

203 Information from HQCJ in letter No. 28-390/23 dated 5 April 2023. The data **includes the courts**, operation of which is suspended due to temporary occupation, and jurisdiction of which have been changed accordingly.

204 Publication, 8 June 2023, <https://www.epravda.com.ua/publications/2023/06/8/700937/>.

205 "Since the beginning of 2023, 168 judges have been dismissed", 7 June 2023, <https://hcj.gov.ua/news/z-pochatku-2023-roku-zvilneno-168-suddiv>.

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137. In a period between 1 January 2021 and 20 April 2023, 330 judges retired from their positions²⁰⁶. This systematic retirement of judges is expected to continue, which is one more challenge for the functioning of the judiciary.
138. Understaffing results in the impossibility to deliver justice in certain courts, especially in the first instance courts located in small towns. It has also a negative impact on the quality of judicial decisions. The SJA and the HCJ are trying to mitigate this problem by way of seconding judges to these courts. As of 19 May 2023, the secondment was necessary for operation of 23 courts, but the judges have given their consent to be seconded only to 10 courts²⁰⁷.
139. The Ministry of Finance of Ukraine reported that as of 1 January 2023 there were 41 209 positions in all bodies of the judicial system, including the CCU, of which 9 960 remained vacant (24.2%). As to the court support staff of the first and appellate courts there were 27 811 positions,²⁰⁸.

According to the latest available data from the SJA, as of early June 2023, there were 2 351 vacant positions of the support staff in the first instance courts, and 585 – in the appellate courts²⁰⁹.

140. During martial law, the competition for vacant positions of the court support staff is simplified²¹⁰. However, given the migration, safety issues, huge overload, and low salaries, the crisis with the support staff is expected to worsen.
141. Notwithstanding this background, in December 2022, the SC commenced a process of reduction of 330 support staff position, justifying it with a need to reduce costs of its operation²¹¹. 104 SC employees have been dismissed as of 4 April 2023²¹².

B. Financing of the judicial system and the Constitutional Court of Ukraine

- 142. «Persistent» problems of judicial system financing.** All courts in Ukraine are financed from the state budget of Ukraine²¹³. This is a legislative guarantee to ensure the proper functioning of the judiciary²¹⁴. But in practice, this guarantee is not fully effective.
143. As reported by the SJA, the rate of meeting the financial needs of the first instance, appellate courts and the SJA's bodies in the state budget was 63.4% in 2022 and only 51.4% in 2023²¹⁵. The SJA's financial needs in 2022 were approx. UAH 26.7 billion (EUR 685.5 million), while the funding received amounted only to approx. UAH 16.9 billion (EUR 433.9 million)²¹⁶.
144. At the same time:
- i. the rate of meeting the financial needs of the HACC in the state budget was 85.2% in 2022 and only 82.6% in 2023²¹⁷;

206 The HCJ letter No. 3468/O/9-23 dated 24 April 2023.

207 H. Usyk presentation, https://hcj.gov.ua/sites/default/files/field/prezentaciya_vrp_final.pdf.

208 Ministry of Finance of Ukraine dashboard, 14 March 2023, https://mof.gov.ua/uk/news/derzhavna_sluzhba_v_ukraini_maie_buti_efektivnoiu_ta_iakisnoiu_zastupnik_ministra_finansiv_roman_iermolichev-3882.

209 "Current vacancies in the appellate and local courts of Ukraine", https://dsa.court.gov.ua/dsa/inshe/vacancy_court_23/.

210 Article 10(5) of the Law of Ukraine No. 389-VIII dated 12 May 2015 "On the legal regime of martial law", <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

211 "The Supreme Court Plenum approves the structure and personnel list of the Supreme Court staff and the budget request for 2023", 12 December 2022, <https://supreme.court.gov.ua/supreme/pres-centr/news/1357160/>.

212 The SC letter No. 1674/O/2-23 dated 11 April 2023.

213 Article 148(1) of the Law, <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

214 Article 17(4)(7) of the Law, <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

215 The SJA letter No. 16-5069/23 dated 27 April 2023.

216 The SJA letter No. 16-5069/23 dated 27 April 2023.

217 The HACC letter No. 03.10-01/32/2023 dated 6 June 2023.

- ii. the rate of meeting the financial needs of the SC in the state budget was 62.4% in 2022 and is 92.1% in 2023²¹⁸;
 - iii. the CCU received approx. UAH 282.418 million (EUR 7.25 million) of budget financing in 2022 and approx. UAH 270.689 million are expected in 2023 (EUR 6.9 million)²¹⁹, while the financial needs amounting to approx. UAH 458.355 million (EUR 11.77 million) in 2022 and approx. UAH 365.696 million in 2023²²⁰.
145. As reported by the European Commission for the Efficiency of Justice (CEPEJ) based on the last available data for the 2020 calendar year, the spending for courts in Ukraine is only EUR 12,53 per inhabitant. It remains considerably below the Council of Europe median, which is EUR 43.53 per inhabitant²²¹.
146. In June 2021, a comprehensive «Analysis of state funding of the judicial system of Ukraine for the period 2018-2021» under the auspices of the Council of Europe was conducted. The main problems identified in that analysis are also relevant for the period from 2022 to 2023. Those are, in particular:
- i. underfunding of certain critical SJA expenditures (e.g., postage services and salaries of the court staff);
 - ii. many drawbacks in the current «model» of expenditure planning (it does not take into account the minimum cost of the case; significant differences in the planned and actual model cases occur in practice etc.);
 - iii. low salaries of the court staff;
 - iv. delay in the permanent appointment of judges who do not administer justice but continue to receive remuneration. Similarly, the judges of the liquidated Supreme Court of Ukraine and higher specialised courts continue receiving judicial remuneration but have no judicial powers;
 - v. a significant number of subjects are exempted from paying the court fee, and there is no procedure for compensation of these funds to the judicial system from the state budget;
 - vi. problems with enforcement of court decisions on court fees²²².
147. No considerable steps to resolve any of these problems have been taken so far. Meanwhile, some new problems arose since 24 February 2022. In particular:
- i. the government introduced an additional remuneration for the Court Security Service for the period from 24 February 2022²²³ until 20 January 2023²²⁴. At the same time, no state funding was provided to the SJA to cover these payments intended for more than 4 000 employees²²⁵. Hundreds of claims are submitted to the courts. The SC has recently rendered a precedential decision in favour of the Court Security Service employees²²⁶. The estimated amount of debt under the filed claims is UAH 1.152 billion (EUR 29.5 million)²²⁷;
 - ii. the government also increased the basic salary²²⁸ for all the employees of the state authorities whose place of work is located in areas of active or possible hostilities. The basic salaries are

218 The SC letter No. 2457/0/2-23 dated 5 June 2023.

219 According to the official exchange rate of the National Bank of Ukraine as of 1 June 2023.

220 The CCU letter No. 001-16/3-19/2309 dated 26 May 2023.

221 European judicial systems – CEPEJ Evaluation Report – 2022 Evaluation cycle, p. 136, <https://rm.coe.int/cepej-fiche-pays-2020-22-e-web/1680a86276>.

222 “Analysis of state funding of the judicial system of Ukraine for the period 2018-2021”, June 2021, pp. 33-36, <https://rm.coe.int/analysis-state-financing-of-the-justice-system-of-ukraine-2018-2021-uk/1680a47d88>.

223 Resolution of the Cabinet of the Ministers of Ukraine No. 168 dated 28 February 2023, <https://zakon.rada.gov.ua/laws/show/168-2022-%D0%BF/ed20220228#Text>.

224 Resolution of the Cabinet of the Ministers of Ukraine No. 43 dated 20 January 2023, <https://zakon.rada.gov.ua/laws/show/43-2023-%D0%BF#Text>.

225 “Debts to employees of the Court Security Service of UAH 1.2 billion will lead to a financial collapse of the judiciary – SJA”, 17 April 2023, <https://sud.ua/uk/news/publication/267571-dolgi-pered-rabotnikami-sluzhby-sudebnoy-okhrany-v-12-mlrd-griven-privedit-k-finansovomu-kollapsu-sudebnoy-vlasti-gsa>.

226 The SC decision in Case No. 260/3564/22 dated 6 April 2023, https://supreme.court.gov.ua/supreme/inshe/zrazkovi_spravu/zs_990_4_22.

227 “Debts to employees of the Court Security Service of UAH 1.2 billion will lead to a financial collapse of the judiciary – SJA”, 17 April 2023, <https://sud.ua/uk/news/publication/267571-dolgi-pered-rabotnikami-sluzhby-sudebnoy-okhrany-v-12-mlrd-griven-privedit-k-finansovomu-kollapsu-sudebnoy-vlasti-gsa>.

228 “Посадовий оклад” in Ukrainian, which is one of the parts of the salary of a civil servant.

increased to 100% and 50% respectively. This increase shall apply starting from 28 April 2023 until the end of martial law²²⁹. According to the preliminary estimations approx. UAH 332 million (EUR 8.5 million) is needed to cover these payments to the court staff, but the SJA has only UAH 60 million (EUR 1.5 million)²³⁰. Since the government's position is that the SJA «should look for internal savings» for these purposes²³¹, dozens of new claims may arise in the nearest future.

148. Financing of salaries within the Ukrainian judicial system. The principal expenditure line within the judicial system is the salaries. The share of these «personnel costs» is only increasing (64% in 2018, 67% in 2019, 77% in 2020, 80% in 2021, 79% in 2022, and 80% in 2023)²³². A major part of this expenditure is payment of judicial remuneration alone. The following numbers are representing the situation within the local and appellate courts²³³:

Year	Judicial remuneration (percentage from all budget financing)	Judicial remuneration (approx. amount in UAH, billion)	Salary of the court staff (percentage from all budget financing)	Salary of the court staff (approx. amount in UAH, billion)
2021	52%	9.2	28%	4.8
2022	51%	8.7	28%	4.7
2023	51%	8.8	29%	5

149. The numbers representing the HACC²³⁴, the SC²³⁵ and the CCU²³⁶ are the following:

	Judicial remuneration (percentage from all budget financing)			Judicial remuneration (approx. amount in UAH, million)			Salary of the court staff (percentage from all budget financing)			Salary of the court staff (approx. amount in UAH, million)		
	HACC	SC	CCU	HACC	SC	CCU	HACC	SC	CCU	HACC	SC	CCU
2021	17.5%	36.5%	N/A	89.3	755.7	66.7	27.7%	38.7%	N/A	141.2	801.6	131.5
2022	15.6%	43.1%	N/A	92.3	726	68.9	27.1%	41.5%	N/A	160.7	698.9	127.7
2023 ²³⁷	31.5%	39.2%	N/A	92.4	749.4	14.6 ²³⁸	46.5%	33.6%	N/A	136.5	641.4	21.9 ²³⁹

150. As can be inferred from the above data, the percentage is near the same level within the SC. In comparison, the HACC and the CCU spend more on the court staff. The latter can be explained by the fact that these courts have relatively small number of judges (38 judges at the HACC and 13 at the CCU as of 31 December 2022²⁴⁰).

229 Resolution of the Cabinet of the Ministers of Ukraine No. 391 dated 25 April 2023, <https://zakon.rada.gov.ua/laws/show/391-2023-%D0%BF#Text>.

230 "The Ministry of Finance advises the SJA to look for funds in its own reserves to pay salaries increased by the Cabinet of Ministers to court staff in the area of hostilities", 5 May 2023, <https://sud.ua/uk/news/publication/269463-minfin-sovetuet-gsa-poiskat-v-sobstvennykh-rezervakh-sredstva-na-vyplatu-povyshen-nykh-kabminom-okladov-rabotnikam-apparatov-sudov-v-zone-boevykh-deystviy>.

231 "The Ministry of Finance advises the SJA to look for funds in its own reserves to pay salaries increased by the Cabinet of Ministers to court staff in the area of hostilities", 5 May 2023, <https://sud.ua/uk/news/publication/269463-minfin-sovetuet-gsa-poiskat-v-sobstvennykh-rezervakh-sredstva-na-vyplatu-povyshen-nykh-kabminom-okladov-rabotnikam-apparatov-sudov-v-zone-boevykh-deystviy>.

232 "Analysis of state funding of the judicial system of Ukraine for the period 2018-2021", June 2021, p. 40, <https://rm.coe.int/analysis-state-financing-of-the-judicial-system-of-ukraine-2018-2021-uk/1680a47d88>; the SJA letter No. 16-5069/23 dated 27 April 2023.

233 The SJA letter No. 16-5069/23 dated 27 April 2023.

234 The HACC letter No. 03.10-01/32/2023 dated 6 June 2023.

235 The SC letter No. 2457/0/2-23 dated 5 June 2023.

236 The CCU letter No. 001-16/3-19/2309 dated 26 May 2023.

237 Planned for the whole 2023 calendar year, except for numbers regarding the CCU.

238 For the first quarter of the 2023 calendar year.

239 For the first quarter of the 2023 calendar year.

240 "Regarding the report of the High Qualification Commission of Judges of Ukraine for 2022", 13 January 2023, <https://vyksu.gov.ua/news/stosovno-zvitu-vysh-choyi-kvalifikacynoyi-komisiyi-suddiv-ukrayiny-za-2022-rik>.

Judges, official website of the CCU, <https://ccu.gov.ua/judge/1844>.

151. According to the European Commission for the Efficiency of Justice based on the last available data for the 2020 calendar year, the average gross salary of Ukrainian judges is (i) **6.8 times** higher at the beginning of their career and (ii) **21.6 times** higher at the SC than the national average gross salary in 2020²⁴¹. It was one of the highest indicators among all assessed countries. In the majority of the states and entities, judges' remuneration ranges from **1.5 times to 3.5 times** the average salary at the beginning of their career and from **2.5 times to 6.5 times** the average salary at the end of their career²⁴².
152. There is a huge difference between the salaries of judges and court staff. There is no correlation whatsoever between the salary of a judge and his/her office staff. Moreover, the court staff salary is governed in bylaws, while the judge's remuneration is guaranteed by Law.
153. There is a legislative initiative suggesting that (i) the minimum basic salary of court staff is defined in Law and (ii) the basic salary of the judge's assistant shall be at least 25% of the judge's remuneration and a basic salary of other court staff – at least 20%²⁴³. However, the respective draft law had not been enacted as of early June 2023.
154. The average monthly remuneration of the judges and salary of the court staff (**gross**) are presented in the table below²⁴⁴:

	2021	2022	2023
Judges of 1st instance, amount in UAH	109 050 (approx. EUR 3 527)	100 614 (approx. EUR 2 583)	109 011 (approx. EUR 2 791)
Court staff of 1st instance amount in UAH	14 291 (EUR 462)	14 403 (EUR 369.77)	12 940 (EUR 331)
Judges of 2nd instance amount in UAH	223.570 (approx. EUR 7 230)	206 076 (approx. EUR 5 291)	214 600 (approx. EUR 5 495)
Court staff of 2nd instance amount in UAH	16 019 (EUR 518)	15 389 (EUR 395)	13 400 (EUR 343)
SC judges amount in UAH	351 797 (approx. EUR 11 377)	339 890 (approx. EUR 8 726)	347 829 ²⁴⁵ (approx. EUR 8 906)
SC staff amount in UAH	46 197 (approx. EUR 1 494)	41 871 (approx. EUR 1 075)	33 650 ²⁴⁶ (EUR 862)
HACC judges amount in UAH	179 758 (approx. EUR 5 813)	186 171 (approx. EUR 4 780)	191 732 ²⁴⁷ (approx. EUR 4 909)
HACC staff amount in UAH	35 138 (approx. EUR 1 136)	40 002 (approx. EUR 1 027)	34 222 ²⁴⁸ (EUR 876)
CCU judges amount in UAH	385 750 (approx. EUR 12 475)	374 400 (approx. EUR 9 612)	373 810 ²⁴⁹ (approx. EUR 9 571)
CCU staff amount in UAH	43 860 (approx. EUR 1 418)	43 200 (approx. EUR 1 109)	33 240 ²⁵⁰ (EUR 851)

241 European judicial systems - CEPEJ Evaluation Report - 2022 Evaluation cycle, Figure 3.46, p. 80, <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>.

242 European judicial systems - CEPEJ Evaluation Report - 2022 Evaluation cycle, p. 81, <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>.

243 Draft Law No. 6311 dated 16 November 2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73208.

244 The SJA letter No. 16-5069/23 dated 27 April 2023.

245 Monthly average during January-May 2023.

246 Monthly average during January-May 2023.

247 Estimated for the 2023 calendar year.

248 Estimated for the 2023 calendar year.

249 Monthly average during January-March 2023.

250 Monthly average during January-March 2023.

155. It should be noted that the net remuneration/salary is 19.5% less than the mentioned amounts due to deductions for personal income tax and military duty. Also, the calculation of these average numbers includes (1) health improvement allowance for judges which is paid once a year in the amount of an average monthly salary when a judge takes the major part of vacation²⁵¹; (2) the same allowance for the court staff²⁵² and, if funds are available, financial support for solving social and household issues in the amount of an average monthly salary for the court support staff only²⁵³. As these are one-time payments, the actual monthly salaries during most periods of the year are lower.
156. The above numbers indicate that (i) the first instance judges receive two times less than the appellate court judges and three times less than the SC judges; (ii) the court staff of the first instance and appellate courts are seriously underpaid compared to the CCU, the HACC and the SC staff.
157. Moreover, the average salary of the court staff in various local courts may significantly vary. In many courts an average monthly salary of the court support staff is less than UAH 6 000 (approx. EUR 150 at the exchange rate as of May 2023)²⁵⁴. On 10 April 2023, a petition was registered on the website of the President of Ukraine concerning the critical situation arising from the exodus of human resources from the judiciary due to the extremely low remuneration for court session secretaries and assistant judges. As of early June 2023, the petition has collected 20 000 signatures out of 25 000 required for further consideration²⁵⁵. On 26 April 2023, employees of various local courts issued a public video statement emphasising the urgent need for increasing their monthly salaries²⁵⁶.
158. It is worth noting that many judges invest their personal funds to ensure the continuity of the judicial system by purchasing, for instance, paper and office supplies etc²⁵⁷. Also, some of them pay an «informal» part of the salary to their assistants²⁵⁸, which is the only way to keep them within the judicial system.
159. Since the beginning of Russia's full-scale invasion of Ukraine, judges and members of the HCJ have financially supported the Armed Forces of Ukraine by transferring part of their remuneration. Judges of local and appellate courts have donated over UAH 590 million, judges of the SC – over UAH 350 million, and members of the HCJ – over UAH 3 million, which totals over UAH 1 billion (EUR 25.6 million)²⁵⁹.
- 160. Initiatives to limit the maximum amount of salaries of judges and court staff during martial law.** On 30 March 2023, the draft law No. 9159 was registered at the parliament²⁶⁰. It proposes to introduce a cap on the remuneration (salary) during martial law of 10 minimum gross wages, which as of May 2023 is UAH 67 000 gross (approx. EUR 1 700 at the exchange rate as of May 2023). The draft law proposes to apply the ceiling to state employees, including judges, court staff, members of the HCJ and the HCCJ.
161. Meanwhile, on 10 April 2023, another draft law (No. 8312) was adopted²⁶¹. This law introduced a rule that since April 2023 and until the end of martial law, limitation of the salaries of state officials may not exceed 10 times the minimum wage established as of 1 January 2023 (the same UAH 67 000

251 Article 136 of the Law, <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

252 Article 57 of the Law of Ukraine No. 889-VIII dated 10 December 2015, <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

253 Resolution of the Cabinet of the Ministers of Ukraine No. 500 dated 8 August 2016, <https://zakon.rada.gov.ua/laws/show/500-2016-%D0%BF#Text>.

254 "Analysis of state funding of the judicial system of Ukraine for the period 2018-2021", June 2021, p. 53, <https://rm.coe.int/analysis-state-financing-of-the-justice-system-of-ukraine-2018-2021-uk/1680a47d88>.

255 Petition on the critical situation regarding the outflow of human resources from the judicial system due to the significantly low level of remuneration for the lowest level of civil servants in the general local and appellate courts, namely court secretaries and assistant judges, <https://petition.president.gov.ua/petition/189076>.

256 26 April 2023, <https://court.gov.ua/press/news/1414614/?fbclid=IwAR2GIROiyucuy-0b642QxPTe31JY0eflIMHeSXVCPfVomE8Q7-v3OPefw4>.

257 Ukrainian judge: vocation, profession, everyday life. Analytical report on the results of the study - Kyiv: Centre for Sociology of Law and Criminology, 2023, p. 24, <https://drive.google.com/file/d/1z1FOEB2zHhsQLaS3eVzPJu6lmFazsPN5/view>: "The existence of an "informal cash box" where judges save up for closure holes in the material facilities to ensure the functioning of the court is not something special. This is a fairly common practice."

258 Ukrainian judge: vocation, profession, everyday life. Analytical report on the results of the study - Kyiv: Centre for Sociology of Law and Criminology, 2023, p. 27, <https://drive.google.com/file/d/1z1FOEB2zHhsQLaS3eVzPJu6lmFazsPN5/view>: "To motivate their assistants not to quit, some judges have developed the practice of paying their assistants additional remuneration. What form this payment takes depends on the judge, but several of our respondents noted that the existence of such practice in courts is not a secret at all."

259 The decision of the HCJ dated 11 April 2023 No. 323/0/15-23, <https://hcj.gov.ua/doc/doc/39538>.

260 "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2023" to increase expenditures on payments to military personnel and their families by applying restrictions on the calculation of remuneration in the public sector during martial law", <https://itd.rada.gov.ua/billInfo/Bills/Card/41658>.

261 "On Amendments to Certain Laws of Ukraine on Improving the Legal Regulation of Issues Related to the Implementation of Measures of the Legal Regime of Martial Law", <https://itd.rada.gov.ua/billInfo/Bills/Card/41080>.

gross (approx. EUR 1 700 at the exchange rate as of May 2023)). The newly adopted law is not clear as to whether it applies to the judiciary. It may be construed in both ways.

162. On 11 April 2023, the HCJ clearly stated in its advisory opinion that the abovementioned initiatives violate the guarantees of independence of judges²⁶².
163. On 21 April 2023, the Committee on Legal Policy of the Verkhovna Rada of Ukraine issued an announcement emphasising that (i) the judicial remuneration and remuneration of judges of the CCU were regulated exclusively by the Laws of Ukraine «On the Judiciary and the Status of Judges» and «On the Constitutional Court of Ukraine» respectively; (ii) draft law No. 8312 does not amend these laws, and therefore cannot regulate or in any way change the procedure for calculating and paying judicial remuneration or remuneration of a CCU justice²⁶³. Such clarification is not binding and does not specify that the parliament would not attempt to decrease judicial remuneration by introducing new amendments to the abovementioned laws.

C. Resuming operation of the High Council of Justice

- 164. Election/appointment of the new HCJ members.** The activity of the Ethic Council became a prerequisite for resuming the HCJ operation.
165. After postponement of the interviews on 24 February 2022, the Ethics Council held online meetings on 26 April 2022 where it (i) amended its rules of procedure adjusting them to the martial law reality; and (ii) defined the dates of interviews with the **four sitting members of the HCJ**²⁶⁴.
166. On 7 May 2022, the Ethics Council completed the assessment and ruled that 3 sitting members (Oksana Blazhivska, Vitalii Salikhov, and Inna Plakhtii) met the criteria of professional ethics and integrity, while 1 sitting member (Viktor Hryshchuk) did not²⁶⁵. The powers of Viktor Hryshchuk as the HCJ member were subsequently suspended and his office was officially terminated on 22 August 2022²⁶⁶.
167. Since late May 2022, the Ethics Council resumed interviews with candidates for vacant positions of the HCJ members²⁶⁷. The Ethics Council decided not to broadcast live the interviews during martial law²⁶⁸. Until May 2023, the Ethics Council has assessed 127 candidates. 33 of them were found as meeting the criteria of professional ethics and integrity, while 53 were not. 35 remaining candidates withdrew from the selection process²⁶⁹.
168. On 15 August 2022, the parliament elected two candidates who had successfully passed the assessment by the Ethic Council as members of the HCJ (Roman Maselko and Mykola Moroz)²⁷⁰. On 19 August 2022, the Congress of Legal Scholars elected Dmytro Lukianov as a member of the HCJ²⁷¹. On 11-12 January 2023, the XIX Extraordinary Congress of Judges of Ukraine took place and elected 8 new HCJ members (Hryhorii Usyk, Yuliia Bokova, Tetiana Bondarenko, Serhii Burlakov, Olena Kovbii, Alla Kotelevets, Olha Popikova, Oleksandr Sasevych).

262 The HCJ decision No. 323/O/15-23 dated 11 April 2023, <https://hcj.gov.ua/doc/doc/39538>.

263 21 April 2023, https://www.rada.gov.ua/news/news_kom/235612.html.

264 Announcement, 25 April 2022, <https://ec.court.gov.ua/ec/pres-centr/news/1270352/>.

265 Announcement, 8 May 2022, <https://ec.court.gov.ua/ec/pres-centr/news/1273058/>.

266 "Viktor Hryshchuk dismissed from the High Council of Justice", 26 August 2022, <https://sud.ua/uk/news/publication/247753-viktor-grischuk-uvolen-iz-vysshe-go-soveta-pravosudiya>.

267 Announcement, 25 May 2022, <https://ec.court.gov.ua/ec/pres-centr/news/1277576/>.

268 "Ethics Council, war and judicial reform - why it is important to keep going", 3 August 2022, <https://www.pravda.com.ua/columns/2022/08/3/7361701/>.

269 "The Ethics Council has completed the first stage of its work and continues to work", 12 May 2023, https://lb.ua/blog/lev_kyshakevych/554928_etichna_rada_zavershila_pershiv_etap.html?fbclid=IwARIFzsgq-k4DS0vPb1dpMrZdcGpdWBWV4MzMpNve9xnPBmzqiFs8SIN5-7Q.

270 Resolution of Verkhovna Rada of Ukraine No. 2498-IX dated 15 August 2022, <https://zakon.rada.gov.ua/laws/show/2498-20#Text>.

Resolution of Verkhovna Rada of Ukraine No. 2499-IX dated 15 August 2022, <https://zakon.rada.gov.ua/laws/show/2499-20#Text>.

271 Announcement, 20 August 2022, <https://hcj.gov.ua/news/dmytra-lukyanova-obrano-chlenom-vyshchovi-rady-pravosuddya-vid-zyizdu-naukovciv>.

169. The HCJ is operational if at least 15 members are appointed (elected)²⁷². It became operational on 12 January 2023²⁷³. On 23 January 2023, Hryhorii Usyk was elected as Chair of the HCJ²⁷⁴.
170. On 28 February 2023, two more HCJ members were elected under the prosecutors' quota (Oleh Kandziuba and Oleksii Melnyk)²⁷⁵.
171. On 16 May 2023, the SC terminated the powers of the SC President, Vsevolod Kniaziev²⁷⁶. Considering this fact his powers as the HCJ member were terminated as well. On 26 May 2023 the SC elected its new President, Stanislav Kravchenko, who became the new member of the HCJ on the same day²⁷⁷.
172. As of June 2023, the HCJ is composed of **17 members**²⁷⁸. It is expected that soon the HCJ membership will reach 19 out of 21 sitting members, when (i) the Congress of Legal Scholars elects and (ii) the President of Ukraine appoints one member of the HCJ each. Most probably two seats from the Congress of Attorneys of Ukraine will remain vacant until the end of martial law²⁷⁹. The Ukrainian Congress of Attorneys talked against the participation of the Ethics Council in the selection of the HCJ members²⁸⁰.
- 173. The HCJ priority goals/major challenges.** The Chair of the HCJ, Hryhorii Usyk, communicated the following HCJ goals for the nearest future:
- i. promptly form the HCJ;
 - ii. resume disciplinary proceedings;
 - iii. resolve issues of secondment of judges to other courts;
 - iv. conduct an audit of the electronic court²⁸¹.
174. On its Strategic session, conducted on 28 March 2023, the HCJ also emphasised the following goals: ensuring uniformity of disciplinary practice; digitalisation; increasing trust in the judiciary; attaining the status of an observer at the European Networks of Councils for the Judiciary²⁸².
175. On 15 May 2023, the NABU detained Mr Kniaziev suspecting him in receiving «[a]n undue benefit of approximately USD 2.7 million»²⁸³. On 18 May 2023, the HCJ gave its consent for the detention of Mr. Kniaziev²⁸⁴. **Resuming the HCJ disciplinary function.** After the Law No. 1635-IX dated 14 July 2021²⁸⁵ entered into force on 5 August 2021, the disciplinary function of the HCJ was blocked.
176. According to the said Law, disciplinary proceedings regarding judges cannot be conducted without the appointment of disciplinary inspectors. The competition for their positions was to be announced no later than 5 August 2022. However, the HCJ was not operational and did not announce the competition within that deadline²⁸⁶.

272 Article 18 of the Law of Ukraine No. 1798-VIII dated 21 December 2016 "On the High Council of Justice", <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.

273 "The operation of the High Council of Justice has been restored", 12 January 2023, <https://hcj.gov.ua/news/vidnovleno-povnovazhnyy-sklad-vyshchovy-rady-pravosuddya>.

274 "Hryhorii Usyk is elected as Chief Justice of the High Council of Justice", 23 January 2023, <https://hcj.gov.ua/news/golovoyu-vyshchovy-rady-pravosuddya-obranyy-grygoriy-usyk>.

275 "Composition of the High Council of Justice", <https://hcj.gov.ua/rubric/sklad-vyshchovy-rady-pravosuddya-0>.

276 "The Plenum of the Supreme Court terminated the powers of the Chief of the Supreme Court Vsevolod Kniaziev as a result of a vote of no confidence", 16 May 2023, <https://court.gov.ua/eng/supreme/pres-centr/news/1423797>.

277 Announcement, 26 May 2023, <https://supreme.court.gov.ua/supreme/pres-centr/news/1428935>.

278 "Composition of the High Council of Justice", 10 June 2023, <https://hcj.gov.ua/rubric/sklad-vyshchovy-rady-pravosuddya-0>.

279 "The Ethics Council has completed the first stage of its work and continues to work", 12 May 2023, https://lb.ua/blog/lev_kyshakevych/554928_etichna_rada_zavershila_pershiy_etap.html?fbclid=IwARIFzsqg-k4DS0vPb1dpMrZdcGPdWBWV4MzMPnVe9xnPBmzqiFs8SIN5-7Q.

280 Announcement, 20 January 2022, https://unba.org.ua/news/7203-predstavniki-advokaturi-v-vrp-pishli-u-vidstavku-cherez-nezgodu-z-nekonstitucijnimi-obmezhenyami-statusu.html?fbclid=IwAR2awgJiiKOiznAsTkbpEFh8mfxTXsuRDxvJoQxylgl7XI_E2bMntnnMTbl.

281 Interview, 14 April 2023, <https://hcj.gov.ua/news/oriyentuyemosya-shcho-rishennya-pro-pryznachennya-chleniv-vkks-bude-pryynvato-do-kincyatravnya>.

282 "The HCJ members jointly determined strategic directions of activity", 28 March 2023, <https://hcj.gov.ua/news/chleniv-vrp-spiino-vyznachaly-strategichni-napryamy-diyalnosti>.

283 "NABU, SAPO expose scheme of corrupt pressure on courts", 16 May 2023, <https://nabu.gov.ua/en/news/nabu-sapo-expose-corruption-scheme-in-supreme-court/>.

284 The HCJ decision No. 494/0/15-23 dated 18 May 2023, <https://hcj.gov.ua/en/doc/doc/39723>.

285 Law of Ukraine No. 1635-IX dated 14 July 2021 "On making amendments to certain legislative acts of Ukraine regarding the procedure of election (appointment) to positions of members of the High Council of Justice and the activity of disciplinary inspectors of The High Council of Justice", <https://zakon.rada.gov.ua/laws/show/1635-20#Text>.

286 Explanatory note to the Draft Law No. 9261 dated 2 May 2023, <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1755006>.

177. To ensure that the HCJ's disciplinary function is resumed as soon as possible, the respective legislative amendments should be adopted. The Committee on Legal Policy of the Verkhovna Rada has developed the draft law No. 9261 dated 2 May 2023²⁸⁷.
178. The key proposals of this draft law are summarised further below:
- i. The Service of the Disciplinary Inspectors becomes operational once two third of inspectors are appointed. Temporarily, before the Service of the Disciplinary Inspectors becomes operational, the function of the disciplinary inspector shall be performed by the member of the Disciplinary chamber of the HCJ. This provision will allow resume consideration of the disciplinary complaints received by the previous HCJ's composition.
 - ii. Professional experience requirements for disciplinary inspectors are lowered²⁸⁸.
 - iii. Head of the Service of the Disciplinary Inspectors, its deputy, and disciplinary inspectors are to be appointed on a competitive basis even during martial law.
 - iv. The status of the disciplinary inspectors as state servicemen is increasing, which allows increasing their salary.
179. The HCJ supports the draft law No. 9261 dated 2 May 2023 having some suggestions to certain provisions. In particular, it proposes to lower even more the eligibility requirements for disciplinary inspectors²⁸⁹.
180. The issue of increasing the salary of disciplinary inspectors is of particular importance. It was reported that their salary may amount to UAH 19 000 gross (approx. EUR 490)²⁹⁰. Such amount correlates neither with the eligibility criteria, nor importance of their role in the system, nor the expected workload. The HCJ suggested that inspector's salary should be at least UAH 49 000 (approx. EUR 1 260)²⁹¹.
- 181. Performance of duties of the HCJ sitting member by an individual mobilized for military service.** One particular issue arose in respect of Olena Kovbii. She has been a sitting member of the HCJ since 12 January 2023 but also a military servicewoman since 26 February 2022. It was reported that in April 2023 Olena Kovbii was at the frontline of Bakhmut city, the most active point of war at that time²⁹². Accordingly, she was unable to carry out her duties as a sitting HCJ member on a day-to-day basis and faced constant threats to her life. For instance, she did not participate in the selection of the new HCCJ members that took place on 1 June 2023.
182. Ukrainian legislation does not provide for a specific ground to terminate a contract with a military serviceman in case of his/her election (appointment) to the HCJ as well as other judicial governance bodies. The Committee on Legal Policy of the Verkhovna Rada has developed the draft law No. 8409 dated 1 February 2023 aiming to fill this gap²⁹³. This draft law provides that military service terminates due to election (appointment) to the position of member of the HCJ.
183. The HCJ supports this draft law²⁹⁴. However, as of the end of May 2023 Verkhovna Rada had not considered it yet.

287 "On Amending Certain Laws of Ukraine on Resuming Consideration of Cases on Disciplinary Responsibility of Judges and Ensuring the Operation of the Service of Disciplinary Inspectors of the High Council of Justice", <https://itd.rada.gov.ua/billInfo/Bills/Card/41837>.

288 Instead of fifteen years of professional experience including at least eight years of being either a judge, a prosecutor, or an attorney-at-law, the Draft Law proposes to appoint the candidates with (i) at least seven years of professional experience as a judge; or (ii) at least ten years of professional experience as a prosecutor; or (iii) at least ten years of professional experience as an attorney-at-law, in particular of representation before the court or as a defence council in criminal proceedings; or (iv) at least ten years of cumulative professional experience as a judge, prosecutor or attorney-at-law.

289 The HCJ decision No. 492/0/15-23 dated 18 May 2023, <https://hci.gov.ua/doc/doc/39722>.

290 "The High Council of Justice complained about the actual impossibility of forming a service of disciplinary inspectors", 24 March 2023, <https://zn.ua/ukr/LAW/u-vishchij-radi-pravosuddja-poskarzhilis-na-faktichnu-nemozhlivist-sformuvati-sluzhbu-distsiplinarnikh-inspektoriv.html>.

291 "The High Council of Justice announced the salary to be paid to disciplinary inspectors", 8 April 2023, <https://sud.ua/uk/news/publication/266934-v-vyss-hem-sovete-pravosudiva-nazvali-zarobotnyu-platu-kotoruyu-dolzhny-poluchat-distsiplinarnye-inspektory-c73886>.

292 "The HCJ member Olena Kovbii has left her job at the High Council of Justice and gone to the frontline", 18 April 2023, <https://sud.ua/uk/news/publication/267805-chlen-vrp-olena-kovbii-zalishila-robotu-u-vischij-radi-pravosuddya-i-viyikhala-na-front>.

293 Draft law No. 8409 dated 1 February 2023, <https://itd.rada.gov.ua/billInfo/Bills/Card/41270>.

294 The HCJ decision No. 28/0/15-23 dated 7 February 2023, <https://hci.gov.ua/doc/doc/39209>.

184. Simultaneously, the resolution of this matter remains pertinent, as, in addition to the aforementioned case, 3 recently elected members of the HCJ are currently serving in the Armed Forces of Ukraine and will not be able to participate in the HCJ activities.

D. Resuming operation of the High Qualification Commission of Judges of Ukraine operation

185. Operation of the Selection Commission. The activity of the Selection Commission became a prerequisite for resuming the HCJ operation.

186. The Selection Commission officially resumed its operation on 13 July 2022²⁹⁵, yet previously some preparational actions had taken place²⁹⁶. One of the reasons for some delay, except for the war itself, was the fact that the Deputy Chair of the Commission, Ivan Mishchenko, joined the Armed Forces of Ukraine²⁹⁷.

187. The Selection Commission announced a new period for submission of the applications from 15 July 2022 to 22 August 2022²⁹⁸.

188. 301 applications were submitted from the candidates wishing to hold one of the 16 vacant positions of the HCJ members. Among the candidates admitted to the competition, 32% (96 persons) were judges, 21% (64 persons) had a mixed profile of professional activity, 17% (50 persons) were academics, 15% (45 persons) were attorneys, 3.6% (11 persons) were retired judges, 3.6% (11 persons) were prosecutors, 3% (9 persons) were representatives of law enforcement agencies, and 5% had other legal specialties²⁹⁹.

189. On 20 December 2022, the Selection Commission announced that it admitted 64 candidates to the next stage of the selection procedure (interviews)³⁰⁰. The interviews were conducted with 61 candidates (3 candidates have withdrawn their candidatures), which were broadcasted live during January-February 2023³⁰¹.

190. On 15 March 2023, the Selection Commission published the list of 32 candidates, out of which the HCJ should have appointed 16 HCJ members³⁰².

191. On 28 March 2023, the HCJ approved the Methodology for Interviewing, Selecting and Appointing Candidates to the position of member of the HCJ³⁰³. On 13 April 2023, the HCJ decided to broadcast live all interviews³⁰⁴.

192. The HCJ conducted all 31 interviews within the period from 2 May to 12 May (1 candidate, Roman Kuibida, has withdrawn from the selection process)³⁰⁵.

295 Announcement, 13 July 2022, <https://www.facebook.com/scomHCJ/>.

296 Interview with Ivan Mischenko, 8 August 2022, <https://pravo.ua/my-obyratymemo-krashchykh-z-krashchykh-osnovnyi-pryntsyyp-roboty-konkursnoi-komisii-ne-zminyvsia-ivan-mishchenko-zastupnyk-holovy-konkursnoi-komisii-z-doboru-kandydativ-u-chleny-vkks/>.

297 "There is no difference - who is a lawyer, who is a prosecutor, who is a judge - we are all united". Monologue of a Supreme Court judge taking up a machine gun", 5 March 2022, <https://graty.me/monologue/net-razniczy-kto-advokat-kto-prokuror-kto-sudya-vse-my-obedinilis-monolog-sudi-verhovnogo-suda-vzavshhego-avtomat/>.

298 Announcement, 13 July 2022, <https://www.facebook.com/scomHCJ/>.

299 Announcement, 6 October 2022, <https://www.facebook.com/scomHCJ/>.

300 Announcement, 21 December 2022, <https://hcj.gov.ua/news/konkursna-komisiya-ogolosyla-perelik-z-64-kandydativ-na-posadu-chlena-vyshchoyi>.

301 "The Selection Commission has drawn up a schedule of interviews for the position of a member of the HCJ of Ukraine for January 2023", 13 January 2023, <https://hcj.gov.ua/news/konkursna-komisiya-sklala-grafik-provedennya-spivbesidy-na-posadu-chlena-vkks-ukrayiny-na>.

"The Selection Commission has drawn up a schedule of interviews for the position of a member of the HCJ of Ukraine for February 2023", 8 February 2023, <https://hcj.gov.ua/news/konkursna-komisiya-sklala-grafik-provedennya-spivbesidy-na-posadu-chlena-vyshchoyi>.

302 "List of candidates recommended for the positions of members of the High Qualification Commission of Judges of Ukraine", 15 March 2023, <https://hcj.gov.ua/news/perelik-kandydativ-rekomendovanyh-na-posady-chleniv-vyshchoyi-kvalifikaciyoi-komisiyi-suddiv>.

303 "The High Council of Justice approved the Methodology for Interviewing, Selecting and Appointing Candidates to the Position of a Member of the High Qualification Commission of Judges of Ukraine", 28 March 2023, <https://hcj.gov.ua/news/vyshcha-rada-pravosuddya-zatverdyla-metodyku-vidboru-kandydativ-na-posadu-chlena-vkksu>.

304 Announcement, 13 April 2023, <https://hcj.gov.ua/news/spivbesidy-z-kandydatamy-na-posadu-chlena-vkksu-translyuvatymutsya-u-pryamomu-eteri>.

305 "The HCJ approved schedule of interviews with candidates for HCJ members", 20 April 2023, <https://hcj.gov.ua/news/vrp-zatverdyla-grafik-provedennya-spivbesid-iz-kandydatamy-na-posadu-chlena-vkksu>.

193. Finalising of the selection. On 1 June 2023, the HCJ openly voted for and appointed 16 members of the HQCJ, among whom there were eight judges or retired judges³⁰⁶.

194. On 6 June 2023, Roman Ihnatov was elected as a Chief of the HQCJ³⁰⁷.

195. It should be noted that 3 appointed members of the HQCJ are military servicemen. Those are Oleksii Omelian, Volodymyr Luhanskyi³⁰⁸ and Yaroslav Dukh³⁰⁹. All those members may be unable to carry out their duties as sitting HQCJ members on a day-to-day basis. This situation is similar to the one faced by Olena Kovbii and may be resolved only once the legislation is amended and provides for a specific ground to terminate a contract with a military serviceman in case of his/her election (appointment) to the HQCJ.

196. The HQCJ priority goals. The HQCJ is expected to face an enormous workload resulting from its non-operation for 3.5 years. As of 31 December 2022, there have been **uncompleted**:

- i. competition to fill 346 vacant positions of judges of appellate courts. The documents were received from 2 208 applicants;
 - ii. competition to fill 7 vacant positions of judges in local general courts of Donetsk and Luhansk regions who meet the requirements of paragraph seven of clause 13 of section III «Final and Transitional Provisions» of the Law of Ukraine «On the High Council of Justice», in which 6 candidates are participating;
 - iii. competition to fill 35 vacant positions of local court' judges who meet the requirements of the third paragraph of Section III, paragraph 13 «Final and Transitional Provisions» of the Law of Ukraine «On the High Council of Justice», in which 25 candidates are participating;
 - iv. qualification assessment of 2 009 judges;
 - v. selection of candidates for the positions of a local court judge. 368 candidates are participating³¹⁰.
197. It should be noted that the procedure for selecting judges is likely to be changed soon. A working group on improving the procedures for selecting judges has been set up under the Legal Policy Committee to develop relevant legislative amendments³¹¹.

E. Challenges to the operation of certain courts

1) Situation with the District Administrative Court of the city of Kyiv

198. Background. OACK was the largest local administrative court in Ukraine. It had jurisdiction to decide complaints/appeals filed against decisions of the major Ukrainian authorities located in Kyiv (e.g., Cabinet of Ministers of Ukraine, National Bank of Ukraine, and many others).

199. One may argue that OACK was the most notorious court in Ukraine. According to the representatives of Ukrainian civil society organisations, OACK was «considered by many as the most ill-famed

³⁰⁶ "The HCJ appointed members of the High Qualification Commission of Judges of Ukraine", 1 June 2023, <https://hcj.gov.ua/news/vrp-pryznachy-la-chleniv-vyshchovi-kvalifikacynovi-komisiji-suddiv-ukrayiny>.

³⁰⁷ "Roman Ihnatov is elected as Chief of the High Qualification Commission of Judges of Ukraine", 6 June 2023, <https://vkksu.gov.ua/news/golovoyu-vyshchovi-kvalifikacynovi-komisiji-suddiv-ukrayiny-obranany-roman-ignatov>.

³⁰⁸ "The High Council of Justice appointed 16 new members of the High Qualification Commission of Judges", 1 June 2023, <https://www.ukrinform.ua/rubric-society/3716958-visa-rada-pravosudda-priznacia-16-novih-cleniv-vkks.html>.

³⁰⁹ "The High Qualification Commission of Judges gets a new chief", 6 June 2023, <https://www.unian.ua/politics/roman-ignatov-noviy-golova-vishchoji-kvalifikacynovi-komisiji-suddiv-vkks-12284226.html>.

³¹⁰ "Regarding the report of the High Qualification Commission of Judges of Ukraine for 2022", 13 January 2023, <https://vkksu.gov.ua/news/stosovno-zvitu-vyshchovi-kvalifikacynovi-komisiji-suddiv-ukrayiny-za-2022-rik>.

³¹¹ «The procedures for selecting judges will be simplified: Committee sets up working group», 13 February 2023, <https://sud.ua/uk/news/publication/261960-protsedury-otbora-sudey-uprostat-komitet-sozdal-rabochuyu-grupu>.

court in Ukraine, as it has long been a symbol of judicial corruption»³¹².

200. Since late 2016, Pavlo Vovk, the president of OACK, and some other judges of this court have been implicated in NABU investigations related to the alleged corruption and obstruction of justice. In 2017 and 2019, NABU conducted searches at the court's premises³¹³.

201. In July 2020, NABU reported that it had sufficient grounds to believe that 7 judges of OACK headed by its president «acted as a part of a criminal organisation, which aimed to usurpate state power by establishing control over the High Qualification Commission of Judges of Ukraine and the High Council of Justice and creating deliberate obstacles to their work»³¹⁴. NABU published so-called «Vovk's tapes», which caused a public outcry. They indicated that the manner of communication of OACK judges under investigation was incompatible with the position of a judge.

202. In March 2021, NABU further reported that «the OACK president and judges have repeatedly avoided the pre-trial investigation, breached their procedural duties, and thus effectively impeded the completion of the investigation»³¹⁵.

203. On 17 June 2022, NABU sent the investigation files to HACC for prosecution (case No. 991/2030/22)³¹⁶. It was reported in May 2023 that there is no significant development in the consideration of this case. It is expected that delivering a judgment in this case may take years³¹⁷.

204. OACK liquidation and subsequent problems. On 13 April 2021, the President of Ukraine registered a draft law No. 5369 on the liquidation of OACK³¹⁸. The draft law was not voted for by Parliament until December 2022. On 9 December 2022, the U.S. Department of State sanctioned the OACK president (Pavlo Vovk) «for soliciting bribes in return for interfering in judicial and other public processes. As part of this action, two immediate family members were also sanctioned»³¹⁹.

205. Shortly after, on 13 December 2022, draft law No. 5369 was adopted and became effective on 15 December 2022³²⁰. That law envisaged that up until a new Kyiv City District Administrative Court is established, all remaining and new cases of OACK should be considered by the Kyiv District Administrative Court (it has jurisdiction over Kyiv region and is located in Kyiv). The OACK judges lost powers to administer justice but retained their status as judges.

206. According to OACK, over **60 000 cases** were pending before the court as of mid-December 2022³²¹. Those cases should have been transferred to the Kyiv District Administrative Court within 10 days (i.e., by 25 December 2022). However, only 8 825 cases have been transferred as of 17 March 2023³²². Kyiv District Administrative Court is composed of only 23 judges, which is twice less than the liquidated OACK³²³. Thus, huge delays in considering the remaining cases are expected. Ukrainian MPs are considering adopting a draft law that would allow the transfer of OACK's cases to other local administrative courts located near Kyiv³²⁴.

312 "Liquidation of the DACK", 17 December 2022, <https://www.kyivpost.com/post/5838>.

313 "NABU conducts searches in District Administrative Court of the city of Kyiv in case of illegal enrichment of its Chief", 26 May 2017, <https://nabu.gov.ua/news/novyny-nabu-zdiysnyuye-obshuky-v-okruzhnomu-adminsudi-kyveva-u-spravi-pro-nezakonne-zbagachennya/>.

"Clarification on the searches in the District Administrative Court of the city of Kyiv", 26 July 2019, <https://nabu.gov.ua/news/novyny-rozysnennya-shhodo-obshukiv-v-okruzhnomu-adminsudi-kyveva/>.

314 "Abuses in the KDAC: new episodes", 17 July 2020, <https://nabu.gov.ua/news/novyny-zlovzhyvannya-v-OACK-novi-epizody/>.

315 "Abuses in KDAC: materials are open", 17 March 2021, <https://nabu.gov.ua/news/novyny-zlovzhyvannya-v-oask-materialy-vidkryto/>.

316 "Abuses in KDAC: charges against 11 people sent to court", 20 June 2022, <https://nabu.gov.ua/news/novyny-zlovzhyvannya-v-OACK-obvynuvalnyy-akt-stosov-no-11-osib-skеровано-do-sudu/>.

317 "The cases of Vovk and his brother: only one case is considered without delay, the other may take years", 2 May 2023, <https://zn.ua/ukr/POLITICS/spravi-vov-ka-ta-joho-brata-lishe-odnu-vaks-rozhjadaje-bez-zatjahuvan-insha-mozhe-roztjahnutis-na-roki.html>.

318 Draft Law No. 5369 dated 13 April 2021 "On Liquidation of the District Administrative Court of the city of Kyiv and Establishment of the Kyiv City District Administrative Court", https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71646.

319 "Combating Global Corruption and Human Rights Abuses", 9 December 2022, <https://www.state.gov/combating-global-corruption-and-human-rights-abuses/?fbclid=IwAR38pmt3vCMirUshkUr29bgqO4wpBn514Ovpa12ZECIG-KyQGXSuVULpyll>.

320 Law of Ukraine No. 2825-IX dated 13 December 2022, <https://zakon.rada.gov.ua/laws/show/2825-20#Text>.

321 "UBA calls for resolution of the situation with blocking the work of administrative jurisdiction in Kyiv and Kyiv region", 10 February 2023, <https://uba.ua/ukr/news/asocziacziya-zaklykaye-do-vyrishennya-sytuacziyi-shhodo-blokuvannya-roboty-administratvynoyi-yurysdykczivi-po-mistu-kyvevu-ta-kyivskij-oblasti>.

322 "OACK would transfer cases until July 2031", 20 March 2023, https://zib.com.ua/ua/155327-OACK_peredavati_spravi_do_lipnya_2031_roku_.html.

323 "UBA calls for resolution of the situation with blocking the work of administrative jurisdiction in Kyiv and Kyiv region", 10 February 2023, <https://uba.ua/ukr/news/asocziacziya-zaklykaye-do-vyrishennya-sytuacziyi-shhodo-blokuvannya-roboty-administratvynoyi-yurysdykczivi-po-mistu-kyvevu-ta-kyivskij-oblasti>.

324 "Rada told when the Kyiv City District Administrative Court can start operating", 22 March 2023, <https://www.ukrinform.ua/rubric-society/3685850-u-ra-di-rozpovili-koli-moze-zaprucuvati-kiivskij-miskij-okruznij-adminsud.html>.

207. The SJA has already done some preliminary actions necessary for the establishment of the Kyiv City District Administrative Court (e.g., chief of court staff has been appointed; the court as a legal entity was registered on 28 February 2023; searching for suitable premises is underway etc.)³²⁵. It is expected that the Kyiv City District Administrative Court may not start delivering justice until January 2024 at the earliest³²⁶.

2) Situation with the High Court of Intellectual Property

208. Along with the HACC one more specialised court should be established in Ukraine, namely the HCIP³²⁷. This court shall consist of **21 judges** in the first instance and **9 judges** in its appellate chamber, 30 judges in total³²⁸.

209. The HCIP shall consider the IP-related disputes defined in Article 20(2) of the Commercial Procedural Code of Ukraine³²⁹.

210. The main events relating to the establishment of the HCIP are the following:

- i. On 29 September 2017, the President of Ukraine issued the order establishing the HCIP³³⁰.
- ii. On 30 September 2017, the HJCJ commenced the selection of first instance judges³³¹. **234 candidates** submitted their applications, mostly local court judges³³².
- iii. On 5 October 2018, the HJCJ commenced a selection for the **9 positions of judges** of the appellate chamber of the HCIP³³³. 97 candidates submitted their applications³³⁴.
- iv. Due to the temporary suspension of operation of the HJCJ in November 2019, the selections were not finalized.
- v. On 13 February 2020, the SJA registered the HCIP as a legal entity at the address of the SJA itself³³⁵.
- vi. At the end of 2021, two draft laws were registered in the parliament aiming to regulate organisational aspects of the HCIP operation³³⁶. These draft laws have not been adopted as of June 2023.

211. The most recent news about the HCIP relates to the creation of a special chamber for investment disputes within this court³³⁷. However, no relevant draft laws were registered or publicly communicated as of June 2023.

212. Thus, as of June 2023 (i) the HCIP is not operational; (ii) the selection of judges is not finished, and it is unclear when it may be finished. Moreover, since considerable time has passed after the initiative to establish it, there may be a need for new legislation for proper functioning of the HCIP.

325 The SJA letter No. 16-4624/23 dated 19 April 2023.

326 "Rada told when the Kyiv City District Administrative Court can start operating", 22 March 2023, <https://www.ukrinform.ua/rubric-society/3685850-u-ra-di-rozpovili-koli-moze-zapracuvati-kiivskij-miskij-okruznij-adminsud.html>.

327 Article 31(2) of the Law, <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

328 The SJA order No. 926 dated 30 September 2017, https://dsa.court.gov.ua/userfiles/file/DSA/DSA_2017_all_docs/17ordersmarch/N_929.pdf.

The SJA order No. 372 dated 31 July 2018, https://dsa.court.gov.ua/userfiles/file/DSA/2018_DSA_NAKAZY/N_372_2018.pdf.

329 The Commercial Procedural Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1798-12#Text>.

330 Order of the President of Ukraine No. 299/2017 dated 29 September 2017, <https://www.president.gov.ua/documents/2992017-22722>.

331 "On Competition for Vacant Positions of Judges of the High Court of Intellectual Property", 30 September 2017, <https://vkksu.gov.ua/news/shchodo-konkursu-na-zaynyattya-vakantnyh-posad-suddiv-vyshchogo-sudu-z-pytan-intelektualnuyi-0>.

332 <https://vkksu.gov.ua/sites/default/files/field/file/ipposada.pdf>.

333 5 October 2018, <https://vkksu.gov.ua/news/ogolosheno-konkurs-do-apeljacijnuyi-palaty-vyshchogo-sudu-z-pytan-intelektualnuyi-vlasnosti>.

334 https://vkksu.gov.ua/sites/default/files/field/file/vyshchvyi_sud22.11.pdf.

335 "The High Court of Intellectual Property was registered", 14 February 2020, <https://court.gov.ua/press/news/889183/>.

336 Draft law No. 6488 dated 29 December 2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73541. Draft law No. 6487 dated 29 December 2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73540.

337 <https://www.facebook.com/photo/?fbid=600258052142089&set=a.341097734724790>.

VI. OTHER CHALLENGES

A. Challenges in resolving certain types of cases

213. Russian aggression has given rise to new types of court disputes that the Ukrainian judicial system would not otherwise have faced. This section aims to provide a short and concise analysis of such cases as well as legislative and practical challenges of resolving them.

1) War crimes

214. Legal qualification of the armed conflict as a single IAC and its legal regime. The full-scale Russian invasion of Ukraine, which commenced on 24 February 2022 and is still ongoing, can be regarded as the third phase of the Russian-Ukrainian international armed conflict (the «IAC»). This conflict originated with the invasion of Russian forces into the Autonomous Republic of Crimea by no later than 20 February 2014, leading to its occupation on 27 February 2014 (first phase). Subsequently, the conflict entered a second phase characterised by proxy occupation of parts of the Donetsk and Luhansk regions, intermittent shelling, and invasions from Russian territory. The temporal jurisdiction pertaining to this IAC is deemed to have begun no later than 20 February 2014 and will persist until it ends.

215. The armed conflict between Russia and Ukraine is regulated exclusively by the rules of the IAC under the IHL legal regime. The provisions of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II do not apply to this conflict.

216. Institutional avenues for the prosecution of war crimes. Multiple institutional avenues exist for the prosecution of war crimes committed during this war. These avenues include:

i. Domestic jurisdiction in Ukraine. There are currently **89 351** ongoing criminal proceedings (as of 8 June 2023) that address violations of the laws and customs of war (as outlined in Article 438 of the Criminal Code of Ukraine)³³⁸. These proceedings are being conducted by various law enforcement bodies, with supervision from the Office of the Prosecutor General of Ukraine where a special «war department»³³⁹ was established;

ii. International jurisdiction of the International Criminal Court (the «ICC»). In 2015, Ukraine activated the ad hoc jurisdiction of the ICC over the armed conflict under Article 12(3) of the ICC Statute. Notably, 43 states have referred this situation to the Court, signifying unprecedented global support for Ukraine and pursuit of justice. The Office of the Prosecutor of the ICC is currently undertaking an investigation and has already issued the first arrest warrants;

³³⁸ Criminal Code of Ukraine No. 2341-III dated 5 April 2001, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³³⁹ The Department of Supervision in Criminal Proceedings Regarding Crimes Committed in Conditions of Armed Conflict.

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iii. National jurisdictions based on the universal jurisdiction principle. At least 13 other countries have initiated investigations into crimes committed during the armed conflict, utilizing the principle of universal jurisdiction. These investigations encompass a comprehensive range of crimes, including the crime of aggression and genocide. Countries such as Lithuania, Poland and Ukraine have established a Joint Investigation Team, with the involvement of the ICC and other participating states.

217. There have been discussions surrounding the creation of a special international or internationalised criminal jurisdiction³⁴⁰ to prosecute war crimes and possibly other atrocity crimes committed during the armed conflict. However, this idea has not yet gained significant popularity. It is important to note that war crimes and the crime of aggression are distinct offences governed by different branches of international law: *jus in bello* (IHL) and *jus ad bellum* (the legal framework governing the use of force), respectively. As a result, the process aimed at creating the Special Tribunal for the Crime of Aggression Against Ukraine, whether on an international or internationalised level, does not encompass jurisdiction over war crimes.

218. Current situation and challenges in domestic prosecution of international crimes in Ukraine. According to a survey held by the Sociological Group «Rating», 75% of respondents prioritize fair punishment of war criminals, while 21% emphasize reparations to victims³⁴¹. At the same time, 75% believed that war crimes trials in Ukraine should begin promptly, indicating a strong demand for justice within Ukrainian society and high expectations for the judiciary and law enforcement.

219. As mentioned above, between 24 February 2022 and 8 June 2023, a total of 89 351 criminal proceedings were initiated for violations of the laws and customs of war (as per Article 438 of the Criminal Code of Ukraine). In contrast, during the previous eight years of the IAC (2014-2021), only a few hundred criminal proceedings were registered under Article 438, resulting in just two publicly available verdicts being rendered, namely in Cases Nos. 243/6186/20³⁴² and 243/4702/17³⁴³.

220. The abovementioned increase in the number of criminal proceedings can be attributed to several factors:

- i. the actual substantial rise in the commission of war crimes and crimes against humanity, which may lead also to allegations of genocide during the *third phase* of the armed conflict;
- ii. the indirect (proxy) nature of the *first* and *second phases* of the armed conflict, which made it challenging to properly qualify the situation as an IAC rather than an Anti-Terrorist Operation from the outset. That created complexities in determining the status of the armed groups in Donetsk and Luhansk regions, which were initially considered terrorists rather than combatants, despite Russian control. Consequently, there was a lack of understanding of the combatant privilege, leading to some violations of IHL being classified as terrorist acts;
- iii. insufficient knowledge of IHL and ICL among law enforcement officials, which posed challenges in legally qualifying war crimes. This knowledge gap remains an ongoing issue;
- iv. the rudimentary and inconsistent nature of the provisions of Chapter XX «Crimes Against Peace, Human Security and International Law and Order» of the Criminal Code of Ukraine. Notably, the absence of provisions establishing responsibility for crimes against humanity resulted in the classification of nearly all international crimes during the third phase as war crimes under Article 438 of the Criminal Code of Ukraine. This article, in itself, has limited logical basis in IHL.

221. While some of the aforementioned challenges persist, there are also additional ones that need to be acknowledged:

³⁴⁰ See the Suggestion of the Draft Law for a Ukrainian High War Crimes Court prepared by the Public International Law & Policy Group, <https://www.publicinternationallawandpolicygroup.org/draft-law-ukrainian-high-war-crimes-court>.

³⁴¹ Sociological research "Legal protection of victims of war crimes in Russia" dated 15 February 2023, https://ratinggroup.ua/research/ukraine/pravoviy_zahist_postrazhdaliv_v_d_vo_nnih_zlochiv_v_ros_23-26_grudnya_2022.html.

³⁴² Verdict of the Slovianskyi City District Court of Donetsk region dated 15 December 2021, <https://reyestr.court.gov.ua/Review/101948384>.

³⁴³ Verdict of the Slovianskyi City District Court of Donetsk region dated 1 June 2017, <https://reyestr.court.gov.ua/Review/66885637>.

- i. The absence of a codified list of war crimes in the Criminal Code of Ukraine, which necessitates the detailed inclusion of war crimes and criminalisation of crimes against humanity for better accessibility and application by prosecutors and the judiciary;
- ii. Insufficient expertise in IHL and ICL among prosecutors, judges, and defence counsel;
- iii. The need of a systematic strategy and implementation of categorizing war crimes at the prosecutorial level, which can be addressed by the prosecution despite the absence of a categorized list in the Criminal Code of Ukraine;
- iv. Limited case law and involvement of higher court judges in developing guidelines on application of IHL for Ukrainian courts;
- v. The need to strengthen international cooperation on the criminal matters, although the adoption of Ljubljana-Hague Convention (Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and Other International Crimes)³⁴⁴, has garnered support from 80 countries³⁴⁵, facilitating international cooperation in the investigation and prosecution of serious international crimes.

222. The growing docket of war crimes proceedings presents a significant challenge for the Ukrainian judiciary, which is currently overwhelmed by the volume of cases. As of 8 June 2023, only 121 cases under Article 438 of the Criminal Code of Ukraine are pending in the courts of first instance, with 35 cases considered, 86 cases yet to be considered, and 3 cases considered in the appellate instance, with no cassation proceedings reported.

223. Over half of the judgments that were rendered were conducted in absentia. Many of the considered cases cover a broad spectrum of offences against civilians, including unlawful detention, intimidation, torture, battery, and premeditated killings. It is noteworthy that a significant majority of court sentences issued under Article 438(1) of the Criminal Code of Ukraine prescribe imprisonment terms ranging from 10 to 12 years.

224. Ukrainian courts require appropriate legal tools and methodologies for handling war crimes cases, while raising awareness of IHL and ICL. Respecting the rights of victims and the accused is essential. Categorizing war crimes and standardizing prosecutorial methodologies in each category should be addressed at the prosecutorial level. Additionally, transitional justice mechanisms, such as truth-seeking initiatives and involvement of civil society organisations, can be employed in this context.

225. Analysis of judicial decisions on war crimes (Article 438 of Criminal Code of Ukraine) by Ukrainian courts. The analysis of existing judicial decisions in cases under Article 438 of the Criminal Code of Ukraine highlights some areas where there is room for improvement in understanding IHL and the legal regime of IAC. It appears that there may be certain gaps in knowledge regarding the fundamental elements of war crimes and challenges in reaching well-grounded conclusions about specific violations of IHL.

226. Summarising the existing verdicts, the following problems of application can be identified.

- i. Some judgments indicate a need for judges to distinguish between different branches of international law and avoid confusing the prohibition of acts of aggression (*jus ad/ contra bellum*) with IHL (*jus in bello*). It is important to recognise that IHL applies during armed conflicts and regulates the conduct of hostilities, irrespective of which party initiated the conflict. Judges may sometimes struggle with this distinction.
- ii. In particular, in cases Nos. 760/5257/22³⁴⁶, 535/244/22³⁴⁷, 751/2961/22³⁴⁸, 748/727/23³⁴⁹,

³⁴⁴ "The Ljubljana-Hague Convention adopted", 26 May 2023, <https://www.gov.si/en/news/2023-05-26-the-ljubljana-hague-convention-adopted/>.

³⁴⁵ Supporting States as of 12 May 2023, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/MLA-Initiative-List-of-Supporting-States-English.pdf>.

³⁴⁶ Verdict of the Solomyansky District Court of Kyiv in case No. 760/5257/22 dated 23 May 2022, <https://reyestr.court.gov.ua/Review/104432094>.

³⁴⁷ Verdict of the Kotelevsky District Court of Poltava region in case No. 535/244/22 dated 31 May 2022, <https://reyestr.court.gov.ua/Review/104531363>.

³⁴⁸ Verdict of the Novozavodsky District Court of Chernihiv in case No. 751/2961/22 dated 31 August 2022, <https://reyestr.court.gov.ua/Review/105986768>.

³⁴⁹ Verdict of the Chernihiv District Court of Chernihiv region in case No. 748/727/23 dated 29 May 2023, <https://reyestr.court.gov.ua/Review/111139770>.

the verdicts provide arguments and legal instruments on the unlawfulness of the aggressive war (wrongly attributing its beginning to 24 February 2022). Additionally, there are instances where the «motives for the intention to commit the crime of aggression» were established as «Ukraine's European integration course» – information that is not directly relevant to the qualification of war crimes. Instead, it would be beneficial to focus on establishing the commencement of the armed conflict between Russia and Ukraine (as war crimes can only be committed during an armed conflict), providing evidence of the invasion by Russian armed forces or overall control over proxy armed groups, and determining the applicable legal regime (IAC legal regime).

- iii. It is notably that in all cases, the judges correctly qualified the armed conflict as an IAC. However, in some cases they encountered difficulties in determining its legal regime and the applicable rules. For example, in cases such as Nos. 760/6123/22³⁵⁰, 748/727/23³⁵¹, 370/179/23³⁵², 367/3477/22³⁵³, the mentioned sources of applicable law were Common Article 3 of the Geneva Conventions and, in some instances, Additional Protocol II. These sources primarily regulate Non-International Armed Conflicts and are not applicable to IACs.
227. It is not necessary to refer to the sources of other legal regimes, such as the provisions of the European Convention on Human Rights³⁵⁴, to legally classify violations of IHL. While IHL continues to apply during armed conflicts, its violation does not automatically constitute evidence of a war crime. Moreover, in many cases, the rules of IHL act as *lex specialis*, thereby rendering the rules of International Human Rights Law inapplicable. Although there is no specific list of such cases, examples include a certain «legitimation» of combatants killing each other during IACs or the possibility of detaining prisoners of war indefinitely until the end of the armed conflict.
228. Many judgments correctly explain that Article 438 of the Criminal Code of Ukraine is a blanket rule. They also refer to the relevant primary IHL treaties and their entry into force dates for Ukraine. However, in several cases, the list of treaties includes ones that are not applicable either to the IACs, such as Additional Protocol II, or to Ukraine, such as the ICC Rome Statute. Judges should be informed that since Ukraine has not ratified the ICC Rome Statute, its provisions cannot be directly applied through Article 438. Nevertheless, the war crimes defined in Article 8 of the Rome Statute, which provide for liability within the jurisdiction of the ICC, can be applied as customary rules and serve as a guideline for the classification of war crimes (mainly for prosecutors). It is also important to note that the list of acts in Article 8 is not exhaustive, as IHL prohibits more acts than those codified in the ICC Statute.
229. Overall, the analysis shows that judges may not be aware of customary rules as a source of IHL. It is crucial to clarify that customary rules are binding on all states and on non-state actors involved in a conflict worldwide. Although their application is not explicitly provided for in Article 438 of the Criminal Code of Ukraine (despite its title referring to «laws and customs of war»), Article 3 of the Criminal Code of Ukraine defines that «generally recognised principles and rules of international law» (another common name for customary international law) are the source of Ukrainian criminal law.
230. One more notable issue is the failure to establish sufficient evidence of the commission of serious violations of IHL. In many cases, judges identify violations of specific articles of IHL treaties by merely mentioning their articles and stating the facts of the conduct without a necessary analysis and explanation of how the accused's actions violated each specific provision. For example, in a case No. 367/3477/22³⁵⁵, the court simply mentioned several provisions of the «Convention» without giving its full name at the outset. These provisions included Articles 3 (a, b, c), 27, 31, and 32, without clarifying which specific conduct of the accused violated each of these provisions.
231. When arguing a violation of the principle of distinction, it is essential to conduct an analysis of the facts to determine the civilian status of the targeted object. Merely relying on an extract from the

350 Verdict of the Solomyansky District Court of Kyiv in case No. 760/4174/22 dated 26 September 2022, <https://reyestr.court.gov.ua/Review/106808179>.

351 Verdict of the Chernihiv District Court of Chernihiv region in case No. 748/727/23 dated 29 May 2023, <https://reyestr.court.gov.ua/Review/11139770>.

352 Verdict of the Makariv District Court of Kyiv region in case No. 370/179/23 dated 20 April 2023, <https://reyestr.court.gov.ua/Review/110354341>.

353 Verdict of the Irpin City Court of Kyiv region in case No. 367/3477/22 dated 12 May 2023, <https://reyestr.court.gov.ua/Review/110824305>.

354 See, Case No. 369/9950/22, <https://reyestr.court.gov.ua/Review/107577110>.

355 Verdict of the Irpin City Court of Kyiv region in case No. 367/3477/22 dated 12 May 2023, <https://reyestr.court.gov.ua/Review/110824305>.

register of property rights or an apartment sale and purchase agreement is insufficient to confirm that the object was civilian (as seen in case No. 750/6470/22³⁵⁶).

232. Judges should be able to differentiate between military objectives and civilian objects, possess knowledge of IHL targeting rules, and understand that simply identifying a building as residential does not automatically establish its civilian status. There may be legitimate military objectives located inside or in close proximity to the building, which can be lawful targets for attack, particularly if the accused testifies to their presence within the zone of fire impact. Other principles of IHL, such as proportionality and precaution, should also be assessed during the trial regarding their application to the facts of the case, especially if the accused argues that their target was military.
233. The analysis of court verdicts reveals that judges are familiar with the general contextual elements of war crimes. They recognise that the conduct took place in the context of an IAC and that the perpetrator was aware of the factual circumstances establishing the existence of such an armed conflict. Many judgements provide detailed explanations of the contextual objective and subjective link between the conduct and the armed conflict. However, not all judges fully grasp the specific elements that constitute this contextual link and may include irrelevant factors (as defined in the ICTY Tadić Judgment).
234. Additionally, judges do not always comprehend that certain categories of war crimes, such as those specified in Article 50 of the Geneva Convention I, Article 51 of the Geneva Convention II, Article 130 of the Geneva Convention III, Article 147 of the Geneva Convention IV, and Article 8(2)(a)(i-viii) of the ICC Rome Statute, require the establishment of another element: that the victim held a protected status under IHL and did not lose it during the commission of the crime. For example, it is necessary to understand the elements of direct participation in hostilities (DPH) and its impact on the protected status of individuals.
235. Overall, the analysis of court judgments highlights the pressing need to enhance the judges' capacity in war crimes cases. This entails increasing their knowledge and improving their skills in the fundamentals of IHL and ICL, as well as development of user-friendly manuals on IHL and ICL that provide practical guidance, categorize war crimes and other international crimes, define the constituent elements of each crime, and offer relevant excerpts from the case law of international criminal tribunals such as the ad hoc tribunals or the ICC. Furthermore, it is crucial to involve higher court judges in the process of drafting a Codified Manual on War Crimes, ensuring their expertise and perspective are incorporated into the final document. Lastly, there is a need to provide detailed provisions on war crimes within the Criminal Code of Ukraine, thereby establishing a comprehensive legal framework to address and prosecute such crimes effectively.

2) Cases on compensation of damages caused by the Russian Federation

236. The first cases on compensation of damages caused by the Russian Federation emerged as a result of events in Donbas during 2014-2015, not in 2022. This period is known as the most active phase of hostilities, in the course of which the Russian proxies (so-called «Luhansk People's Republic» and «Donetsk People's Republic») attempted to occupy the whole Donetsk and Lugansk regions.
237. Since 2015 «war has largely turned into stagnant trench warfare»³⁵⁷ but civilian casualties and damage to private property continue. According to the UN Human Rights Office, from 14 April 2014 till 31 January 2021, at least 3 375 people were killed and 7 000-9 000 injured as a result of Russian aggression at Donbas³⁵⁸.
238. The UN Monitoring Mission on Human Rights in Ukraine has provided data as of 15 February 2015. According to it, more than 50 000 civilian houses on both sides of the contact line have been damaged. According to the Donetsk and Luhansk Regional State Administrations, as of February 2019,

356 Verdict of the Desnianskyi District Court of Chernihiv in case No. 750/6470/22 dated 11 April 2023, <https://reyestr.court.gov.ua/Review/110135338>.

357 "Here's what it's like inside the bunkers Ukrainian troops are living in every day", 15 August 2017, <https://www.businessinsider.com/heres-what-the-bunkers-ukrainian-troops-dig-for-protection-look-like-2017-8>.

358 "UN estimated the number of casualties in Donbas", 19 February 2021, <https://www.radiosvoboda.org/a/news-oon-kst-gertv-boyovvoh-donbas/31110937.html?fbclid=IwAR0ZjwNeEDdlhmO8oi-7UoNaRKCR2HbzhPIBsC-ILoz4RrzqOQ94-DE8ei8>.

there were 20 354 damaged houses of all forms of ownership on the Ukrainian government controlled territory³⁵⁹.

239. People have suffered monetary (as a result of damage to their property) and non-monetary damages (as a result of their injuries or the killing their relatives). They started to file claims with the Ukrainian courts against Russian Federation and sometimes against Ukraine. 800 cases of war damages were reported against the Russian Federation as of April 2020³⁶⁰.
240. Ukrainian courts have faced the legislative obstacle to resolving this type of cases, namely Article 79(1) of the Law of Ukraine «On International Private Law». This provision establishes judicial immunity of a foreign state. According to it, filing a claim against a foreign state, involving a foreign state to participate in a case as a defendant or a third party, seizing property of a foreign state that is located in the territory of Ukraine, applying other means of securing a claim in respect of such property and recovering such property may be allowed only with the consent of the competent authorities of this state unless otherwise provided for by an international treaty of Ukraine or the law of Ukraine³⁶¹.
241. Despite this provision, in some cases Ukrainian courts have not even attempted to obtain consent from the Russian Federation to be a defendant, understanding that such attempts are *prima facie* meaningless. At the same time, most Ukrainian courts refused to commence proceedings against the Russian Federation guided by Article 79(1) of the Law of Ukraine «On International Private Law»³⁶². Some claims were considered on the merits but dismissed on the ground of the Russian Federation's judicial immunity³⁶³.
242. 24 February 2022 became a turning point for resolution of these disputes. On 14 April 2022, the SC rendered a resolution in case No. 308/9708/19³⁶⁴. The claim was brought in 2019 by the widow of Ukrainian military servicemen and their two minor children for compensation of moral damages. Her husband has been killed in 2014 during the shelling of the Luhansk International Airport by mercenaries of the Russian Federation occupation authorities.
243. In that case, the SC changed its previous conclusions about the Russian Federation judicial immunity in Ukrainian courts. The SC held that in cases of damages caused to the health, life, or private property of citizens by military aggression of the Russian Federation, the defendant **does not enjoy judicial immunity**. The SC further noted that starting from 2014 **there is no need to send requests** to the Russian embassy in Ukraine for the Russian Federation's consent to be a defendant in this type of cases. These conclusions were further supported and elaborated in cases No. 428/11673/19³⁶⁵ and No. 760/17232/20-ц³⁶⁶.
244. There is no official statistics on the number of cases of damages brought against the Russian Federation following the SC decisions. According to one source, as of 30 January 2023 (i) Ukrainian first instance courts were considering cases against the Russian Federation for at least UAH 173 million (EUR 4.4 million) of damages; (ii) there are at least 209 pending cases for compensation of damage to Ukrainians and Ukrainian companies against Russia³⁶⁷. It may be preliminary estimated that, as of June 2023, at least several hundred more similar claims have been filed in Ukrainian courts.
245. The SC's novelty in addressing the issue of judicial immunity of a foreign state is controversial. This approach formally contradicts the effective Article 79(1) of the Law of Ukraine «On International Private Law». Moreover, it is not clear whether the final decisions of the Ukrainian courts against Russia will be enforced by authorities of foreign states. The general international approach is that

359 Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population / compiler Nataliia Melnyk. - Kharkiv: LLB "Human Rights Publisher", 2019, p. 74, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/report_on_damage_to_housing_of_the_civilian_population_in_the_eastern_ukraine_eng.pdf.

360 Ruling of the SC in case No. 357/13182/18 dated 15 April 2020, <https://reyestr.court.gov.ua/Review/88834130>.

361 Article 79(1) of the Law of Ukraine "On International Private Law", <https://zakon.rada.gov.ua/laws/show/2709-15#Text>.

362 Ruling of the SC in case No. 357/13182/18 dated 15 April 2020, <https://reyestr.court.gov.ua/Review/88834130>.

363 Resolution of the Cherkasy Appellate Court in case No. 710/784/19 dated 12 February 2020, <https://reyestr.court.gov.ua/Review/87655867>.

364 Resolution of the SC in case No. 308/9708/19 dated 14 April 2022, <https://reyestr.court.gov.ua/Review/104086064>.

365 Resolution of the SC in case No. 428/11673/19 dated 18 May 2022, <https://reyestr.court.gov.ua/Review/104635313>.

366 Resolution of the SC in case No. 760/17232/20-ц dated 18 May 2022, <https://reyestr.court.gov.ua/Review/104635312>.

367 Opendatabot.ua, 30 January 2023, <https://opendatabot.ua/analytics/courts-ua-russia>.

judicial immunity of the foreign state may be lifted only with the explicit or implicit consent of the state concerned³⁶⁸.

246. On 5 July 2022, draft law No. 7520 was registered with the parliament. This draft law aims, in particular (i) to amend Article 79(1) of the Law of Ukraine «On International Private Law» and set out that Russian Federation does not enjoy judicial immunity against this type of cases; (ii) to introduce procedural aspects for handling such cases (e.g., territorial jurisdiction, notification about the court hearings). As of early June 2023, the draft law No. 7520 had not been enacted³⁶⁹.

247. In any event, in April-May 2022, the SC has already demonstrated the political will to address the possibility to consider and satisfy claims on compensation for damage caused by Russian aggression. Further, on 23 February 2023, the legislation on compensation for damage and destruction of certain categories of real estate as a result of hostilities was adopted. On 22 May 2023, it became effective³⁷⁰. This law applies only to certain types of residential property and does not introduce a comprehensive mechanism for compensation of war damages.

3) Sanction cases considered by the High Anti-Corruption Court

248. Since the beginning of the full-scale Russian aggression against Ukraine, the legislative framework was introduced making the HACC a venue for resolution of sanction cases. In particular, the Law of Ukraine No. 2257-IX dated 12 May 2022 «On Amendments to Some Legislative Acts of Ukraine Regarding Increasing the Effectiveness of Sanctions Related to the Assets of Certain Persons»³⁷¹ provided for the application of the following Sanction «the collection of assets belonging to an individual or legal entity, as well as assets, in relation to which such a person can directly or indirectly (through other natural or legal entities) perform actions identical in content to the exercise of the right to dispose of them» (Article 4(1)(1-1) of the Law of Ukraine «On Sanctions») (**«Law on Sanctions»**)³⁷². The Ministry of Justice of Ukraine shall be the claimant for application of the Sanction by the HACC. Assets shall be collected to the benefit of the state budget of Ukraine.

249. The HAAC considers applications of this Sanction as a court of first instance, and the Appellate Chamber of the HACC – as the appellate instance respectively (Article 22(5) and Article 23(4) of the Code of Administrative Procedure of Ukraine)³⁷³.

As of 26 April 2023, the HACC considered 18 sanction cases³⁷⁴ and 1 case³⁷⁵ is pending³⁷⁶.

250. On 25 August 2022, the first Sanction cases began to be considered. The HACC satisfied in full the claims of the Ministry of Justice of Ukraine regarding the collection of assets to the benefit of the state budget in 14 cases, and partially – in 4 cases. The partial satisfaction resulted from insufficient confirmation of the defendants' ownership of the assets. The collection of assets was applied to 21 individuals³⁷⁷ and 2 legal entities³⁷⁸.

368 "Russia will pay Ukrainians for the war. Is the mission (un)achievable?", 9 June 2022, <https://www.epravda.com.ua/columns/2022/06/9/687970/>.

369 Draft law No. 7520 dated 5 July 2022 "On Amendments to Certain Legislative Acts to Improve the Consideration of Certain Categories of Court Cases in Connection with the Military Aggression of the Russian Federation", <https://itd.rada.gov.ua/billInfo/Bills/Card/39874>.

370 Law of Ukraine No. 2923-IX dated 23 February 2023, "On Compensation for Damage and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Diversions Caused by the Military Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Diversions Caused by the Military Aggression of the Russian Federation against Ukraine", <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

371 Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Regarding Increasing the Effectiveness of Sanctions Related to the Assets of Certain Persons" No. 2257-IX dated 12 May 2022, <https://zakon.rada.gov.ua/laws/show/2257-20#n9>.

372 Law on Sanctions, <https://zakon.rada.gov.ua/laws/show/1644-18#n24>.

373 Code of Administrative Procedure of Ukraine No. 2747-IV dated 6 July 2005, <https://zakon.rada.gov.ua/laws/show/2747-15/ed20230401#Text>.

374 Case No. 991/3183/22, Case No. 991/5572/22, Case No. 991/5732/22, Case No. 991/5799/22, Case No. 991/5982/22, Case No. 991/6317/22, Case No. 991/6376/22, Case No. 991/6606/22, Case No. 991/6655/22, Case No. 991/480/23, Case No. 991/317/23, Case No. 991/752/23, Case No. 91/265/23, Case No. 991/1542/23, Case No. 991/1396/23, Case No. 991/1914/23, Case No. 991/2086/23, Case No. 991/3226/23.

375 Case No. 991/3250/23.

376 The HACC rendered a total of 62 decisions in sanctions cases, including 18 judgments (1 with restricted access) on merits, 1 abbreviated judgment; 44 resolutions, of which 13 – on securing a claim; 1 – on refusal to secure a claim; 2 – on correcting typos in the decision; 2 – on the refusal to correct typos; 1 – on withdrawal; 3 – on the demand for evidence and materials; 1 – on leaving without movement.

377 PERSON_1 (the name is not accessible), Viktor Yanukovych, Anatoliy Torkunov, Andriy Falalayev, Oleg Polukhin, Boris Paikin, Roman Lyabykhov, Mykhailo Shelkov, Serhiy Kolbin, Olga Kovtidi, Kostyantyn Bakharev, Anatoliy Aksakov, Oleg Derypaska, Evgeniy Giner, Oleksiy Chernyak, Arkadiy Rotenberg, Ihor Rotenberg, Oleksandr Ponomarenko, Oleskandr Skorobahatko, Leonid Babashov.

378 International Public Joint Stock Company "United Company "RUSAL" and Public Joint Stock Company "Moscow Stock Exchange MMVB-RTS".

251. The already available HACC case law in Sanction cases allows highlighting the following problematic issues.
252. First of all, Article 5-1(1) of Law on Sanctions provides for somehow vague construction as «actions of individuals and legal entities that have created a significant threat to national security, sovereignty or territorial integrity of Ukraine (including through armed aggression or terrorist activity) or significantly contributed (including through financing) to the commission of such actions by other persons». However, Article 5-1(1) further specify and detail the composition of the offence that encroach on the national security, sovereignty or territorial integrity of Ukraine. In particular, Article 5-1(1) details and specifies the forms and ways of committing actions causing significant damage to the national security, sovereignty, or territorial integrity of Ukraine in 10 compositions of offences, as well as the forms and ways of facilitating their commission in more than 12 compositions of offences.
253. Notably, that the following grounds for applying the Sanction were accepted by the HAAC:
- i. participation in decision-making on the extension of the jurisdiction of the aggressor state to the territory of the so-called «Donetsk People’s Republic», «Luhansk People’s Republic», as well as Kherson and Zaporizhzhia regions; glorification (praising) of persons who carried out armed aggression against Ukraine, subordinated, managed and financed by the aggressor state (cases Nos. 991/317/23, 991/752/23, 991/1396/23, 991/1914/23, 991/2086/23);
 - ii. actions that create real and potential threats to national interests, national security, sovereignty and territorial integrity of Ukraine, as well as violate the rights and freedoms of citizens, the interests of society and the state (cases Nos. 991/6317/22, 991/6376/22, 991/6655/22);
 - iii. the supply/provision, storage of weapons, ammunition, explosives, military or special equipment, other means and tools for carrying out armed aggression against Ukraine, ensuring the repair of such means and tools, as well as through financing and logistical support of the activities of the aggressor state, connected with armed aggression against Ukraine (cases Nos. 991/265/23, 991/1542/23, 991/1914/23);
 - iv. satisfying the needs of the defence-industrial complex (of the Russian Federation), including within the framework of fulfilment of state contracts during 2014-2022 and after 24 May 2022 (case No. 991/6606/22);
 - v. substantial informational support for actions that undermine and threaten the territorial integrity, sovereignty and independence of Ukraine by organizing and directly carrying out relevant public actions on the Internet, which are addressed both to students and an unspecified circle of persons (cases Nos. 991/5799/22, 991/5982/22, 991/480/23);
 - vi. deliberate formation of hatred towards Ukraine as a state in the young generation of the Russian Federation, promotion of the idea of the so-called «liberation of the territories of the «Donetsk People’s Republic» and “Luhansk People’s Republic» (case No. 991/5732/22);
 - vii. providing assistance to representatives of the Russian Federation in carrying out subversive activities against Ukraine, facilitating and agreeing to armed aggression and waging an aggressive war against Ukraine (case No. 991/5572/22);
 - viii. financing of activities of the aggressor state related to armed aggression against Ukraine by paying taxes to the state budget of the aggressor state and investing in state bonds of the aggressor state (case No. 991/3226/23).
254. Thus, in the Sanction cases, the above actions of the defendants were classified as those that cause significant damage to the national security, sovereignty, or territorial integrity of Ukraine, or contribute to their commission.
255. Secondly, there are significant procedural problems that could affect and restrict the defendants’ enjoyment of procedural rights. These procedural features primarily concern notifying the defendants about the case and sending them a copy of the claim, submitting a statement of defence, the duration of case consideration, and announcing and delivering court decisions.

256. Proceedings in the Sanction cases are classified as urgent administrative cases, the consideration of which has some peculiarities.
257. In all Sanction cases, the defendants were notified about filing of the claim as well as the date, time, and place of the hearing. They were also provided with copies of the claim and enclosed documents, through either official email addresses or telephone and fax numbers, or other technical means of communication. The HACC consistently presented relevant evidence in each court decision to demonstrate compliance with the procedural law requirements. At the same time, on the website of the judiciary of Ukraine, both relevant summonses for court sessions³⁷⁹ and resolutions on the commencement of proceedings³⁸⁰ in the respective cases were published.
258. However, in all Sanction cases defendants neither appeared at the court hearings nor submitted statements of defence. It may be assumed that the defendants' failure to appear at the court session and to submit relevant responses and objections may be indicative of the objective impossibility of enjoying procedural rights for the persons in respect of whom the issue of application of the Sanction was raised.
259. The deadline established by the law for Sanction case proceedings, starting from the date of receipt of the claim to the issuance of a court judgment, is 10 calendar days only (Article 283-1(4) of the Code of Administrative Procedure of Ukraine). In practice, the average duration of sanctions case proceedings, from the moment of receipt of the claim to the issuing of the court judgment, is 18 days. The shortest duration of the sanctions case proceedings was 7 days³⁸¹, while the longest one was 39 days³⁸².
260. The issue of 3 months limitation period for the Ministry of Justice of Ukraine as the claimant in Sanction cases is of crucial importance as well. This term starts on the day of occurrence of grounds that give the Ministry of Justice of Ukraine the right to raise a claim. Considering huge number of Sanction cases and their complexity, such limitation period seems to be very short.
261. To address the abovementioned issues, draft law No. 8392 dated 27 January 2023 was registered before Parliament. In particular, the draft law No. 8392 suggests that in case if participants to a case and/or their representatives fail to appear, a necessary condition for consideration of the claim is their «proper notification of the date, time, and place of its consideration»³⁸³. Also, for applying to the HACC with a claim for the application of the Sanction, the whole duration of martial law will be established. Meanwhile, the deadline for the resolution of the case on the application of the Sanction will be extended to 30 days from the date of receipt of the claim by the court. The draft law No. 8392 dated 27 January 2023 has undergone the first readings on 20 March 2023 and awaits further legislative procedures.
262. Thirdly, the collection of assets into the state revenue is the result of the application of Sanction. Mainly, collected assets include movable and immovable property, property rights, cash, buildings, apartments, residential buildings with outbuildings, apartment buildings, cottages, non-residential premises, cars and other vehicles, tractors, trailers, garages, and car spaces etc.
263. It is worth noting that a significant number of collected assets are actually located in the temporarily occupied territory of the Autonomous Republic of Crimea³⁸⁴, which precludes their actual collecting until de-occupation. In more rare cases, collected assets are in the territory controlled by the Ukrainian authorities³⁸⁵.

379 Summonses of the High Anti-Corruption Court <https://hcac.court.gov.ua/hcac/gromadyanam/summons/>.

380 Resolutions on the commencement of proceedings in administrative cases (268 (2) of the Code of Administrative Procedure of Ukraine) https://hcac.court.gov.ua/hcac/gromadyanam/administrative_rulings/.

381 Cases Nos. 991/480/23, 991/752/23, 991/1542/23, 991/3226/23.

382 Case No. 991/1396/23.

383 Draft law No. 8392 dated 27 January 2023 on amendments to some legislative acts of Ukraine on the application of sanctions <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1631807>.

384 For instance, assets located in Alushta (Case No. 991/480/23), Bakhchysarai district (Case No. 991/752/23), Yevpatoria (Case No. 991/5982/22), Sevastopol (Case No. 991/480/23), Simferopol (Cases Nos. 991/1396/23, No. 991/480/23), Kerch (Case No. 991/5799/22), Yalta (Cases Nos. 991/6317/22, 991/6376/22, 991/5732/22).

385 For instance, assets located in Zaporizhia (Case No. 991/3183/22), Kyiv and Kyiv region (Cases Nos. 991/1914/23, 991/5572/22), Mykolaiv and Sumy region (Case No. 991/265/23), Nikopol and Odesa (Case No. 991/6606/22).

264. Significant assets were collected in several cases, in particular, in relation to Viktor Yanukovich³⁸⁶; Oleh Derypaska and International Public Joint Stock Company «United Company «RUSAL»³⁸⁷; Yevhen Gyner³⁸⁸; Arkadiy Rotenberg, Ihor Rotenberg, Oleksandr Ponomarenko, Oleksandr Skorobahatko³⁸⁹; Public Joint Stock Company «Moscow Stock Exchange MMVB-RTS»³⁹⁰.

386 Movables, immovable property, cash, a total of 537 items. Judgment dated 12 December 2022 in the case No. 991/5572/22, https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/administrative/judgments/991_5572_22_12-12-2022.pdf.

387 Dnipro-Buzka seaport in the city of Mykolaiv, property in the Sumy region, cash in the amount of UAH 32,233,588.41, a total of 312 items. Judgment dated 16 February 2023 in the case No. 991/265/23 https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/administrative/judgments/991_265_23_16-02-2023.pdf.

388 88.890583% of shares of Joint Stock Company "First Investment Bank". Judgment dated 27 February 2023 in the case No. 991/1542/23 https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/administrative/judgments/991_1542_23_27-02-2023.pdf.

389 A share in the amount of 100% of the authorized capital of the Limited Liability Company "Avangard-Vilarti" by the companies "Ocean Plaza Project (Cyprus) Limited" and "Ethoder Investments Limited"; a share in the amount of 66.65% of the authorized capital of the Limited Liability Company "Investment Union "Lybid" by the Limited Liability Company "Avangard-Vilarti". Judgment dated 20 March 2023 in the case No. 991/1914/23 https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/administrative/judgments/991_1914_23_20-03-2023.pdf.

390 1.44% of the shares of the Public Joint-Stock Company "Calculation Center for Servicing Contracts on Financial Markets", which is owned by the Public Joint Stock Company "Moscow Stock Exchange MMVB-RTS" in the amount of 2,978 shares. Judgment dated 19 April 2023 in the case No. 991/3226/23 https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/administrative/judgments/991_3226_23_19-04-2023.pdf.

VII. OPERATION OF THE CONSTITUTIONAL COURT OF UKRAINE IN THE TIME OF WAR

265. This Section aims to provide a concise analysis of the main features on the CCU operation during the war.

266. First days and weeks of the CCU operation in war conditions. The CCU did not make an official decision to suspend its activities, and even on 24 February 2022 continued its activities by rendering procedural decisions³⁹¹. There is no publicly available data confirming whether the evacuation of the CCU staff and case files took place or not.

267. At the beginning of the Russian aggression, the CCU delivered a number of statements and appeals both to the Ukrainian people and to international partners and also adopted a number of organisational decisions regarding the support for the Ukrainian army in the fight against Russian aggression.

268. It is worth noting that one CCU judge and five employees of the CCU Secretariat were among the volunteers of the territorial defence of the voluntary formation of the territorial community of the city of Kyiv «Mriya» («Dream»). As it has been already mentioned, one employee of the CCU has joined Armed Forces of Ukraine³⁹².

269. Although the CCU has not officially suspended its operation since the beginning of the full-scale Russian invasion³⁹³, it can be argued that the CCU actually resumed the exercise of its constitutional powers on 5 April 2022, when it passed the first procedural decisions in the relevant constitutional proceedings³⁹⁴. The first decisions on merits after the beginning of the full-scale invasion were rendered on 6 April 2022 in two cases based on constitutional complaints³⁹⁵.

270. The composition of the CCU during martial law. The composition of the CCU remained understaffed both before the beginning of the Russian invasion and during martial law. As of the beginning of the war, the composition of the CCU included 16 justices out of

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³⁹¹ On 24 February 2022, the CCU adopted 9 resolutions, of which 7 were on the rejection to commence constitutional proceedings in cases based on constitutional complaints and 2 were on extending the deadline for issuing resolutions on initiating or rejecting to initiate constitutional proceedings in cases on constitutional complaints, <https://ccu.gov.ua/en/novina/under-conditions-martial-law-and-during-special-period-constitutional-court-ukraine-continues>.

³⁹² The CCU letter No. 001 -16/3-19/2309 dated 26 May 2023.

³⁹³ "The Constitutional Court of Ukraine Continues to Perform its Constitutional Functions under Martial Law and in a Special Period", <https://ccu.gov.ua/en/novina/constitutional-court-ukraine-continues-perform-its-constitutional-functions-under-martial-law>.

³⁹⁴ On 5 April 2022, the CCU adopted 1 ruling on the joining of constitutional proceedings in cases based on constitutional complaints and 73 rulings on extending the term for issuing decisions on opening or refusing to open constitutional proceedings in cases based on constitutional complaints https://ccu.gov.ua/docs-search?tid=All&date_filter%5Bvalue%5D%5Bdate%5D=05.04.2022&body_value=&field_textindex_value=&field_speaker_value=.

³⁹⁵ Judgment No. 1-p (II)/2022 of 6 April 2022, case No. 3-192/2020(465/20) on the constitutional complaint of Polishchuk Serhiy Oleksiyovych https://ccu.gov.ua/sites/default/files/docs/1_r_2_2022.pdf.
Judgment No. 2-p(II)/2022 of 6 April 2022 in case No. 3-9/2019(206/19) on the constitutional complaint of Margo Polina Oleksandrivna https://ccu.gov.ua/sites/default/files/docs/2_r_2_2022_2.pdf.



the 18 judicial positions³⁹⁶.

271. At different times, the CCU included 16 justices (February to April 2022), 15 judges (April to August 2022), 16 justices (August to December 2022), and 13 justices (December 2022 to May 2023)³⁹⁷ due to the dismissal of 4 justices, the expiration of the term of office of two justices, and the appointment of 3 new justices.
272. In particular, justice Oleksandr Lytvynov retired on 27 April 2022³⁹⁸, justices Iryna Zavhorodnia, Serhii Sas and Ihor Slidenko retired on 7 December 2022³⁹⁹. The term of office of justices Oleksandr Tupytskyi (15 May 2022) and Oleksandr Kasminin (19 September 2022) expired⁴⁰⁰. Oksana Hryshchuk took office on 19 May 2022 and Oleksandr Petryshyn – on 21 September 2022 (appointed by the President of Ukraine). Olha Sovhyria became the CCU judge on 2 August 2022 (appointed by the Parliament). Thus, there are five unfilled vacancies remaining three of them on the quota of Parliament and two of them – on the quota of the Congress of Judges of Ukraine.
- 273. Attempts to introduce the competitive selection of the CCU judges.** Probably, the main issue relating to the CCU during martial law is connected to the implementation in law of a competitive procedure for the selection of CCU justices.
274. This question remains significant in view of the European integration obligations of Ukraine and granting it the candidate status. As was clearly indicated in the European Commission Opinion on Ukraine's application for membership of the European Union dated 17 June 2022, that Ukraine should «enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with the Venice Commission recommendations»⁴⁰¹.
275. Following the Commission Opinion, in August 2022, the draft law on improving the procedure for selecting judicial candidates to the CCU on a competitive basis was registered with the Verkhovna Rada of Ukraine⁴⁰². That draft law was adopted as a whole, published, and entered into force in December 2022⁴⁰³.
276. The Venice Commission made relevant recommendations when the Law No. 2846-IX⁴⁰⁴ was adopted and after it was adopted⁴⁰⁵ and enacted⁴⁰⁶.

396 Serhiy Holovatiy (Acting Chief), Petro Filiuk, Viktor Horodovenko, Oleksandr Kasminin, Viktor Kychun, Victor Kolisnyk, Victor Kryvenko, Vasyl Lemak, Oleksandr Lytvynov, Volodymyr Moisyk, Oleg Pervomaiskyi, Serhii Sas, Ihor Slidenko, Oleksandr Tupytskyi, Halyna Yurovska, Iryna Zavhorodnia.

397 Serhiy Holovatiy (Acting Chief), Petro Filiuk, Viktor Horodovenko, Oksana Hryshchuk, Viktor Kychun, Victor Kolisnyk, Victor Kryvenko, Vasyl Lemak, Volodymyr Moisyk, Oleksandr Petryshyn, Oleg Pervomaiskyi, Olga Sovhyria, Halyna Yurovska, <https://ccu.gov.ua/en/judge/1844>.

398 https://ccu.gov.ua/sites/default/files/docs/1_ps_2022.pdf.

399 Resolution No. 8-nc/2022 dated 7 December 2022, <https://ccu.gov.ua/sites/default/files/docs/8-ps2022.pdf>.

400 Yet earlier the President of Ukraine regarding 2 judges of the CCU, Oleksandr Tupytskyi and Oleksandr Kasminin issued Decree No. 124/2021 dated 27 March 2021, <https://www.president.gov.ua/documents/1242021-37701>, which cancelled the previous the President's of Ukraine decrees issued yet in 2013 on their appointment to the positions of CCU judges.

By decision of 14 July 2021, <https://reyestr.court.gov.ua/Review/98306624>, the Cassation Administrative Court of the SC found this Decree of the President of Ukraine illegal and annulled this Decree in part of one of the judges – Oleksandr Tupytskyi.

However, this decision of the Cassation Administrative Court of the SC did not enter into force and continues to be considered on appeal by the Grand Chamber of the SC. During this time, the President of Ukraine issued Decree No. 365/2021 of 17 August 2021 on the competition for the selection of candidates for the post of judge of the CCU regarding persons appointed by the President of Ukraine, <https://www.president.gov.ua/documents/3652021-39697>.

After this competition was held, the President of Ukraine issued decrees No. 596/2021 and No. 597/2021 dated 26 November 2021 on the appointment of 2 new judges of the CCU. Newly appointed CCU judges took the oath and acquired the powers of CCU judges after the expiration of the term of office of 2 previous CCU judges, in respect of whom the Decree of the President of Ukraine was issued on the cancellation of the Decrees on their appointment.

401 Venice Commission has already expressed opinions and recommendations regarding the reform of the competitive selection procedure for judges of the CCU: CDL-AD(2016)034, Opinion on the draft Law on the Constitutional Court, adopted by the Venice Commission at its 109th Plenary Session (Venice, 9-10 December 2016); CDL-AD(2020)039, Urgent Opinion on the Reform of the Constitutional Court, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 9 December 2020, endorsed by the Venice Commission on 11 December 2020 at its 125th online Plenary Session (11-12 December 2020).

402 Draft law No. 7662 dated 12 August 2022 on Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Selecting Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1435099>.

403 Law of Ukraine No. 2846-IX dated 13 December 2022 "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of the Selection Procedure for Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis" <https://zakon.rada.gov.ua/laws/show/2846-20#Text>.

404 CDL-PI(2022)046-e Ukraine – Urgent Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", issued on 23 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2022\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2022)046-e).

405 CDL-AD(2022)054 Ukraine – Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", adopted by the Venice Commission at its 133rd Plenary session (Venice, 16-17 December 2022), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)054-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)054-e).

406 25 January 2023 the President of the Venice Commission addressed the Chief of the Parliament with a letter and attached Analysis of the compliance of the Law of Ukraine No. 2846-IX dated 13 December 2022 with the key recommendations made by the Venice Commission in its Opinion of 16-17 December 2022. CDL-PI(2023)002-e Ukraine – Follow-up to the Opinion CDL-AD (2022) 054, 25 January 2023, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2023\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2023)002-e).

277. On 25 January 2023, the Venice Commission communicated that Law No. 2846-IX implemented most of its recommendations. At the same time, two of the core recommendations were not followed, namely (i) on the anti-deadlock mechanism and the composition of the AGE, and (ii) on the powers of the AGE in the selection of candidates for the position of justices of the CCU⁴⁰⁷.
278. The first recommendation suggested that the anti-deadlock mechanism should be implemented through a composition of the AGE of 7 members, with 4 being appointed on the international quota, or the solution chosen for the Ethics Council shall apply with the decisive vote of the international quota during the transitional period of 6 years, if a 6-member composition is maintained.
279. The second recommendation primarily related to the facts that (i) the Law itself shall ensure that candidates who are deemed «not suitable» by the AGE on grounds of either moral integrity or professional competence are to be excluded from further consideration; (ii) the AGE assessments should be made available to the public.
280. Subsequently, two draft laws (No. 9225 of 19 April 2023 and No. 9322 of 25 May 2023) were registered in the Parliament, both aimed to conform Law No. 2846-IX to the Venice Commission's recommendations. Notably, the second draft law was registered to replace the first one. While draft law No. 9225 has never been considered by the parliament and was revoked on 25 May 2023, draft law No. 9322 was adopted in the first readings by Parliament on 10 June 2023.
281. The draft law No. 9322⁴⁰⁸ provides for several amendments and supplements that improved the completion-based selection procedure.
282. As to the main suggested provisions
- i. draft law No. 9322 does not propose introducing the AGE composition of 7 members. At the same time, it suggests that during the transitional period the AGE makes all decisions (including on professional competence of candidates) by at least 4 votes of its membership, among which 2 shall be appointed under the international quota.
 - ii. as to professional competence, draft law No. 9322 provides that in case of receiving from the AGE an assessment of «not suitable», the candidate is considered to have failed the respective stage of competition-based selection to judicial positions in the CCU which is effective from the moment the AGE promulgates the relevant decision.
283. On 10 June 2023, the Venice Commission expressed a follow-up opinion to the draft law No. 9322. In this opinion, the Venice Commission
- i. «regrets that its recommendation to add a seventh member to the AGE has not been followed»;
 - ii. «welcomes however the significant improvements proposed in response to its key recommendations, such as the exclusion of «not suitable» candidates from further consideration following both integrity and professional competence assessments, ensuring the casting vote for the international members in regular and in tie vote situations for the evaluation of both integrity and professional competence; the provision that AGE substitute members of shall be appointed to ensure continuity of work in case of recusal or self-recusal»;
 - iii. «recommends nonetheless removing from Article 1011 of the draft law the provision on the order of voting for the election by the Congress of Judges ... clarifying that the names of the AGE members who voted in favour of each candidate at the ranking phase be also published and specifying that the decisions of the AGE may only be challenged on formal grounds and not on the merits»⁴⁰⁹.

407 CDL-PI(2023)002-e Ukraine - Follow-up to the Opinion CDL-AD (2022) 054, 25 January 2023 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2023\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2023)002-e).

408 Draft law No. 9332 dated 25 May 2023 on amendments to some legislative acts of Ukraine regarding the specification of provisions on the competitive selection of candidates for the post of judge of the Constitutional Court of Ukraine, <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1797727>.

409 CDL-AD(2023)022 - Follow-up Opinion to the opinion on the draft Law on amendments to certain legislative acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a competitive basis (Draft Law no. 9322 of 25 May 2023), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), [https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD\(2023\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD(2023)022-e).

284. Consequently, the Venice Commission stated «that the key recommendations ... have been followed» in the draft law No. 9322 «with the change and the clarifications recommended above»⁴¹⁰. It is expected that (i) parliament will clarify certain provisions of the draft law during the second readings; (ii) draft law No. 9322 will be enacted, and AGE will become operational in the nearest future.

285. To sum up, filling the vacancies of CCU judges based on the competitive procedure that aligns with European standards remains an important factor in improving the exercise of the CCU powers.

286. Exercise of the constitutional powers during martial law by the CCU. In accordance with the Constitution⁴¹¹ and the Law on CCU⁴¹², the CCU exercises its powers regarding: establishing the conformity of the laws of Ukraine and other acts with the Constitution⁴¹³; consideration and resolution of constitutional complaints⁴¹⁴; official interpretation of the Constitution⁴¹⁵; consideration and resolution of constitutional appeals⁴¹⁶.

287. From 24 February 2022 until 1 May 2023, the CCU considered and issued decisions on the merits in 18 cases, including 4 cases based on constitutional petitions, and 14 – based on constitutional complaints. For comparison, in 2021, the CCU delivered decisions on the merits in 10 cases, including in 3 cases based on constitutional petitions, and in 7 cases based on constitutional complaints.

288. As for the substantive aspects of the delivered judgments in cases based on constitutional petitions, they were related to issues on special confiscation provided by the Criminal Code of Ukraine⁴¹⁷; on the constitutional control of amendments to the Constitution regarding the inviolability of MPs of Ukraine after they entered into force⁴¹⁸; on the full name of religious organisations⁴¹⁹; and on fixed-term employment contracts of teaching staff of state and communal institutions of general secondary education⁴²⁰.

289. On the basis of constitutional complaints, the CCU delivered 14 judgments (3 judgments were enacted in joint proceedings)⁴²¹. The CCU recognised the relevant provisions of the laws of Ukraine as unconstitutional in 12 judgments and confirmed the constitutionality of the relevant legislative provisions in 2 judgments. For comparison, in 2021, the CCU delivered 7 judgments following the constitutional complaints (2 judgments of the CCU were enacted in joint proceedings).

290. The substance of decisions in cases based on constitutional complaints was related to various civil liberties and social rights, in particular,

- i. on renewal the civil procedural term of application for annulment of an arbitration court decision⁴²²,
- ii. on the presumption of innocence⁴²³,
- iii. on the individualisation of legal responsibility in customs cases⁴²⁴,

410 CDL-AD(2023)022 – Follow-up Opinion to the opinion on the draft Law on amendments to certain legislative acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a competitive basis (Draft Law no. 9322 of 25 May 2023), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), [https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD\(2023\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD(2023)022-e).

411 Constitution, <https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text>.

412 Law on CCU, <https://zakon.rada.gov.ua/laws/show/en/2136-19#Text>.

413 Article 147 and Article 150-1 (1) of the Constitution; Article 7-1 (1) of the Law on CCU.

414 Article 151-1 of the Constitution, Article 7-1(9) of the Law on CCU.

415 Article 147, Article 150-1(2) of the Constitution; Article 7-1(2) of the Law on CCU.

416 Article 147, Article 151 of the Constitution, Article 7-1(3-8) of the Law on CCU.

417 Judgment No. 1-p/2022 of 30 June 2022 in case No. 1-22/2020(391/20) on the constitutional petition of 47 MPs of Ukraine, https://ccu.gov.ua/sites/default/files/docs/1-r2022_0.pdf.

418 Judgment No. 2-p/2022 of 1 November 2022 in case No. 1-1/2020(39/20) on the constitutional petition of 50 MP's of Ukraine, <https://ccu.gov.ua/sites/default/files/docs/2-r2022.pdf>.

419 Judgment No. 4-p/2022 of 27 December 2022 in case No. 1-13/2019(374/19) on the constitutional petition of 49 MP's of Ukraine, https://ccu.gov.ua/sites/default/files/docs/4-r2022_0.pdf.

420 Judgment No. 1-p/2023 of 07 February 2023 in case No. 1-5/2020(118/20) on the constitutional petition of 56 MP's of Ukraine, https://ccu.gov.ua/sites/default/files/docs/1-r2023_0.pdf.

421 case No. 3-321/2019(7780/19, <https://ccu.gov.ua/docs/5097>; case No. 3-102/2021(231/21, 415/21) <https://ccu.gov.ua/docs/5602>; case No. 3-79/2021(189/21, 394/21), <https://ccu.gov.ua/docs/6033>.

422 Judgment No. 2-p(II)/2022 of 6 April 2022 in case No. 3-9/2019(206/19) on the constitutional complaint of Margo Polina Oleksandrivna, https://ccu.gov.ua/sites/default/files/docs/2_r_2_2022_2.pdf.

423 Judgment No. 3-p(II)/2022 of 8 June 2022 in case No. 3-20/2021(40/21) on the constitutional complaint of Krotyuk Oleksandr Volodymyrovych, https://ccu.gov.ua/sites/default/files/docs/3_p_2_2022.pdf.

424 Judgment No. 4-p(II)/2022 of 15 June 2022 in case No. 3-321/2019(7780/19, 91/21) on the constitutional complaints of Barseghyan Gevork Senekerymovych and Lynenko Natalia Mykolaivna, https://ccu.gov.ua/sites/default/files/docs/4_r_2_2022.pdf.

- iv. on discrimination in the enjoyment of the right to housing⁴²⁵,
- v. on the civil law provision of consequences of contract breach by the borrower⁴²⁶,
- vi. on the lack of alternatives to the confiscation of certain goods in the Code of Ukraine on Administrative Offenses⁴²⁷,
- vii. on the inviolability of the right to property⁴²⁸,
- viii. on guarantees of social protection of civil servants⁴²⁹,
- ix. on guarantees of the prosecutor's independence⁴³⁰,
- x. on the equality of the parties in the framework of judicial control over the execution of the court decision⁴³¹,
- xi. on guarantee of a pension, which is the main source of livelihood⁴³²,
- xii. on personal data in a court decision⁴³³.

291. During wartime, the CCU did not receive applications directly questioning legislative measures related to the introduction of martial law and the corresponding restrictions of constitutional rights and freedoms. It nevertheless enacted a number of judgments that were of significant social importance for Ukraine in wartime (for instance, the decisions in the case of the constitutional petition on the full name of religious organisations⁴³⁴ and in the cases of constitutional complaints on enhanced social protection of servicemen⁴³⁵ and social guarantees for Ukrainian defenders)⁴³⁶.

292. Duration of the Constitutional Proceedings. In the majority of cases (15 out of 18) in which the CCU passed final judgments on merits, the terms of their consideration significantly exceeded the deadlines envisaged in the Law on CCU.

293. As a general rule, the term of constitutional proceedings should not exceed 6 months, and it starts on the date when a ruling on the commencement of constitutional proceedings was delivered (Article 75(1) of the Law on the CCU).

425 Judgment No. 5-p(II)/2022 of 22 June 2022 in case No. 3-39/2021(86/21) on the constitutional complaint of Abramovych Oleksiy Volodymyrovych, https://ccu.gov.ua/sites/default/files/docs/5-r_2_2022.pdf.

426 Judgment No. 6-p(II)/2022 of 22 June 2022 in case No. 3-188/2020(455/20) on the constitutional complaint of the Joint Stock Company "State Savings Bank of Ukraine", https://ccu.gov.ua/sites/default/files/docs/6-r_2_2022.pdf.

427 Judgment No. 8-p(I)/2022 of 12 October 2022 in case No. 3-144/2021(315/21) on the constitutional complaint of Unukovych Roman Andriyovych https://ccu.gov.ua/sites/default/files/docs/8-ri2022_0.pdf.

428 Judgment No. 9-p(II)/2022 of 16 November 2022 in case No. 3-270/2019(6302/19) on the constitutional complaint of the Private Joint-Stock Company "Odesteplokomunenergo", https://ccu.gov.ua/sites/default/files/docs/9-rii_2022.pdf.

429 Judgment No. 3-p/2022 of 23 December 2022 in case No. 3-132/2018(5462/17) on the constitutional complaint of Mosyurchak Vasyl Ivanovych, https://ccu.gov.ua/sites/default/files/docs/3-r2022_0.pdf.

430 Judgment No. 1-p(II)/2023 of 1 March 2023 in case No. 3-5/2022(9/22) on the constitutional complaint of Vasylenko Serhii Mykolayovych, <https://ccu.gov.ua/sites/default/files/docs/1-rii2023.pdf>.

431 Judgment No. 2-p(II)/2023 of 1 March 2023 in case No. 3-27/2022(54/22) on the constitutional complaint of Pleskach Vyacheslav Yuriyovych, <https://ccu.gov.ua/sites/default/files/docs/2-rii2023.pdf>.

432 Judgment No. 3-p(II)/2023 of 22 March 2023 in case No. 3-98/2022(227/22) on the constitutional complaint of Lazurenko Ihor Oleksandrovych, <https://ccu.gov.ua/sites/default/files/docs/3-rii2023.pdf>.

433 8 constitutional complaints were joined with other proceedings.

434 Judgment No. 4-p/2022 of 27 December 2022 in case No. 1-13/2019(374/19) on the constitutional petition of 49 MP's of Ukraine, https://ccu.gov.ua/sites/default/files/docs/4-r2022_0.pdf.

The Grand Chamber of the CCU in the case regarding the full name of religious organizations recognized the constitutionality of the Law of Ukraine "On Amendments to Article 12 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" regarding the name of religious organizations (associations) that belong to the structure (are part of) of a religious organization (association), the governing centre (management) of which is outside the borders of Ukraine in a state recognized by law as having carried out military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine.

435 Judgment No. 1-p (II)/2022 of 6 April 2022, case No. 3-192/2020(465/20) on the constitutional complaint of Polishchuk Serhiy Oleksiyovych, https://ccu.gov.ua/sites/default/files/docs/1_r_2_2022.pdf.

The Second Senate of the CCU, in the case of enhanced social protection of servicemen, recognized as unconstitutional Article 16-3 (4) of the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families", which became invalid as of the date of adoption of this Judgment by the CCU.

436 Judgment No. 7-p(II)/2022 dated 12 October 2022 in case No. 3-102/2021(231/21, 415/21) on the constitutional complaints of Zhydenko Volodymyr Viktorovych and Petrenko Viktor Oleksiiyovych, https://ccu.gov.ua/sites/default/files/docs/7-rii2022_0.pdf.

The Second Senate of the CCU in the case regarding social guarantees for defenders of Ukraine recognised as unconstitutional the provisions of Article 2 of the Law of Ukraine "On Measures for Legislative Support of Reforming the Pension System" dated 8 July 2011 No. 3668-VI as they do not provide high-level social guarantees, which arise from the special legal status of citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, as well as persons who armedly defend the sovereignty, territorial integrity and inviolability of Ukraine during the aggression of the Russian Federation against Ukraine.

294. The average duration of proceedings based on constitutional petitions, which ended with the adoption of a judgment, was 879 days (2 years and 5 months) within the analysed period. The longest proceeding under the constitutional petition lasted 3 years, 8 months and 9 days⁴³⁷. The shortest one took 1 year, 8 months and 15 days⁴³⁸.

295. The average duration of proceedings based on constitutional complaints that ended with a final judgment was 598 days (more than 19 months) within the analysed period. The longest proceeding based on a constitutional complaint lasted 4 years, 7 months, and 28 days⁴³⁹. The shortest one took 3 months⁴⁴⁰.

296. Thus, the average duration of cases remains too excessive, and in view of the number of cases that continue to be pending before the CCU and the receipt of new applications, the CCU has already accumulated a significant backlog.

297. Cases pending before the CCU. The CCU continues considering 29 cases on the basis of 34 constitutional petitions⁴⁴¹ on the conformity of the laws of Ukraine and other acts to the Constitution, of which 32 were initiated prior to the full-scale Russian invasion and two cases were initiated after it started. Within the analysed period, the CCU held hearings in seven of these cases.

298. It is worth paying attention to several cases based on constitutional petitions, which are still pending before the CCU and may have a significant impact on the development of Ukrainian society and the state, as well as affect Ukraine's fulfilment of European integration obligations.

299. Thus, cases can be significant in terms of the consequences of their influence on Ukrainian society and the state in the CCU proceedings regarding compliance with the Constitution:

- i. of certain provisions of the Law of Ukraine «On Purification of Power» No. 1682-VII dated 16 September 2014⁴⁴²;
- ii. of the Law of Ukraine «On the High Anti-Corruption Court» No. 2447-VIII dated 7 June 2018⁴⁴³;
- iii. of the Law of Ukraine «On the State Bureau of Investigations» No. 794-VIII dated 12 November 2015 (with amendments)⁴⁴⁴;
- iv. of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Conditions of Transfer of Agricultural Land» dated 31 March 2020 and certain provisions of the Land Code of Ukraine⁴⁴⁵;
- v. of the Law of Ukraine «On the High Council of Justice» No. 1798-VIII dated 21 December 2016, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) for the positions of members of the High Council of Justice and activities of disciplinary inspectors of the High Council of Justice» No. 1635-IX dated 14 July 2021⁴⁴⁶.

437 Case No. 1-13/2019 (374/19).

438 Case No. 1-1/2020 (39/20).

439 Judgment No. 3-p/2022 of 23 December 2022 in case No. 3-132/2018(5462/17) on the constitutional complaint of Mosyurkach Vasyl Ivanovych, https://ccu.gov.ua/sites/default/files/docs/3-r2022_0.pdf.

440 Judgment No. 3-p(II)/2023 of 22 March 2023 in case No. 3-98/2022(227/22) on the constitutional complaint of Lazurenko Ihor Oleksandrovych, <https://ccu.gov.ua/sites/default/files/docs/3-rii2023.pdf>.

441 4 constitutional petitions were united into one proceeding, 4 into two proceedings. Therefore, 29 constitutional proceedings remained regarding the conformity of the Constitution with the laws of Ukraine and other acts.

442 Constitutional petitions of the Supreme Court of Ukraine dated 20 November 2014, 23 March 2015, 28 December 2015 and 47 MPs. The case is pending since 6 July 2017, and in the analysed period, no hearings were conducted.

443 Constitutional petition of the 49 MPs dated 22 July 2020; The case has been considered by the Grand Chamber of the CCU since 6 October 2020, but no hearings were held.

444 Constitutional petition of the 58 MPs dated 2 June 2020. The case is being considered by the Grand Chamber of the CCU from 13 April 2023.

445 The case was initiated and joined into one constitutional proceeding based on the constitutional petition of 53 MPs dated 14 May 2020 and of 48 MPs dated 04 May 2020. The case is being considered by the Grand Chamber of the CCU from 3 June 2021. During the analyzed period, there were two CCU sessions in this case.

446 Constitutional petition of the SC dated 13 October 2021. The case is considered by the Grand Chamber of the CCU from 14 February 2023. In the analysed period, 2 CCU sessions were held in this case.

300. There are also 5 pending cases based on constitutional petitions regarding the official interpretation of the Constitution⁴⁴⁷. All these petitions regarding the official interpretation were submitted long before the full-scale invasion. The CCU held a session in one of these cases regarding the official interpretation. The CCU did not receive any new constitutional petitions regarding the official interpretation of the Constitution.
301. Moreover, there are (i) 35 pending cases initiated on the basis of 55 constitutional complaints⁴⁴⁸ filed after 2020⁴⁴⁹ (after the beginning of the full-scale invasion, the CCU (1) initiated and joined 22 proceedings based on 26 constitutional complaints, (2) closed proceedings in 5 cases based on constitutional complaints; (ii) two pending constitutional appeals⁴⁵⁰; (iii) three constitutional proceedings commenced based on the constitutional petitions filed by the SC⁴⁵¹.
302. While the CCU did not receive any direct applications challenging legislative measures tied to the imposition of martial law, it does not preclude the possibility of the CCU facing the task of reviewing the conformity of specific measures of introducing martial law and the corresponding restriction of constitutional rights and freedoms with the Constitution in the future. Bearing this in mind, it is conceivable that the CCU may play a crucial role «as regards post-war elections, reintegration of occupied territories and Euro-Atlantic integration»⁴⁵².

303. Peculiarities of the CCU operation during martial law, air raid sirens and electricity cuts. The operational guidelines for the CCU amidst martial law were established in a series of orders issued by the CCU Chief⁴⁵³ and the Head of the CCU Secretariat⁴⁵⁴.

304. Although public access to these orders in view of security reasons is not yet available, according to the received information, the CCU adopted decisions related to ensuring the safety of both the judges themselves and the employees of the Secretariat. Later, the CCU developed recommendations on action plan in case of air raid sirens. In particular, the employees of the CCU Secretariat should immediately stop working and move to the nearest publicly accessible shelter or to the basement of the administrative building of the CCU. Visitors should immediately leave the administrative building of the CCU and move to the nearest publicly accessible shelters.

447 Constitutional petition of 51 MPs dated 28 August 2019 regarding the official interpretation of Article 7, Article 20-7, points 12, 15, 16 of part 1 of Article 92-1 (12,15-16), Article 118-1-5, Article 133-2, Article 140-1-4, 141-2-4 of the Constitution in their relationship https://ccu.gov.ua/sites/default/files/3_5329.pdf;

Constitutional petition of 46 MPs dated 13 November 2019 regarding the official interpretation of the provisions of Article 13-1(1), Article 14-1 of the Constitution in a systematic connection with the provisions of Preamble-1, Article 1, Article 3-2, Article 5-2, Article 13-4 of the Constitution https://ccu.gov.ua/sites/default/files/3_6992.pdf;

Constitutional petition of 142 MPs dated 05 May 2020 regarding the official interpretation of the provisions of the fourth paragraph of the preamble-4 of the Constitution in their systemic connection with the provisions of Article 3-2, Article 13-4, Article 17-5 of the Constitution https://ccu.gov.ua/sites/default/files/3_172.pdf;

Constitutional petition of the SC dated 25 September 2020 regarding the official interpretation of the provisions of Article 105-1 of the Constitution in the aspect of possible bringing the President of Ukraine to administrative responsibility for committing an administrative offense while exercising his powers https://ccu.gov.ua/sites/default/files/4_459.pdf;

Constitutional petition of 99 MPs dated 20 December 2021 regarding the official interpretation of the provisions of Article 4 of the Constitution https://ccu.gov.ua/sites/default/files/3_473_2021.pdf.

448 9 constitutional complaints were joined into 1 proceeding, 4 constitutional complaints into 1, 6 complaints into 2 proceedings, 8 complaints into 4 proceedings. Thus, 35 constitutional proceedings regarding constitutional complaints remain under consideration by the CCU.

449 Data on proceedings that were initiated on the basis of constitutional complaints filed before 2020 and are still pending before the Court is not available on the CCU official website.

450 Constitutional appeal of the Verkhovna Rada of Ukraine dated 19 March 2021 https://ccu.gov.ua/sites/default/files/2_111_2021_0.pdf.

Constitutional appeal of 49 MPs dated 31 March 2023 https://ccu.gov.ua/sites/default/files/3_125_2023_utochnennya.pdf.

451 Constitutional petition of the SC No. 4/72(23) dated 27 February 2023 on compliance with the Constitution (constitutionality) of Article 75-4 of the Family Code of Ukraine dated 10 January 2002 No. 2947-III https://ccu.gov.ua/sites/default/files/04_72_2023.pdf.

Constitutional petition of the SC No. 4/104(23) dated 16 March 2023 on compliance with the Constitution (constitutionality) of Article 40-1(1) of the Law of Ukraine "On Mandatory State Social Insurance" No. 1105-XIV dated 23 September 1999 https://ccu.gov.ua/sites/default/files/04_104_2023.pdf.

452 CDL-AD(2023)022 – Follow-up Opinion to the opinion on the draft Law on amendments to certain legislative acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a competitive basis (Draft Law no. 9322 of 25 May 2023), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), [https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD\(2023\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD(2023)022-e).

453 Order of the CCU Chief "On the Organization of the Work of the Constitutional Court of Ukraine under Martial Law" No. 11/01/2022-ОД dated 5 April 2022;

Order of the CCU Chief "On Amendments to the Order of the Chief of the Constitutional Court of Ukraine No. 11/01/2022-ОД dated 5 April 2022 (regarding the organization of the work of the Constitutional Court of Ukraine under martial law)" No. 14/01/2022- ОД dated 20 April 2022; Order of the CCU Chief "On the Organization of the Work of the Constitutional Court of Ukraine under Martial Law" dated No. 33/01/2022-ОД 31 August 2022.

454 Order of the Head of the CCU Secretariat "On the Work of the Secretariat of the Constitutional Court of Ukraine and the Autobase of the Constitutional Court of Ukraine under Martial Law" dated 8 April 2022; Order of the Head of the CCU Secretariat "On the Work of the Secretariat of the Constitutional Court of Ukraine and the Autobase of the Constitutional Court of Ukraine under Martial Law" dated 31 August 2022; Order of the Head of the CCU Secretariat "On Approval of the Recommended Course of Action after the Announcement of an Air Alert" dated 31 August 2022.

305. A shelter was arranged in the basement of the CCU for the temporary stay of justices and employees of the Secretariat. The CCU also developed and approved the «Plan of Measures of the Secretariat of the Constitutional Court of Ukraine in the event of absence (significant interruptions or limitations) of electricity, water supply, heating, and communications (Blackout)» No. 21/3410 dated 7 December 2022⁴⁵⁵. The CCU did not report any damages to the court's premises.

455 The CCU letter No. 001 -16/3-19/2309 dated 26 May 2023.

