



HUMAN
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“All She Did Was Help People”

Flawed Anti-Collaboration Legislation in Ukraine



“All She Did Was Help People”

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“All She Did Was Help People”
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Summary1

Recommendations..... 8

Methodology.....10

Legislative Framework..... 11

Framework of International Humanitarian and Human Rights Law13

Anti-Collaboration Prosecution Data.....15

Concerns over Rushed and Flawed Legislation17

Legal Ambiguity19

Prosecuting Medical and Education Workers for Collaboration..... 22

Public Harm and Guilty Intent 28

Disregard of Coercion and Duress 32

Compromised Right to Defense and Other Due Process Concerns..... 35

In Absentia Rulings 40

**Chilling Effect of Anti-Collaboration Legislation on Reintegration Efforts and
Transitional Justice 42**

Acknowledgements48

Appendix I: Human Rights Watch Letter to the Ministry of Justice of Ukraine..... 49

Appendix II: Human Rights Watch Letter to the Prosecutor General of Ukraine 53

Appendix III: Letter from the Ministry of Justice of Ukraine to Human Rights Watch.....57

**Appendix IV: Unofficial Translation of the Letter from the Ministry of Justice of Ukraine
to Human Rights Watch 60**

**Appendix V: Letter from the Office of the Prosecutor General of Ukraine to Human
Rights Watch..... 67**

**Appendix VI: Unofficial Translation of the Letter from the Office of the Prosecutor
General of Ukraine to Human Rights Watch..... 73**

Summary

Russia's full-scale invasion of Ukraine in February 2022 has wreaked devastation on the civilian population, causing immense suffering. Russian forces have committed numerous apparent war crimes and crimes against humanity in Ukraine. As of November 2024, the Ukrainian government had registered 147, 559 alleged war crimes and other abuses, and Russia exercised control over swaths of Ukrainian territory, including parts of Luhanska, Donetska, Zaporizka, and Khersonska regions, as well as the entire Crimean Peninsula, which Russia occupied in 2014.

Trapped behind the frontline are millions of Ukrainian citizens who must daily contend with bombardment and shifting battlelines, predation by their occupiers, wartime deprivation, and often split up families and households.

Many Ukrainians are no longer behind enemy lines, after the areas where they live were de-occupied, but they endured other hardships that have lasted long after Russian occupation ended.

The experience of Veronika V. (pseudonym), a 50-year-old child psychologist with almost 30 years of experience, illustrates some of these hardships. Veronika lives in a city in Kharkivska region. By April 2022, after intense fighting, Russian forces occupied Veronika's city, and it remained under occupation until late September that year.

Like many other residents, Veronika spent the first month of the occupation at home, the constant shelling leaving her too terrified to venture outside. By mid-June, she decided she was ready to help her community. She resumed her work at a local kindergarten, where she and other staff cleaned up the building before it could reopen, sweeping out glass and rubble and shaking out mattresses. Due to ongoing hostilities, the kindergarten remained closed to children. Staff who continued working received humanitarian aid weekly from Russian occupying authorities and volunteers.

Veronika was a well-known psychologist, and soon residents began seeking her support. She said that she started providing counseling to a group of approximately 10 women, all local residents:

People's need [for psychological help] was huge. Everyone was terrified. For two months, people lived in their basements, afraid to go outside. And when they could meet for a group session, talk about their emotions ...it was so important.

At the request of the local education department, now under the control of Russian occupying authorities, Veronika was then asked to write an article for a local newspaper on how to best support children emotionally during the war. The article, published under her name, offered practical advice on helping children cope with the stress. She said:

It was a professional article. Not screaming about how well we had it under occupation but focused on how to support children under such traumatic, unstable circumstances. It talked about things like having a routine, taking children for walks when possible, keeping a schedule.

In September, after an almost six-month Russian occupation, Ukrainian forces liberated the city. Like other residents, Veronika had to undergo "filtration," a screening process by Ukrainian security services. Although they cleared her of all suspicion of collaboration with Russian forces, local authorities made it clear to Veronika she would never work with the local education department again. A local official specifically mentioned her article as the reason, she said.

Veronika started looking for a new job. Despite applying for several positions, including at four charity foundations, she was unable to find employment as a psychologist in her home city. The head of one of the foundations, which hired Veronika initially and then was forced to fire her, told Human Rights Watch that the municipal authorities had explicitly prohibited the foundation from hiring Veronika:

They told us, if [the foundation] wants to be able to work ... to rent office space, even for money, you can't hire her [because she is a "collaborator."]
[They said], "Remember, you either work with us or you are against us."

Veronika said that she was shocked by what she had to face after her city was de-occupied. She said that she was proud of her work under occupation and had stayed to

help her city and other Ukrainians. She questioned her own naivety and wondered if she should have hidden her work.

Another resident from Veronika's city said: "People who stayed and worked under occupation have become unemployable. They can't even get a job as a street sweeper now."

Veronika's story is only one example of the many unjust experiences of Ukrainian civilians caught in the crossfire of Russia's war in Ukraine. While she has not been criminally prosecuted, many others, who engaged with occupying authorities to no greater extent than she did, have been.

Since the start of Russia's full-scale invasion of Ukraine, Ukrainian authorities have prosecuted hundreds of Ukrainian civilians, sentencing some to lengthy prison terms, on charges of "acts of collaboration" under overly vague and broad anti-collaboration legislation that Ukraine's parliament adopted in March 2022, two weeks after the invasion. More than 8,400 investigations have been opened since then.

Intended to deter collaboration with occupying forces, the practical impact of the legislation goes much further. In effect, it criminalizes Ukrainian civilians who provide routine public services to their fellow Ukrainians, as they are expected to do under occupation. The broad range of activities and interactions with the occupier that fall under the legislation in practice make it very difficult for Ukrainians employed in public service before their towns were occupied or who wanted to assist with delivery of public services afterward, to avoid falling afoul of the legislation.

The penalties set out for different types of so-called acts of collaboration range from bans on working in certain professions or public service for up to 15 years, corrective labor and asset seizure, to life imprisonment.

This report analyzes Ukraine's anti-collaboration laws and their impact on a range of rights. It highlights how some anti-collaboration provisions criminalize legitimate civilian activities under occupation. It also outlines cases of arbitrary prosecutions and penalties against Ukrainian civilians and describes how authorities have at times used these laws to penalize the mere act of continuing to work under Russian occupation, without adequate

regard to establishing the accused' intent to undermine Ukraine's security or demonstrate that actual damage was inflicted as a result their actions. It also looks at the broader consequences of these laws and their implementation on communities emerging from occupation.

The collaboration prosecutions documented in this report involved people from de-occupied areas of Ukraine. Ukrainian authorities have also prosecuted individuals who are currently living in occupied territories, trying them in absentia.

This report documents cases of Ukrainian citizens, including volunteers, municipal workers, medical personnel, and teachers, who were prosecuted for actions that had no criminal content and caused no public harm. Yet they suffered harsh, arbitrary penalties for alleged collaboration with occupying forces. For instance, in one documented case, a veterinarian was sentenced, in absentia, to 10 years in prison for accepting an administrative role in the local veterinary service, while an electrician who took part in the efforts to restore electrical supply to a city, damaged by hostilities, was handed a three-year prison term, accompanied by confiscation of property and a professional ban of 10 years. Although an appellate court issued a more lenient sentence, it did not exonerate the man or expunge his criminal record.

The Ukrainian government is within its rights to adopt legislation to punish those who pose a threat to national security under occupation. Such measures may be necessary to respond to public calls for justice and prevent a sense of impunity in society. However, as this report describes, the current anti-collaboration legal framework is deeply flawed. Its language is imprecise, overly broad and vague. It casts too wide a net, capturing not only those who actively harm Ukraine's safety and security, but also civilians carrying out ordinary work for fellow civilians under occupation or performing other activities necessary for survival.

International human rights law requires that legislation meets the criteria of "legality," which means that to be valid, laws cannot be overly broad or vague. Instead, they need to be sufficiently accessible and precise so that an individual can reasonably foresee the consequences of their actions, in particular when they may be in violation of the law.

Ukraine's international legal obligations also require it to ensure due process and fair trial rights, with due consideration afforded to duress or coercive circumstances, equal application of the law, and proportionate punishment. Ukraine's anti-collaboration laws do not meet these tests. The fact that courts have issued different verdicts for similar acts, and identical verdicts for very different acts and seemingly very different levels of culpability under a given provision of the criminal code, is a demonstration of the legislation's arbitrariness and the lack of foreseeability.

Analysis by Human Rights Watch and other organizations of existing court verdicts shows that the conviction rate in collaboration cases is close to 100 percent. This, combined with the prevalence of plea bargains, the low rate of appeals, and the scarcity of lawyers willing to handle collaboration cases raises significant concerns about whether individuals charged with collaboration have adequate access to due process. Many collaboration prosecutions are also conducted in absentia, but without meeting any of the due process safeguards required to render those proceedings fair under international law.

Ukrainian legal experts and human rights defenders interviewed by Human Rights Watch for this report mostly criticized the anti-collaboration laws. Many believed them to be unfair and unjust, and thought that they punish people for simply trying to survive under difficult circumstances. Some argued that the Ukrainian government should be encouraging people to stay in their communities and provide Ukrainian civilians with services under occupation, rather than punishing them for doing so.

The anti-collaboration legislation does not sufficiently address the coercion and duress that civilians face under occupation. The report describes how the legislation enables the courts to unfairly punish civilians who were forced to engage with Russian occupying authorities to protect themselves and their families. To address this, prosecutors and courts should in each case carefully review and consider individual circumstances, such as evidence of intimidation, pressure, or threats of violence.

In May 2024, the Office of the Prosecutor General of Ukraine took an important step by issuing a directive to the heads of regional prosecutor's offices, instructing them to comply with international human rights law and international humanitarian law during pre-trial investigations and providing procedural guidance in criminal cases involving collaboration. The instruction, which the Prosecutor General's office shared with Human

Rights Watch, re-iterated the prevalence of international human rights and humanitarian law over domestic law. Recognizing that Ukraine's collaboration laws do not explicitly differentiate between criminal collaboration and necessary interactions with the occupying power, the letter instructs the prosecutors to apply practical considerations to make this distinction.

While this is a positive move, at time of writing, the extent of the impact of these instructions on new and ongoing investigations and prosecutions or previously issued verdicts remains unclear.

In some cases, described in this report, local authorities returning to de-occupied areas have targeted residents even after they underwent "filtration" and were cleared of any suspicion of violating anti-collaboration laws. Like Veronika, described above, these residents can then be targeted by local authorities who publicly signal that they will not be able to get a job again because during the occupation they did not leave and continued to work. Official policy does not condone this, but as a Ukrainian Supreme Court judge critical of the law told Human Rights Watch: "To put it simply, they are being punished for not fleeing their homes."

A woman whose city was occupied between April and September 2022 summarized her experience:

Our mayor left just before the Russians came in. He didn't help us, didn't tell us to evacuate. He just ran away, quietly, took his family out. And then when our [Ukrainian forces] liberated us, the mayor suddenly reappeared. He said that all of us who stayed behind and worked are collaborators. People started ... asking: what were we supposed to do to feed our families? And he responded: "You were supposed to eat worms [rather than collaborate with the Russians.]"

Nearly three years after the shock of the Russia's full-scale invasion and the rushed passage of the anti-collaboration laws, some Ukrainian legislators are rethinking their impact and proposing amendments. Ukrainians we spoke with said the current anti-collaboration laws are counterproductive in that they effectively encourage Ukrainians to

abandon occupied communities, while incentivizing those who remain, whatever their sympathies, to fear rather than welcome Ukrainian authorities after de-occupation. This, they argue, has made Ukrainian recovery of its territorial integrity and reintegration of liberated populations more difficult.

As detailed below, many in Ukraine's civil society believe that prosecuting individuals for collaboration should be considered through the broader lens of transitional justice, with a careful balance between Ukraine's immediate security needs, the humanitarian needs of Ukrainian civilians, and the long-term interests of Ukraine in recovering and reintegrating Russian occupied territories.

Recommendations

To the Ukrainian Authorities:

- Revise the anti-collaboration legislation, in close consultation with civil society, to ensure compliance with the norms and standards of international humanitarian law and international human rights law. This should include explicit provisions making clear that collaboration does not include the continued provision of routine services to civilians under occupation.
- Revise the anti-collaboration legislation to prevent the unjust targeting and punishing of civilians who engaged with Russian occupiers under situations of coercion or duress, to protect themselves and their families. Issue clear guidelines and provide appropriate training to judges and prosecutors to ensure that they assess individual circumstances in collaboration cases, including evidence of coercion, intimidation, or threats of violence.
- Ensure that the penalties for violations of collaboration laws are proportionate to the gravity of the offense and consider alternatives to criminalization.
- Ensure that policies and laws on collaboration, filtration processes, and administrative penalties such as termination of employment and professional bans have a proper legal basis and are implemented consistently with Ukraine's human rights obligations, including due process and fair trials, and relevant norms on occupation under international humanitarian law.
- To help ensure that prosecutions for collaboration activities focus only on serious cases for which there is evidence of actual harm caused to national security, devise a unified strategy that identifies and prioritizes such cases.
- Consider including changes to the anti-collaboration legislation as part of the government's action plan for fulfilment of recommendations from the European Commission for Ukraine's EU accession.
- Ensure all anti-collaboration verdicts and legal proceedings are matters of public record and proceedings are open to the public, in line with fair trial norms.
- Take action to end and prevent, including through monitoring and responding to complaints, any and all extralegal punishments, discrimination or harassment, official or otherwise, on individuals who are not charged with collaboration, but are nonetheless treated as suspects because they lived and worked under occupation.

- Likewise, make clear in public statements and other public interactions that the mere act of remaining in one's home territory under Russian occupation is not a crime, nor in any way unpatriotic or cause for stigma.

To the European Union:

- As part of Ukraine's EU accession and the analytical examination of applicable EU law (so-called screening of the EU "acquis"), discuss and review the collaboration law and its implementation, for example through trials in absentia, and include reform of this legislation among the priorities ("benchmarks") for the first cluster of legal reforms in the accession process (the "fundamentals" cluster), including reforms in the judiciary and fundamental rights.
- As part of EU support to Ukraine in fulfilling its fundamental rights obligations for EU accession, work with the Ukrainian government to help them align with EU and international humanitarian and human rights law norms by developing guidelines on the implementation of collaboration legislation, including a strong focus on eliminating arbitrary application of the law and ensuring due process and the right to a fair trial.
- Assess the reform of the legislation and its implementation in the annual enlargement report on Ukraine.

To the Council of Europe, the OSCE, and other international organizations and actors:

- Collect and share evidence on the harms caused by the collaboration law and its potential negative impact on the successful reintegration of de-occupied territories, including the negative impact bad laws have on building robust respect for rule of law, post-conflict.
- Encourage Ukraine to seek an opinion by the Council of Europe's Venice Commission on the collaboration laws, their implementation, and to follow the recommendations made by the Commission.

Methodology

This report presents findings from research carried out by Human Rights Watch between March 2023 and September 2024. Human Rights Watch conducted 34 in-depth interviews with Ukrainian legal professionals, including active judges, defense lawyers and legal experts, as well as representatives from international organizations. Among the interviewees were also Ukrainian civil society representatives, human rights activists, and Ukrainian civilians with direct experience of living under occupation.

Research methodology also included a comprehensive analysis of current and draft legislation, as well as secondary sources. These sources comprised parliamentary commissions' reviews of draft legislation and other official documents, court decisions from the Unified State Register of Court Decisions, publications by civil society groups, reports by the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), the OSCE's Office for Democratic Institutions and Human Rights (OSCE ODIHR) and the European Union Advisory Mission in Ukraine (EUAM), along with academic research and media coverage.

All interviews were conducted in-person or remotely, in Ukrainian, English, or Russian and with informed consent. Most interviewees spoke on the condition that their names and other identifying information be withheld. Human Rights Watch did not provide interviewees with financial compensation or other incentives for participating.

Legislative Framework

On March 3, 2022, the Ukrainian parliament adopted two laws that criminalize collaboration and establish penalties for it. Law No. 2108-IX amended the Criminal Code of Ukraine by adding a new article 111-1, consisting of seven paragraphs that define “acts of collaboration,” and set out a range of penalties for them.¹ Law No. 2107-IX modified a range of Ukrainian laws—including those regulating elections, military service, state secrets, political parties, public associations, trade unions, freedom of conscience and religion, and citizens’ participation in protecting public order and the state border—to bring them into line with the amended criminal code.

In April 2022, the parliament adopted Law No. 2198-IX, which introduced article 111-2 to the criminal code, establishing criminal liability for aiding and abetting “an aggressor state.”²

While article 111-1 applies only to Ukrainian citizens, article 111-2 applies both to Ukrainian citizens and foreigners.

Law No. 2110-IX, also adopted on March 3, 2022, further amended the criminal code, adding article 436-2, which banned “justification, recognition as legitimate, denial of armed aggression of the Russian Federation against Ukraine,” including by presenting Russia’s aggression against Ukraine as an internal civil conflict.³

Article 111-1 of the Criminal Code of Ukraine defines acts of collaboration as “public denial of the armed aggression against Ukraine” and “public calls for support for decisions and/or actions of the aggressor state,” “propaganda in educational institutions to facilitate the armed aggression against Ukraine and actions aimed at implementing the

¹ Law 2108-IX “On Amendments to Certain Legislative Acts Regarding the Establishment of Criminal Liability for Acts of Collaboration Activities” <https://zakon.rada.gov.ua/laws/show/2108-20#Text> (accessed May 18, 2024) and Law No. 2107-IX “On Amendments to Certain Legislative Acts on Ensuring the Responsibility of Individuals Who Carry Out Acts of Collaboration” <https://zakon.rada.gov.ua/laws/show/2107-ix#Text> (accessed May 18, 2024).

² Law 2198-IX “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Responsibility for Acts of Collaboration and Features of the Application of Preventive Measures for Committing Crimes against the Foundations of National and Public Security” <https://zakon.rada.gov.ua/laws/show/2198-ix#Text> (accessed May 18, 2024).

³ Law 2110-IX “On Amendments to Certain Legislative Acts of Ukraine Regarding the Strengthening of Criminal Liability for the Production and Distribution of Prohibited Information Products,” <https://zakon.rada.gov.ua/laws/show/2110-20/#Text> (accessed May 18, 2024).

education standards of the aggressor state,” “transfer of material resources to the aggressor state,” “implementation of economic activities in cooperation with the aggressor state,” and “organization and conduct of political events, information activities in cooperation with the aggressor state.”

The legislation penalizes carrying out, under occupation, a wide range of public sector jobs. They encompass the misdemeanor of “voluntary occupation of a position not related to the performance of organizational-administrative or administrative-economic functions” (article 111-1, part 2) and the more serious felony offense of “voluntary occupation of a position related to the performance of organizational-administrative or administrative-economic functions” (article 111-1, part 5). Thus, the law distinguishes between situations in which Ukrainian citizens hold a position not related to performing administrative activities, punishable by deprivation of the right to hold certain positions or engage in certain activities (with or without confiscation of property), and situations in which they hold administrative positions (punishable by deprivation of liberty).

Penalties are severe and range from a fine to a 3- to 5-year prison term. The period for deprivation of the right to hold certain positions or engage in certain activities is 10 to 15 years. Life imprisonment is stipulated for an aggravating circumstance involving the death of a person or other serious consequence resulting from actions defined in parts 5, 6, and 7 of article 111-1.

These definitions of collaboration are overly broad and vague, and baselessly criminalize a wide range of activities necessary for the maintenance of routine civilian services in occupied areas. They do not distinguish between Ukrainian civilians who hold public service positions under the occupation and may be required to cooperate to ensure civilian life can continue, and actual acts of collaboration intended to undermine state security and/or inflict real harm to security. And as described below, in cases Human Rights Watch analyzed, courts do not adequately assess actual harm, or the intent of the people charged with collaboration offenses.

Framework of International Humanitarian and Human Rights Law

International Humanitarian Law and Collaboration

The laws of war do not directly address wartime collaboration, but rather the fourth Geneva Convention codifies norms to protect civilians—as protected persons—under occupation from misconduct by occupying forces. These norms were applicable while Ukrainian civilians were living under Russian occupation in areas now liberated by Ukraine and continue to be applicable in areas still under Russian occupation, including Crimea.

While the fourth Geneva Convention does not address how the sovereign authorities of the occupied territory should treat civilians who have lived under occupation, it does set out the legal framework under which adult civilians may be expected to work under the occupation (article 51), and in particular in areas such as health care (article 56), education and child care (article 50) calls for “the cooperation of the national and local authorities” to maintain services essential to civilians.⁴ Indeed the fourth Geneva Convention, while prohibiting the use of mental or physical coercion against civilians (article 31) or requiring civilians to serve in an occupying force or perform military or semi-military functions (article 51), does provide that civilians may be compelled to work “for the needs of the army of occupation” (article 51).⁵

It follows that civilians who perform work or cooperate with occupying forces in the circumstances provided for in Geneva Convention IV should not also be punished for it, by their own government.

Due Process and Fair Trial

Ukraine is a party to both the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), which remain applicable

⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Geneva Convention IV, 6 U.S.T. 3516, 75 U.N.T.S. 287, (1949), articles 50, 51, 56.

⁵ Geneva Convention IV, articles 31 and 51.

during wartime.⁶ Ukraine has exercised its right to derogate from certain obligations under the treaties in this time of war, but not with respect to the right to a fair trial, protected by article 6 of the ECHR and article 14 of the ICCPR.⁷ Wartime does not relieve states of the obligation to conduct only fair trials, affording all essential judicial guarantees.⁸

The right to due process and a fair trial relating to criminal offences covers both obligations of substance and process. To preclude arbitrary application, a law that creates a “criminal charge,” on which basis a person can be deprived of their liberty, prosecuted, and punished, must comply with the principle of “legal certainty,” which requires that in substance it must be sufficiently accessible, precise and foreseeable in its application. Prosecution for offences that do not meet the “quality of law” test are arbitrary and inherently violate fair trial protections.

The right to a fair trial also guarantees due process rights, including the presumption of innocence, the right to effective representation, and the right to sufficient time and facilities to prepare a defense. Trials in absentia are fundamentally at odds with the right to a fair trial, which includes the right to be present at trial, and are only permitted in exceptional circumstances with safeguards.

How these standards play out in the application of Ukraine’s anti-collaboration laws is explored further in this report.

⁶ The European Convention for the Protection of Human Rights and Fundamental Freedoms, European Treaty System No. 005, ratified by Ukraine on September 11, 1997; International Covenant on Civil and Political Rights, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, ratified by Ukraine on November 12, 1973.

⁷ See “Derogation contained in the Note Verbale No. 31011/32-017-3 from the Permanent Representation of Ukraine to the Council of Europe, dated 28 February 2022, registered at the Secretariat General on 1 March 2022”, <https://rm.coe.int/1680a5bobo>, and “Partial withdrawal of derogation contained in Note verbale No. 31011/32-119-46585 from the Permanent Representation of Ukraine, dated 4 April 2024, registered at the Secretariat General on 5 April 2024, concerning Articles 4.3, 9, 13, 14 and 16 of the Convention”, <https://rm.coe.int/1680af452a>. Derogations by Ukraine are available at <https://www.coe.int/en/web/conventions/search-on-reservations-and-declarations>.

⁸ See the ICRC study on customary rules of international humanitarian law applicable in international and non-international armed conflicts, rule 100, available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule100>.

Anti-Collaboration Prosecution Data

Between the start of Russia's full-scale invasion in February 2022 and November 2024, Ukrainian authorities registered 147,559 war crimes, including 19,758 crimes against national security, according to the Office of the Prosecutor General.⁹

At time of writing, authorities had reportedly opened 8,894 criminal cases under article 111-1 of the Criminal Code (acts of collaboration) and 1,388 proceedings under article 111-2 (abetting an aggressor state).¹⁰

The full scope of the sentencing data for collaboration is unclear due to several factors. These include security-related restrictions on public access to parts of the national court register and duplications and gaps in the register itself. It appears, though, that the number of prosecutions for collaboration increased between 2023 and the first half of 2024 and declined between from June through August 2024.¹¹

As of September 2024, Human Rights Watch had tabulated 1,948 verdicts under article 111-1 of the criminal code and 84 verdicts under article 111-2, using the state register of court decisions.¹² The Office for Democratic Institutions and Human Rights of the Organization for Security and Co-Operation in Europe (ODIHR) reported that, as of May 2024, first-instance courts had issued a total of 1,622 decisions on collaboration cases, and that 634 of these rulings, or 39 percent, were issued between December 2023 and May 2024 alone, suggesting an increase in prosecution over time.¹³ This indication that prosecutions are becoming more common is consistent with data reported by HRMMU for the period of

⁹ Office of the Prosecutor General of Ukraine, <https://gp.gov.ua/> (accessed November 7, 2024).

¹⁰ Ibid.

¹¹ According to the HRMMU October 2024 report, the number of criminal investigations into collaboration cases started declining between June and August 2024, following instructions from the office of the prosecutor general to ensure compliance with international humanitarian law in prosecution of such cases, see OHCHR, "Treatment of Prisoners of War and Update on the Human Rights Situation in Ukraine, 1 June 2024-31 August 2024," October 1, 2024, <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/Ukraine-OHCHR-40th-periodic-report.pdf>, October 1, 2024 (accessed October 3, 2024).

¹² Unified State Register of Court Decisions, <https://reyestr.court.gov.ua> (accessed July 24, 2024). Human Rights Watch also analyzed 117 judgments by appellate courts under article 111-1 and one appellate court judgment under article 111.2 The 117 are not included in the 1,948 of first instance court verdicts tabulated by Human Rights Watch.

¹³ OSCE, "Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine," ODIHR, OSCE, July 22, 2024, https://www.osce.org/files/f/documents/a/e/573346_1.pdf (accessed July 26, 2024). The report states that as of May 2024, the total number of criminal cases for collaboration was 3932.

March to May 2024. Its report stated that in the reporting period authorities opened 652 new cases of “collaboration activities” and Ukrainian courts issued verdicts in 322 cases, finding the defendants guilty in all cases.¹⁴ The Human Rights Centre ZMINA, an independent Ukrainian group that has been closely monitoring collaboration verdicts, told Human Rights Watch that the number of verdicts that first instance courts delivered for acts of collaboration had at least doubled between September 2023 and April 2024.¹⁵

Deciphering the trend of recent prosecutions and convictions has become increasingly fraught, however, due to growing security related restrictions on public access to information. In May 2024, the Ukrainian parliament took a step further in restricting such access by adopting, at first reading, a bill that, if adopted into law, would restrict access to court decisions in cases of “special public interest,” including cases involving national security, protection of state secrets, border security, conscription, mobilization, and military service procedures. The bill stipulates that access would be restricted for the duration of martial law and one year thereafter.¹⁶

If passed, the bill will sharply curtail public awareness and debate concerning the impact of the anti-collaboration laws, depriving Ukrainian society of information necessary to assess them. The initiative triggered criticism from civil society groups. More than 30 Ukrainian rights groups called on the parliament to reject the legislation, arguing it imposed disproportionate restrictions on access to information, increased opportunities for corruption, and gave judges wide discretion to remove essential information on specific cases from court judgments.¹⁷

¹⁴ OHCHR, “Report on the human rights situation in Ukraine, 1 March 2024-31 May 2024,” <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/24-07-02-OHCHR-39th-periodic-report-Ukraine.pdf> (accessed September 9, 2024), paras. 92-96.

¹⁵ Human Rights Watch phone interview with legal analyst (name withheld) from ZMINA, April 29, 2024.

¹⁶ Draft Law “On Amendments to Certain Laws of Ukraine to Prevent the Disclosure of Certain Information in the Texts of Court Decisions,” <https://itd.rada.gov.ua/billInfo/Bills/Card/41159> (accessed July 26, 2024).

¹⁷ See, for example, Media Initiative for Human Rights: “We call on the Verkhovna Rada not to adopt draft law No. 7033-D, which restricts access to court decisions,” May 16, 2024, <https://mipl.org.ua/zaklykayemo-verhovnu-radu-ne-pryjmaty-zakonoprojekt-N-7033-d-yakyj-obmezhuje-dostup-do-sudovyh-rishen/> (accessed June 3, 2024).

Concerns over Rushed and Flawed Legislation

Ukrainian civil society groups, government officials, and international organizations have criticized the anti-collaboration legislation for being overly broad and vague as well as for having been adopted in a rushed manner without proper consultation and debate.

Government officials have issued conflicting statements about what they believe constitutes collaboration with the occupying power. Some recognize the element of coercion as a mitigating factor. Others have appeared to attempt to shift responsibility to all residents living in occupied territories for not leaving their homes after the area came under occupation.

For example, Iryna Vereshchuk, the then-minister for reintegration of occupied territories, said in January 2024 that Russian authorities' forces had forced Ukrainians living in occupied territories to collaborate, making it "impossible for them to return to Ukraine's jurisdiction without being subjected to checks and investigations" and called on people to leave these territories.¹⁸ Dmytro Lubinets, the Ukrainian parliament's commissioner for human rights, stated that Ukraine will not prosecute those who receive social benefits or apply for a Russian passport, but suggested that anyone working for the occupying authorities should be prosecuted for collaboration.¹⁹ The chair of the Verkhovna Rada Committee on Law Enforcement Issues said: "We understand that some people living in occupied areas are forced, for humanitarian reasons, to cooperate with occupiers one way or another. That's why we want to modify [to soften] the criminal code articles that currently establish criminal responsibility for such actions."²⁰

Some legal professionals and human rights advocates believe that collaboration prosecutions should be integrated within a comprehensive transitional justice framework that balances the state's legitimate security interests and the needs of civilians, including

¹⁸ See, for example: "Occupiers Force Ukrainians into Collaboration," UNN, January 4, 2024, <https://unn.ua/ru/news/okkupant-zastavlyayet-ukraintsev-zanimatsya-kollaboratsionizmom-vereshchuk> (accessed April 2, 2024).

¹⁹ Dmytro Lubinets Telegram channel, post dated April 30, 2023, https://t.me/dmytro_lubinetz/2290 (accessed July 13, 2024).

²⁰ "They give less for murder.' The state is changing approach to collaborators," Glavkom, July 26, 2023, <https://glavkom.ua/publications/za-vbivstvo-menshe-dajut-derzhava-zminjuje-pidkhodi-do-kolaborativ-943357.html> (accessed March 3, 2024).

fostering truth-seeking, reconciliation, and the successful future reintegration of occupied territories.

For instance, a legal expert who worked on the development of a government strategy for prosecuting crimes of collaboration in Crimea said:

On one hand, authorities are not providing clear signals to people [residing in occupied areas] about what constitutes a crime and what doesn't, and what will happen to them when [Ukraine] returns and how they will be treated. People who have already suffered from the occupation are labeled as traitors or “collaborators.” On the other hand, this is a problem for Ukraine because these decisions will have to be made eventually [after occupied territories are liberated], and if they are made hastily, they will not be of good quality.”²¹

A human rights advocacy expert from ZMINA described to Human Rights Watch how in the weeks and months after the legislation was adopted, the group received “thousands of calls from people asking us whether their actions were going to fall under this legislation.”²² Human Rights Watch also came across reports of parents who were worried that they might be accused of collaboration for having sent their children to camps in Russia to protect them from the war.²³

Numerous draft laws suggesting amendments to the criminal code concerning collaboration have been proposed.²⁴ Some aim to sharpen current language and address inconsistencies between the articles, others seek to impose even stricter punishments for collaboration. At time of writing, none had advanced in parliament.

²¹ Human Rights Watch Skype interview with a legal expert (names withheld), April 25, 2024.

²² Human Rights Watch phone interview with a human rights advocacy expert (name withheld) at the Human Rights Center ZMINA, May 26, 2023.

²³ See also, for example, Helsinki Human Rights Union: “Why are parents of deported children afraid of accusations of cooperation with the enemy?” September 23, 2023, <https://www.helsinki.org.ua/publications/chomu-batky-deportovanykh-ditey-boiatsia-zvynuvachen-u-spivpratsi-z-vorohom-doslidzhennia/> (accessed July 8, 2024), and Human Rights Watch interview with Shahida Tuluganova, London, February 22, 2024.

²⁴ See, for example, “Collaborationism and Abetting the Aggressor State: practice of legislative application and prospects for improvement,” ZMINA, 2023, https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf (accessed September 30, 2024).

Legal Ambiguity

As noted above, key aspects of the criminal code's definition of acts of collaboration are not in line with international human rights law and the law's overly broad terminology has led to inconsistent, arbitrary prosecutions and excessive punishments.

Offences under article 111 of the criminal code (high treason), article 111-1 (collaboration), article 111-2 (aiding and abetting the aggressor state), and article 436-2 (justifying, recognizing as legitimate, or denying Russian Federation armed aggression against Ukraine, or glorifying its participants) do not clearly differ from one another. Due to the very broad wording, similar offenses can be classified under different criminal code articles, several legal practitioners told Human Rights Watch.²⁵ For instance, "speaking out in public in favor of the aggressor" can be classified under either article 111-1 or article 436-2 of the criminal code.

Furthermore, laws that address interactions with occupying forces do not clarify what might constitute "exchange of material resources" or what can be considered engaging in "economic activity" with them, or clearly define what performing "organizational-administrative or administrative-economic functions" means. The lack of clear definitions has also led to inconsistencies in how the law is applied.

In some instances, courts have issued identical verdicts for very different acts and seemingly very different levels of culpability under a given criminal code article. And vice versa: courts have viewed almost identical actions by defendants under similar circumstances differently depending on the prosecutor's interpretation or the judge's discretion, resulting in varying penalties.

For example, Human Rights Watch reviewed two guilty verdicts issued in the spring of 2024 against defendants charged under article 111-1, part 2 (working in a non-administrative job).

²⁵ Human Rights Watch interviews with Ukrainian legal practitioners on March 8, 2024, April 5, 2024, April 29, 2024 (all names withheld).

In the first case, a Ukrainian woman from Kharkivska region was accused of collaboration with the occupying authorities because she worked at the local library while her town was under occupation.²⁶ In her role as “acting head of library,” according to the case materials, she filled out library cards and assisted the library room’s visitors with searching for books and magazines. The woman pleaded guilty and was sentenced to a 10-year ban on holding any public sector position. The court considered her guilty plea a mitigating circumstance.

In the other case, a woman received the same sentence, also under article 111-1, part 2, but for holding a position of a head of village administration.²⁷ In that role, she had encouraged local residents to obtain Russian passports and send their children to a children's camp in Russia, as well as “supported and promoted the ideology of the ‘Russian world,’” according to the case materials. Although the court decision referenced a clear ideological motive to oppose Ukrainian security and interests, the verdict was identical to that of the librarian, who merely maintained the library's daily operations, such as issuing library cards.

Three guilty verdicts Human Rights Watch reviewed against individuals charged with “transferring material resources” or “participating in economic activity” (article 111-1, part 4) also illustrate these disparities. In the first, handed down in August 2023, a man agreed to be a security guard for a local market and pharmacy in exchange for food and other basic necessities.²⁸ He did not receive any other remuneration. A court sentenced him to a four-year prison term with confiscation of property and a 10-year ban on working in public service.

In the second, handed down in December 2023, an entrepreneur and head of a private agricultural business was charged for instructing his employees to plant crops and sell them in Russia.²⁹ He was also accused of organizing exports of sunflower seeds to Russia, for which the occupying authorities paid him in rubles. Finally, he was also accused of registering his enterprise with the Russian occupation tax authorities and paying taxes into

²⁶ Unified State Register of Court Decisions, case number 644/3263/24, May 2, 2024, <https://reyestr.court.gov.ua/Review/118810812> (accessed May 16, 2024).

²⁷ Unified State Register of Court Decisions, case number 636/2836/24, April 24, 2024, <https://reyestr.court.gov.ua/Review/118769366> (accessed May 16, 2024).

²⁸ Unified State Register of Court Decisions, case number 953/2847/23, August 30, 2023, <https://reyestr.court.gov.ua/Review/113110133> (accessed July 24, 2024).

²⁹ Unified State Register of Court Decisions, case number 644/6429/23, December 25, 2023, <https://reyestr.court.gov.ua/Review/115910156> (accessed July 24, 2024).

the Russian budget. Unlike the guard, sentenced to four years in prison and confiscation of property for working in exchange for food to support his family, the entrepreneur was sentenced to a fine, confiscation of property, and a ban on public service, but not to a prison term.³⁰

In the third verdict, issued in December 2022, a court found a boiler room technician guilty of “transferring material resources” to Russian forces. The technician, who had to cross a Russian checkpoint to get to work every morning, arranged to give Russian soldiers water and cigarettes in exchange for them letting him cross the checkpoint daily. He was sentenced to a fine of 9,860 hryvnas (US\$ 240) and a 10-year ban on public service positions.³¹

³⁰ Ibid. He was fined 170,000 hryvnas (US\$4,119) and banned from working in the public sector for 11 years.

³¹ Unified State Register of Court Decisions, case number 574/369/22, December 12, 2022, <https://reyestr.court.gov.ua/Review/107991214> (accessed July 25, 2024).

Prosecuting Medical and Education Workers for Collaboration

Occupying forces can compel adult civilians living under occupation to do work for “the public utility services, or for the feeding, sheltering, clothing, transportation, or health of the population of the occupied country,”³² although they are prohibited from exercising mental or physical coercion against civilians.³³ In addition to this general provision addressing the need to ensure that basic services continue to function for the benefit of the civilian population, there are specific provisions in Geneva Convention IV that address the role of medical personnel and educators working under occupation.

Medical Personnel

Doctors and medical personnel are afforded special protection under international humanitarian law and are obligated to provide care to all those in need. In times of occupation, Geneva Convention IV provides that an occupying power “has the duty of ensuring and maintaining, *with the cooperation of national and local authorities*, the medical and hospital establishments and services, public health and hygiene in the occupied territory” (emphasis added).³⁴ It explicitly provides that “medical personnel of all categories shall be allowed to carry out their duties.”³⁵ Therefore using collaboration charges to target any medical workers who have continued to work during occupation to ensure the functioning of the public health system directly contravenes international humanitarian law and undermines protections afforded to civilians under occupation.

Human Rights Watch identified five verdicts against medical workers accused of collaboration since the start of Russia’s full-scale invasion. While they were not prosecuted solely for treating patients under occupation, these doctors and other medical personnel were found guilty of collaboration under part 5 of article 111-1 (carrying out work in jobs with administrative functions). For example, in January 2023, a court sentenced a doctor from

³² Geneva Convention IV, Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, 75 U.N.T.S. 287, (1949), art. 51.

³³ Geneva Convention IV, art. 31.

³⁴ Geneva Convention IV, art. 56.

³⁵ Ibid.

Melitopol to six years in prison with confiscation of property for assuming the role of medical director at one of the city's hospitals.³⁶ The verdict was handed down in absentia, a violation of fair trial guarantees.

As noted above, the issue of how the law should treat people who cooperate with occupying authorities is extremely contentious in Ukrainian society. This is particularly evident, for example, in the ongoing debate about medical workers performing administrative duties under occupation. For example, a consultant with a nongovernmental group that is advising Ukraine's Ministry of Health and Ministry of Reintegration on a plan for reintegrating health care institutions in de-occupied territories, said: "To me, the line should be: if a person voluntarily agreed to perform administrative and economic activities which led to certain legal consequences, such as hiring and coordinating medical staff, signing orders connected with the functioning of the institution and so on, then it's definitely collaboration."³⁷

The actions the expert described are in fact necessary for the continuing functioning of medical institutions, including for the benefit of the civilian population (as provided for in Geneva Convention IV) and should never be treated as collaboration. As a practicing defense attorney and a human rights lawyer from a prominent human rights group correctly pointed out:

Doctors and medical workers are protected [under international law] to do their job. But for some reason, some [people] in Ukraine think that heads of hospitals or others [medical workers] who perform administrative functions should be penalized. In my view, we should look at medics as a "protected category" not only when they provide urgent medical care in the field, but also when they need to provide treatment in a hospital, with functional equipment and other necessary facilities, which means that someone must create conditions for them to do so. To me, these processes are connected.³⁸

³⁶ Unified State Register of Court Decisions, case number 331/2927/22, January 5, 2023, <https://reyestr.court.gov.ua/Review/108327107> (accessed July 27, 2024).

³⁷ Human Rights Watch phone interview with a consultant (name withheld). April 26, 2024.

³⁸ Human Rights Watch phone interview with a human rights lawyer (name withheld) with Media Initiative for Human Rights, May 2024.

Education Professionals

The fourth Geneva Convention also requires an occupying power “*with the cooperation of the national and local authorities*, to facilitate the proper working of all institutions devoted to the care and education of children” (emphasis added).³⁹

Yet, as of March 2024, the HRMMU had identified 35 criminal verdicts, against 30 women and 5 men, who were employees of educational facilities (school headmasters or their deputies, university administration employees) and employees of “educational departments” in occupied territory.⁴⁰ Between March and May 2024 alone, OHCHR found, courts issued another 21 guilty verdicts for holding such positions.⁴¹ All 76 were found guilty of “the implementation of education standards of the Russian Federation” or “propaganda in educational facilities.” In almost half of these cases, the defendants were convicted in absentia. In most cases, individuals received penalties ranging from 1 to 10 years of imprisonment, while all were banned from holding certain positions.

A letter the Ministry of Education and Science sent to heads of educational institutions and district and regional administrations in September 2022, which Human Rights Watch later obtained, clarified the range of education professionals in occupied areas who risked criminal prosecution for collaboration. The letter warned educational workers that “treason and cooperation with the occupiers are criminal offenses and result in severe punishment.”⁴² The letter emphasized that working in any managerial, teaching or research position under the occupying authorities is “categorically unacceptable.” While “the scale and consequences of such behavior” will be considered by a court of law when

³⁹ Geneva Convention IV, art. 50.

⁴⁰ Data provided to Human Rights Watch by the HRMMU, based on its analysis of information available at the Unified State Register of Court Decisions. For further details, see, for example, OHCHR, “Human Rights Situation During the Russian Occupation of Territory of Ukraine and Its Aftermath, 24 February 2022 – 31 December 2023,” March 20, 2024, <https://ukraine.un.org/en/264057-human-rights-situation-during-russian-occupation-territory-ukraine-and-its-aftermath> (accessed April 2, 2024), para. 126.

⁴¹ OHCHR “Report on the human rights situation in Ukraine, 1 March 2024-31 May 2024,” July 3, 2024, <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/24-07-02-OHCHR-39th-periodic-report-Ukraine.pdf> (accessed September 9, 2024), paras. 92-96.

⁴² Human Rights Watch report: “Education under Occupation: Forced Russification of the School system in Occupied Ukrainian Territories,” June 20, 2024, <https://www.hrw.org/report/2024/06/20/education-under-occupation/forced-russification-school-system-occupied-ukrainian#2019>. Letter from Serhiy Shkarlet, minister of education and science of Ukraine to Heads of professional institutions pre-university, higher education of all forms property and spheres of management, Departments (management) of education and of Kyiv city and regional sciences military (military-civilian) administrations, September 20, 2022, https://dnu.dp.ua/docs/Lyst_MON_Kolaboracia.pdf (accessed October 3, 2024).

determining the severity of punishment in individual cases, the letter states, “the blatant nature of the crime is beyond doubt” with regard to these actions.

The letter specified elements of collaboration, including “participation in the educational process under the occupying power” and “implementation of the education standards of the aggressor state.” It stated that allegations of such actions must be confirmed by factual evidence, documented by an official investigation. The letter referred to Methodological Guidelines by the National Agency for Prevention of Corruption regarding identifying collaboration. However, the guidelines, which Human Rights Watch reviewed, approach collaboration as a broad offense, without establishing specific thresholds that would have to be met for an action to be considered an offense.⁴³

In March 2024, Human Rights Watch interviewed the family of a 43-year-old Ukrainian language teacher sentenced to prison for collaborating with the occupying authorities under criminal code article 111-1, part 3 (“implementing the education standards of the aggressor state”).⁴⁴ The teacher had agreed to become a director of one of her city’s lyceums in mid-August 2022. The teacher’s family told Human Rights Watch that the woman had no choice because she had to support her family, which included an older mother, an ill brother, and her 10-year-old son. She held the post for a little over a month and the school was closed during that time. When the city was de-occupied, in September 2022, Ukrainian authorities required the woman to undergo compulsory security screening, or “filtration,” which she passed. She was, however, subsequently fired from the role she took under occupation and not able to return to her previous job.

In February 2023, she was charged with collaboration and placed in pre-trial detention.

In late December 2023, a court convicted and sentenced her to one year in prison. The family was expecting the woman’s release in March 2024, but the prosecutor’s office appealed the verdict, seeking a two-year sentence. In April, the appeals court sentenced her to an additional 6 months in jail.

⁴³ National Agency for Prevention of Corruption, “Guidelines regarding the work on identifying the facts of collaboration activity,” May 2022, https://nazk.gov.ua/wp-content/uploads/2022/05/6717955817698632004_.pdf (accessed October 3, 2024). See also, Human Rights Watch report “Education Under Occupation: Forced Russification of the School System in Occupied Ukrainian Territories,” June 20, 2024, <https://www.hrw.org/report/2024/06/20/education-under-occupation/forced-russification-school-system-occupied-ukrainian#7017>.

⁴⁴ Human Rights Watch WhatsApp interview with the teacher’s family member (name withheld), March 30, 2024.

The appeal decision, reviewed by Human Rights Watch, stated that the court of first instance did not fully take into account “the gravity of the criminal offense committed by the accused, in particular, the fact that ...[the accused] committed a crime against the foundations of the national security of Ukraine, representing a greater public danger, carried out actions aimed at introducing educational standards of the aggressor state in educational institutions during the period martial law, caused extremely negative consequences for the introduction of a full-fledged educational process in Ukraine.”⁴⁵

The human rights lawyer from Media Initiative for Human Rights questioned the legal basis and practicality of the categorical criminalization of working as an educator under occupation, stating:

There are legal issues and issues of state policy. Firstly, there are 30 to 40 thousand teachers in Crimea, so we would have to convict tens of thousands. Clearly the problem cannot be solved this way. The second approach is entirely legalistic. If we prosecute teachers, we are effectively saying: “Children in occupied areas should be illiterate. They should not be taught to read and write,” which is a fundamental right—a right to education. Although when education is closely tied with ideology, it’s a different story.”⁴⁶

Similarly, a Ukrainian judge said that prosecuting teachers implied that Ukrainian educators in occupied areas should abandon their pupils to the Russian forces. He said:

We are punishing people for what would not have been a crime in ordinary circumstances. Simply because a person continued their normal activities, but under the Russian flag, it suddenly became a criminal offense. This should not be happening.

I believe that, on the contrary, if we look at the teachers who stayed—they stayed with their children. And what would have been better—for them [Russian occupying forces] to bring teachers from Rostov? From Buryatia?

⁴⁵ Case number 953/2742/23, April 15, 2024. Ruling on file with Human Rights Watch.

⁴⁶ Human Rights Watch phone interview with a human rights lawyer (name withheld) with Media Initiative for Human Rights, May 2024.

From Udmurtia? Russia is obliged to ensure the educational process in the occupied territories. Or even worse, they [Russian forces] could have taken the children to Russia for education. Would that have made the children better off? Or Ukraine? ... It is a very difficult choice—to stay with the children or to flee and leave the children at the mercy of the victor.⁴⁷

Given the context of occupation and the responsibilities of teachers and education administrators to the education of children, Ukrainian authorities should not penalize individuals in occupied territories for providing education to children under the Russian curriculum. Human Rights Watch notes that some of the subjects under the Russian curriculum, such as math and sciences, have no ideological component.

Furthermore, the objective alternatives to Ukrainian educators teaching Ukrainian children are for those children to be either denied education, for their families to be displaced out of the occupied regions, or for Russian occupying forces, in furtherance of their obligation to maintain educational functions in areas they occupy, to import Russian educators.

⁴⁷ Human Rights Watch phone interview with a judge (name withheld), July 12, 2024.

Public Harm and Guilty Intent

Ukrainian law, as set out in the Criminal Code, requires both a criminal intent—known as *mens rea* or guilty mind—and harm to be done, before someone can be held liable for a criminal offense. Article 11 of the Criminal Code, which establishes the general principles of criminal liability, defines a crime as “a socially dangerous, guilty (willful or careless) act (omission)” of a sane person of mandatory criminal age. The article emphasizes both the act causing harm and the state of mind (intent) of the perpetrator. While the term “*mens rea*” is not explicitly used throughout the code, criminal intent is implied within the definitions of individual crimes.

The same principles of legality also inform what may be considered legitimate offences under international law.

Ukrainian legal experts and human rights lawyers interviewed by Human Rights Watch for this report held different views on how the anti-collaboration law should be interpreted or applied. However, they all agreed that the law’s flaws created a significant risk of arbitrary prosecutions for activities that were either lawful to begin with and/or for which the accused had no criminal intent and posed no public danger or harm.

For example, a human rights lawyer with experience defending collaboration cases in Ukrainian courts said: “In my view, there is a contradiction in that essential services provided to the population in occupied areas cannot at the same time be recognized by law as carrying public harm.”⁴⁸

A defense attorney, who was preparing to appeal a collaboration verdict in court, said: “[To improve collaboration legislation] we need to be very clear on when such actions were motivated, for example, by intent to harm, [or] to profit. There are those who should be punished [for collaboration]. But there are many who were just trying to help people and they shouldn’t suffer.”⁴⁹

⁴⁸ Human Rights Watch phone interview with a human right lawyer (name withheld), March 8, 2024.

⁴⁹ Human Rights Watch phone interview with a defense lawyer (name withheld), April 23, 2024.

Human Rights Watch reviewed three case files involving individuals charged and sentenced to prison terms under part 5 of article 111-1 for working in positions involving administrative functions under the occupying authorities. All three cases lacked any indication that the accused had any criminal intent or that harm resulted from their actions, to others or to society.

The first of the three verdicts was issued in January 2024 by a court in Dnipropetrovska region against a veterinarian from the occupied Luhanska region.⁵⁰ According to the verdict, the veterinarian had collaborated with the occupying authorities by agreeing to be appointed deputy head of veterinary medicine at the municipal veterinary clinic. She was tried in absentia and sentenced to 10 years in prison with confiscation of property and a 12-year ban on engaging in certain activities.

The second concerned a 53-year-old railway station cleaner from the city of Lyman in Donetska region, which remained under Russian occupation for five months between the end of May and the beginning of October 2022.⁵¹ Before Russia's full-scale invasion, she was a grassroots community leader who represented residents in their interactions with local authorities. After Russian forces occupied the city in May 2022, she replaced the head of her micro district, who fled immediately after the occupation. In her role, she engaged with the occupying authorities on behalf of residents and helped them receive humanitarian aid, food, and coal. Ukrainian armed forces de-occupied the city in September 2022, and Ukraine's security services detained her in January 2023. Notwithstanding that her role was to help with "the feeding, sheltering, clothing, transportation or health" of the population, as foreseen by the Geneva Conventions, in August 2023, a court in Dnipro convicted her under article 111-1, part 5 (holding an administrative position) and sentenced her to five years in prison for carrying out this role.⁵²

⁵⁰ Unified State Register of Court Decisions, case number 198/26/23, January 22, 2024, <https://reyestr.court.gov.ua/Review/116437360> (accessed July 3, 2024).

⁵¹ This case description is based on Human Rights Watch's April 23 phone interview with the defense lawyer (name withheld).

⁵² Unified State Register of Court Decisions, case number 202/3884/23, August 15, 2023, <https://reyestr.court.gov.ua/Review/112856417> (accessed July 15, 2024).

The woman's lawyer, who appealed the verdict, told Human Rights Watch that she was not counting on an acquittal but was hoping for a more lenient sentence for her client.⁵³ In May 2024, the appellate court upheld the guilty verdict.

The lawyer said:

[In my practice,] I came across cases of real collaborators, for example, people who pointed out to occupiers the flats that were abandoned by locals when they fled the war, and others who wanted to cause harm or profit. I personally believe there are real collaborators that should be punished. But [my client], what is she being punished [and jailed] for? She did nothing but help people. She had a bicycle, unlike others, so she could get around and help [distribute aid].

A high-level public official from Lyman, who, according to media, left Lyman the day before the occupation and returned after the city was de-occupied, considered the woman to be guilty even before the trial was finished. In a media interview, he said: "I don't know how they worked. But if there are court trials, they broke Ukrainian law. They betrayed their motherland, where they were born and where they studied and earned a pension."⁵⁴

The third case involves an electrician, also from Lyman, convicted for becoming the head of the municipal electricity service provider under the so-called "DNR" administration. In that capacity, he led the efforts to restore the city's electrical supply, damaged by hostilities. During trial, the electrician partially admitted his guilt and asked the court to take into account mitigating circumstances: that electricity in the city needed to be urgently restored before winter and that he acted out of urgent need to support his family, which included a newborn child and older relatives with medical conditions.⁵⁵ The court sentenced him to three years in prison with confiscation of property, a professional ban of 10 years as well as a 10-year ban on participating in work involving the upkeep and management of electrical grids. The appeals court overturned the verdict citing procedural

⁵³ Human Rights Watch phone interview with the woman's defense lawyer (name withheld), April 23, 2024.

⁵⁴ "They made me an enemy of the people, and I gave my soul to people," Graty, September 11, 2023, <https://graty.me/ru/sdelali-menya-vragom-naroda-a-ya-lyudyam-dushu-otdala-kak-sudyat-dvuh-obshhestvennicz-iz-doneczkoj-oblasti-kotorye-vo-vremya-okkupaczii-limana-stali-glavami-mikrorajonov/> (accessed September 3, 2024).

⁵⁵ Unified State Register of Court Decisions, case number 202/1677/23, May 1, 2023, <https://reyestr.court.gov.ua/Review/110555891> (accessed May 18, 2024).

violations but did not clear the man of collaboration charges.⁵⁶ In the revised sentence, the 10-year professional ban was removed, and the man was released on probation. Although the appellate court issued a more lenient sentence, it did not exonerate him or expunge his criminal record.

⁵⁶ Unified State Register of Court Decisions, case number 202/1677/23, August 31, 2023, <https://reyestr.court.gov.ua/Review/113226198> (accessed May 23, 2024).

Disregard of Coercion and Duress

The anti-collaboration laws do not adequately address situations where Ukrainian civilians in areas under Russian occupation cooperate with the occupying forces under duress or coercion. As described above, the law is being interpreted to criminalize certain acts without regard to the motivation of the defendants. The criminal code includes the word “voluntary” in its definition of acts of collaboration, but the courts hew to a narrow definition of coercion⁵⁷ and ignore the factual circumstances of duress and coercion during occupation.⁵⁸ The combination of these factors can lead to unjust prosecutions. Legal definitions aside, the problem, as a Ukrainian judge put it, is also in the unrealistic and unjust expectation that “loyal” Ukrainian citizens will withstand torture and ill-treatment, and that such resolute patriotism might be manufactured through fear of criminal prosecution following de-occupation:

This legislation normalizes heroism. And heroism is not the norm. And the current approach—if you’re not a hero, you’re a criminal—is not at all right or helpful for the future of Ukraine.⁵⁹

Numerous reports by Ukrainian and international human rights organizations (including Human Rights Watch) and intergovernmental organizations have documented the physical violence, threats, abduction and torture of family members, and other grave abuses Russian occupation forces have perpetrated against Ukrainian civilians to compel them to submit to Russian rule.⁶⁰ They have also documented widespread accounts of severe trauma and stress among Ukrainian civilians who lived under occupation. Many reported losing their livelihoods and being forced to work just to survive and sustain themselves and their families.

⁵⁷ Articles 39 and 40 of the criminal code exempt from criminal liability a person who committed an act under influence of external factors, which include “extreme necessity” and “physical or psychological pressure.”

⁵⁸ Art. 111-1, parts 2 (occupation of positions not related to org-admin or admin-economic functions), 5 (positions related to these functions), and 7 (positions in judicial and law enforcement bodies).

⁵⁹ Human Rights Watch phone interview with a judge (name withheld), July 12, 2024.

⁶⁰ See, for example, “Ukraine: Russian Torture Centre in Kherson,” Human Rights Watch, April 13, 2023, <https://www.hrw.org/news/2023/04/13/ukraine-russian-torture-center-kherson>, (accessed September 9, 2024). See also “You are loyal to Ukraine—are you a Nazi? Torture and other violations as crimes against humanity by the Russian army in Ukraine,” a joint report by the Media Initiative for Human Rights, the Human Rights Centre ZMINA, and OMCT, July 18, 2024, https://www.omct.org/site-resources/files/Ukraine-Report-18.07.2024_English.pdf (accessed September 12, 2024), p. 27.

Four residents of cities in an eastern Ukraine region, which remained under occupation for several months in 2022, described to Human Rights Watch what life looked like under the Russian occupation. One said:

People had nothing to eat. There were food packages once a month—for four people—they included 100 grams of sugar, 200 grams of flour. People had to work—not because they were taking sides, but just to [survive.] Local [Ukrainian] authorities left almost immediately, they blew up bridges.... There was no food, shops and storages were cleaned out. There were more people in the city than supplies needed to survive.⁶¹

Regardless of the specific circumstances an individual might face when deciding whether to work for the occupation administration, it cannot be ignored that a foreign military occupation imposes a certain degree of coercive stress on residents of occupied areas, hardship exacerbated greatly in this case by official Russian policies regarding occupied areas and by widespread abuses against civilians by Russian forces.

When asked about the coercion of Ukrainian civilians by Russian forces, the legal consultant to the Ukraine’s Ministry of Health and Ministry of Reintegration dismissed this broader context and cited instances where individuals faced threats of death or torture yet maintained their loyalty to Ukraine by refusing to cooperate. He then acknowledged that each case should be considered individually.

But other experts told Human Rights Watch that too often Ukrainian courts overlook or dismiss duress as a factor when determining guilt and sentencing in collaboration cases.

For instance, in the case of the security guard described above, the defendant stated in court that Russian military forced him to accept the job of guarding a local market and a pharmacy by threatening him and his family. Nonetheless, the court did not consider this as “sufficient” duress and determined his work under Russian occupation was “voluntary.” As with several other verdicts reviewed by Human Rights Watch, the court based its verdict

⁶¹ Human Rights Watch phone interview with a local resident (name withheld), April 5, 2024.

on the absence of “objective data indicating that measures of physical and/or mental coercion were applied.”⁶²

Human Rights Watch also reviewed cases where the defendants claimed in court that they were subjected to torture, but the court disregarded that information, citing lack of proof. For example, a man in Kharkivska region, the head of the workshop for the manufacturing of lighting products, was accused of delivering three vehicles from the premises of the workshop to the Russian forces.⁶³ In court, he said that Russian soldiers stopped him on the street on the way to his parents’ house and brought him to their headquarters, where they held him for a day, beat him, tied his arms behind his back while holding a grenade, and threatened to kill his girlfriend and his parents. His court testimony was supported by his partner and another family member. The court ruled that insufficient evidence was presented to show that he was under physical or psychological pressure. He was sentenced to five years in prison, with confiscation of property and a ten-year ban on involvement in commercial activities.

While Human Rights Watch cannot assess the accuracy of coercion claims in the individual cases cited above, coercion of Ukrainian civilians by invading Russian forces has been amply documented. Although claims of coercion have been raised as a defense in multiple cases, at time of writing, Human Rights Watch has identified only one acquittal that was issued on the grounds of coercion in verdicts handed down in collaboration prosecutions between May 2022 and August 2024.⁶⁴

⁶² Unified State Register of Court Decisions, case number 953/2847/23, August 30, 2023, <https://reyestr.court.gov.ua/Review/113110133> (accessed May 12, 2024).

⁶³ Unified State Register of Court Decisions, case number 953/4549/22, February 21, 2024, <https://reyestr.court.gov.ua/Review/111301312> (accessed April 29, 2024).

⁶⁴ Unified State Register of Court Decisions, case number 522/7069/23, July 24, 2024, <https://reyestr.court.gov.ua/Review/120568583> (accessed September 12, 2024). Human Rights Watch was unable to identify any other verdicts of first instance or appellate courts where the court examined duress or coercion as a mitigating circumstance.

Compromised Right to Defense and Other Due Process Concerns

The high conviction rate, the prevalence of plea bargains, the low rate of appeals, and the scarcity of lawyers willing to handle collaboration cases raise concern about potential due process and fair trial violations for individuals accused of collaboration.

Wartime does not relieve states of the obligation to conduct only fair trials, affording all essential judicial guarantees.⁶⁵ Ukraine's official derogation from its human rights treaties' obligations under martial law due to the war, does not include derogations from fair trial guarantees under either the European Convention on Human Rights or the International Covenant on Civil and Political Rights.

Conviction Bias and Few Appeals

As noted above, as of September 2024 Human Rights Watch had tabulated 1,948 verdicts under article 111-1 of the criminal code and 84 verdicts under article 111-2.⁶⁶ Analysis of the verdicts shows a conviction rate of more than 99 percent.

Of these verdicts, as of September 2024, Human Rights Watch found only seven acquittals: six under article 111-1 and one under article 111-2, which was subsequently overturned after the prosecution appealed the verdict. No acquittals were granted as the result of appeals.

⁶⁵ See the ICRC study on customary rules of international humanitarian law applicable in international and non-international armed conflicts, rule 100, available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule100>.

⁶⁶ Unified State Register of Court Decisions, <https://reyestr.court.gov.ua>, (accessed July 24, 2024). Human Rights Watch also analyzed 117 judgments by appellate courts under article 111-1 and 1 appellate court judgment under article 111.2. As noted above, it is difficult to determine the precise number of verdicts as the court register often contains duplicates, while some cases are missing entirely.

In many collaboration cases, courts ordered pre-trial detention without considering individual circumstances or the strength of evidence.⁶⁷ International human rights law provides that pre-trial detention should be used only as an exceptional measure.⁶⁸

Human Rights Watch's analysis of verdicts in collaboration cases also suggests that most collaboration cases never make it to appeal and that appellate courts grant very few defense appeals in such cases.

Of the 1,948 verdicts we tabulated under article 111-1, we identified 104 appeals that led to revised sentences, the vast majority leading to harsher, rather than more lenient, sentences. (We identified only one appeal under article 111-2.)

Of the 104 appeals under article 111-1, 38 were filed by prosecutors, 56 by the defense, and 10 jointly. Appellate courts granted all appeals filed by prosecutors, resulting in harsher penalties. Of the appeals to revise the sentence filed by the defense, courts granted only five (three partially and two in full), and the rest were denied. Courts also granted two prosecution appeals to reduce sentences and one joint appeal to reduce a sentence. In the five defense appeals that were granted, the appellate courts mostly cited procedural violations rather challenged the substance of charges or addressed the individual circumstances of the defendant.

Appealing a decision on a collaboration case can be time-consuming and costly, as it requires legal defense services that many cannot afford, in an environment where there are too few lawyers willing to take on collaboration cases. This can deter people from appealing even if they have a strong case, experts interviewed for this report said.⁶⁹

⁶⁷ See, for example, joint report by Human Rights Centre ZMINA, the International Renaissance Foundation and the "Moving Forward Together" campaign: *Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement*, 2023, https://zmina.ua/wp-content/uploads/sites/2/2023/10/collaboration_web_ukr-1.pdf (Accessed August 14, 2024), page 46.

⁶⁸ See for example article 6 (1) of Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) which state that pre-trial detention "shall be" used as a means of "last resort in criminal proceedings", a position repeatedly reiterated in caselaw of the European Court of Human Rights (e.g. *Ambruszkiewicz v Poland*, Application No. 38797/03, judgement May 4, 2006, para. 31).

⁶⁹ Human Rights Watch interviews with a legal practitioner (name withheld), April 25, 2024, a defense lawyer (name withheld), April 5, 2024, legal analyst from the Human Rights Centre ZMINA (name withheld), April 29, 2024.

A significant number of verdicts in collaboration cases are based on plea bargains, which sharply reduces the eligibility of the accused to appeal verdicts in the Ukrainian legal system.⁷⁰

Reflecting on the low numbers of appeals in collaboration cases, one practicing Ukrainian lawyer said:

When the defendant is not present, no one appeals the verdict. When the defendant is present, too many people enter plea deals with the prosecution. So it goes [like this]: the charges are all brought, the court approves them, and no one challenges them. This indicates that people either lack the strength or the desire to contest the charges. I don't know if they are being intimidated, if it's a matter of poor legal representation, or if they just want to get it over with.

This entire situation prevents these cases from being reviewed by higher courts, and no unified judicial practice is established. Decisions are made locally, and they are not even systematically analyzed or reviewed.”⁷¹

Plea Bargains

Plea bargains are a feature of criminal justice systems that allow an accused to obtain a lesser charge or receive a reduced sentence in exchange for a guilty plea in advance of trial. They are not necessarily incompatible with fair trials rights, but, as the European Court of Human Rights has pointed out, in substance this amounts to a waiver of a number of procedural rights, and to be effective “any waiver of procedural rights must always be established in an unequivocal manner, must be attended by minimum safeguards commensurate with its importance and must not run counter to any important public interest.”⁷²

⁷⁰ See section below on plea bargains.

⁷¹ Human Rights Watch Skype interview with the legal practitioner (name withheld), April 25, 2024.

⁷² See *Scoppola v. Italy* (no. 2), Application no. 10249/03, September 17, 2009, para. 135, and *Natsvlishvili and Togonidze v. Georgia*, Application no. 9043/05, ECHR 2014, paras. 90-91.

The Criminal Procedure Code of Ukraine affords defendants who enter a plea agreement significantly fewer grounds for appeal and a shorter timeframe to file an appeal compared to defendants in ordinary cases.⁷³

Although the number of plea bargains in collaboration cases has reportedly decreased, possibly linked to the increase of in absentia proceedings, plea bargaining in collaboration cases remains pervasive.⁷⁴

Lawyers and judges interviewed by Human Rights Watch questioned whether a system that heavily relies on plea bargains can effectively determine guilt or innocence and impose appropriate sentences. Some argued that inconsistencies in the anti-collaboration law and the bias towards conviction might push defendants into pleading guilty to lesser charges, even when innocent, to avoid potentially harsher penalties.

One Ukrainian legal expert said, for instance: “Has the person admitted their guilt to avoid further complications and a harsher sentence, or has it been done to find a compromise and a solution? That line gets blurred. Were the charges correct and proportionate or did the person agree because they don’t trust the system or can’t find a lawyer who would agree [to take on such a case]?”⁷⁵

Inadequate Legal Defense

Lawyers, judges, and others told Human Rights Watch there are not enough lawyers willing to take on collaboration cases. Several people noted reports of threats, intimidation, and public condemnation of lawyers working on such cases.⁷⁶ One lawyer said the law was so poorly written that effective defense was impossible.⁷⁷

⁷³ The defendant would generally need to demonstrate that the plea bargain was reached through coercion, fraud, or a violation of their due process rights. Criminal Procedure Code of Ukraine, arts. 468-476, and arts. 394-395.

⁷⁴ See, for example, “Survival or crime: how Ukraine punishes collaborationism,” Human Rights Centre ZMINA, 2024, https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_eng.pdf (accessed August 9, 2024).

⁷⁵ Human Rights Watch phone interview with legal analyst from ZMINA (name withheld), April 29, 2024.

⁷⁶ Human Rights Watch interviews with a judge (name withheld), July 12, 2024; legal expert (name withheld), April 11, 2024, defense lawyer (name withheld), April 5, 2024.

⁷⁷ Human Rights Watch interviews with a defense lawyer (name withheld), April 23, 2024.

At a roundtable meeting on the practice of investigating crimes of collaboration organized by the Office of the Prosecutor General of Ukraine, a senior staff member of the Ukrainian Legal Aid Foundation noted the dearth of available lawyers and the apparently perfunctory nature of trials. He said: “We met with the practice when, in some frontline areas, there was one lawyer handling 50 to 60 cases. This is a violation of the rules of legal ethics. Moreover, the verdicts in [collaboration] cases are often simply rubber-stamped. In such cases, the participation of a lawyer is rather superficial.”⁷⁸ A Ukrainian human rights NGO expert said: “Lawyers often say that they feel pressure from law enforcement agencies through bar associations ... for being too active in court [in collaboration cases].”⁷⁹

Independent assessments conducted by Ukrainian and international groups have pointed to due process violations in court hearings on collaboration cases. One group noted that even when a defendant obtains formal defense representation, the counsel’s role in court can be muted. Safe Ukraine, in partnership with the International Renaissance Foundation, analyzed 25 verdicts under article 111-1 issued since the adoption of the collaboration legislation and through December 2023. All 25 were guilty verdicts, 14 were handed down with direct participation of the defendants and 11 were issued in absentia.

The study, shared with Human Rights Watch, highlighted a lack of consistency in judicial practice concerning the involvement of defense counsel in collaboration cases.⁸⁰ In at least half of the analyzed verdicts with a defendant present, the defense counsel’s participation in the trial was “perfunctory and not significant for the process.” In some cases, for example, the defense lawyer’s role was limited to a formal indication of the presence of defense counsel during the trial. Six rulings contained no mention of defense counsel at all.

⁷⁸ Comments made by Ukrainian civil society group member (name withheld) at international experts meeting at the Office of the Prosecutor General of Ukraine, attended by Human Rights Watch, September 26, 2023.

⁷⁹ Ibid.

⁸⁰ Study on file with Human Rights Watch.

In Absentia Rulings

In absentia rulings are a prominent feature of Ukraine's implementation of anti-collaboration laws, notwithstanding that in absentia trials have questionable legal status under international law. An estimated one-third of the 1,948 verdicts that Human Rights Watch examined under article 111-1 were issued in absentia.⁸¹ Other organizations have also found high, and growing numbers of in absentia verdicts. For example, according to analysis by the UN Office of the High Commissioner for Human Rights, out of 1,010 collaboration cases prosecuted between May 2022 and December 2023, 1007 resulted in guilty verdicts, 207 of which were handed down in absentia.⁸² ZMINA reported a significant rise in in absentia proceedings between September 2023 and June 2024.⁸³

International law does not strictly prohibit trials in absentia, but strongly disfavors them, permitting them only in exceptional circumstances and if there are specific safeguards in place.⁸⁴ To start, the person tried must have been properly and effectively summoned for trial, have chosen not to appear or clearly and unequivocally waived their right to be present, and measures must be taken during the proceedings before the court to ensure that defense rights are still effectively safeguarded in the accused's absence.⁸⁵ Critically, anyone convicted in absentia has a right to a full and fair retrial, not just an appeal, should they subsequently find themselves in custody, or the trial is invalid. These standards are reflected in Ukraine's fair trial obligations under both the European Convention on Human Rights (article 6) and the International Covenant on Civil and Political Rights (article 14),

⁸¹ Human Rights Watch analysis of the Unified State Register of Court Decisions, <https://reyestr.court.gov.ua> (accessed November 11, 2024).

⁸² OHCHR, "Human Rights Situation During the Russian Occupation of Territory of Ukraine and Its Aftermath, 24 February 2022-31 December 2023," March 20, 2024, <https://ukraine.un.org/en/264057-human-rights-situation-during-russian-occupation-territory-ukraine-and-its-aftermath> (accessed April 2, 2024), para. 126.

⁸³ "Survival or crime: how Ukraine punishes collaborationism," Human Rights Centre ZMINA, 2024, https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_eng.pdf (accessed August 9, 2024).

⁸⁴ See for background a summary of international law relating to trials in absentia in the HRW memo to Secretariat of the Rules and Procedure Committee, Extraordinary Chambers of the Courts of Cambodia, available at <https://www.hrw.org/legacy/backgrounder/ij/cambodia1106/cambodialetter1106web.pdf>. Significantly, international war crimes tribunals, such as those for the former Yugoslavia, Rwanda and Sierra Leone, all prohibited trials in absentia, and article 63 of the Rome Statue for the International Criminal Court explicitly says that the accused shall be present during the trial

⁸⁵ Ukrainian law requires that defendants be appropriately notified of the need to appear in court. Yet a study shared with Human Rights Watch, found that 11 of 25 guilty collaboration verdicts studied were rendered in absentia, and those trials had taken place despite violations of the obligation to notify the defendants of the need to appear in court. The study is on file with Human Rights Watch.

and have been reiterated by the Council of Europe in numerous resolutions.⁸⁶ The European Court of Human Rights has emphasized that the accused's presence at trial "ranks as one of the essential requirements of Article 6" and that "a denial of justice ... undoubtedly occurs where a person convicted *in absentia* is subsequently unable to obtain from the court a fresh determination of the merits of the charge, in respect of both law and fact."⁸⁷ The Court confirmed that when it is not possible to reopen proceedings conducted in the accused's absence, there will be a "flagrant denial of justice" rendering the proceedings "manifestly contrary to the provisions of Article 6 or the principles embodied therein."⁸⁸

The European Union's Court of Justice has also held that, in compliance with the right to a remedy and fair trial under the EU Charter on Fundamental Rights, a trial in absentia could only be considered acceptable if the accused can later "secure the reopening of the proceedings or access to an equivalent legal remedy resulting in a fresh examination, in his or her presence, of the merits of the case."⁸⁹

There is little to indicate that the in absentia trials held in collaboration prosecutions would meet the standards of fair trial and there is no clear guarantee of a retrial for the accused in person. Out of 11 in absentia verdicts in a study reviewed by Human Rights Watch, one had only a formal mention of the defense counsel's involvement and his role was limited to attesting that the defendant received proper notification of the court hearing. Four verdicts merely indicated the defense counsel's presence without describing their actions. In three cases, defense attorneys stated their position that the defendants' guilt was not proven, but did not appeal the verdicts.

⁸⁶ See for example, Resolution (75)11 of the Committee of Ministers on the criteria governing proceedings held in the absence of the accused; and Criteria to assess whether proceedings leading to a judgment in absentia or the additional guarantees provided by the requesting state satisfy the rights of defense, PC-OC Mod (2014) 02rev, May 21, 2014 available at <https://rm.coe.int/16802f7bb4>.

⁸⁷ See for example, *Sanader v Croatia*, Application No. 66408/12, judgment February 12, 2015, para. 68; *Colozza v. Italy*, judgment of February 12, 1985, Series A no. 89, p. 15, para 29.

⁸⁸ *Ibid.* para. 71; see also *Stoichkov v. Bulgaria*, Application no. 9808/02, judgment of March 24, 2005, paras. 54-58.

⁸⁹ Case 569/20, Judgment of the Court, May 19, 2022; available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=259606&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=670999>.

Chilling Effect of Anti-Collaboration Legislation on Reintegration Efforts and Transitional Justice

Acts of collaboration fall under offenses against national security and Ukraine is entitled to bring charges against and prosecute those who harmed national security during the occupation. However, it must do so in compliance with its international humanitarian law and human rights obligations, including those regarding a fair trial. In addition to concerns about inadequate safeguards for defendants' rights in existing collaboration laws and their implementation, Ukrainian legal experts, judges, and civil society activists who spoke with Human Rights Watch emphasized the importance of balancing immediate security interests and accountability with broader goals they believe anti-collaboration laws should promote: the eventual reintegration of Russia-occupied territories, including Crimea, which has been under occupation for over 10 years.

Reintegration is one of the goals of transitional justice, a process aimed at addressing the aftermath of conflict or human rights abuse. Importantly, transitional justice can begin during a conflict, not just after it ends. It involves dealing with the past, such as bringing perpetrators to justice and providing support to victims, but also focuses on preventing future harm. This can include building strong institutions and establishing mechanisms to ensure accountability.⁹⁰

Fueling Mistrust, Inhibiting Reintegration

In practice, the expansive nature of the anti-collaboration laws has many mutually reinforcing consequences that inhibit reintegration. For example, the vague and overly broad laws put many Ukrainian citizens living under Russian occupation at risk of prosecution and/or informal blacklisting after Ukraine regains control of its territory; they

⁹⁰ The EU Policy Framework on Support to Transitional Justice, June 25, 2024, https://www.europarl.europa.eu/meetdocs/2014_2019/documents/dand/dv/40_eupolicy_frmwrk_suptrans_justice_/40_eupolicy_frmwrk_suptrans_justice_en.pdf (accessed August 13, 2024). See also, UN Security Council, Report of the UN Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, 2004, <https://digitallibrary.un.org/record/527647?ln=en&v=pdf>, (accessed August 14, 2024). See also, UN Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, August 2012, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf (accessed August 14, 2024).

make community members feel they are justified in ostracizing their neighbors who interacted with the occupation administration; and they send a message that anyone who remains in occupied areas and does not overtly resist occupying authorities could be viewed as a collaborator. The laws signal to local authorities in de-occupied areas that they can, for example, fire anyone from their jobs who worked under the occupation administration, regardless of whether they were suspected of a collaboration offense and even if they had passed post-occupation security screenings. A stark division has thereby been drawn between Ukrainians who endured the Russian occupation and those who fled to Ukrainian-controlled territory, a division that is further fueled by the potential of using collaboration accusations as a tool to settle personal scores and to get ahead in competition over scarce resources and jobs.

When occupied territories are liberated, Ukrainian law enforcement authorities conduct "filtration," a process involving security screenings of local residents, the goal of which is to identify potential security threats, including genuine collaborators. This could be a legitimate process, if conducted in line with due process guarantees. However, irrespective of how the process itself is conducted, in practice, being cleared by "filtration" provides no guarantee to an individual that local authorities and neighbors alike will not retaliate against them and keep them under a cloud of suspicion. Human Rights Watch has documented cases where residents in de-occupied areas who, having undergone filtration, were cleared of any suspicion of involvement in collaboration, and yet local authorities harassed, publicly stigmatized, and deemed them ineligible for employment. In some cases, local residents' desire for justice and retribution led to the mistreatment of those they perceived as collaborators, even after they cleared filtration.

One example is the experience of 39-year-old Olha O., who resides in a city that was under Russian occupation for about a month in March 2022.⁹¹ Olha told Human Rights Watch that Russian soldiers stationed on her street subjected her to repeated incidents of sexual violence. She said she "went along" with it on the condition that the soldiers would not touch her daughter, who was 13 at the time.⁹² Following de-occupation, Olha said, she underwent "filtration". She was repeatedly summoned for interrogation by Ukraine's law enforcement agencies, including the SBU (the Security Service of Ukraine) and National

⁹¹ Olha O.'s name has been changed to protect her privacy and protect her from potential retaliation.

⁹² Human Rights Watch interview with Olha and her daughter (names withheld), Kyiv, April 28, 2022.

Police. Officials questioned her without legal counsel on several occasions, subjected her to a polygraph test, and searched her house. They focused on her alleged connections to Russians, treating her with hostility and suspicion and accused her of being a collaborator. “They made me undergo a lie detector, searched my house...,” she said. “No one was interested at all in me telling them about the rape. They took our phones and treated us like dogs. Like I was a traitor.”⁹³

Olha’s lawyer confirmed to Human Rights Watch that the authorities who conducted “filtration” interviews with Olha treated her with skepticism and hostility.⁹⁴ Olha was not recognized as a survivor of conflict-related sexual violence until late summer of 2022.

After the security screenings, Ukrainian authorities told Olha that she was no longer a suspect and informed her of her right to seek justice for the sexual violence she experienced. However, she described how the extensive and intrusive filtration process fueled suspicion and accusations of collaboration with Russian soldiers from her local community: “After we were liberated, neighbors started attacking us verbally, several times they broke windows in my house, where my mother also lives with us. I asked the police several times to help but they did nothing.”⁹⁵

Human Rights Watch interviewed residents of three cities that Russian forces had temporarily occupied that illustrate how local Ukrainian authorities stigmatized residents, including those who already passed filtration and simply had them fired from their public sector jobs.

A teacher of Ukrainian language and literature with 15 years’ teaching experience from a city in an eastern Ukraine region said that she had no choice but to remain in her city during Russian occupation.⁹⁶ She said she continued to work under the occupying authorities to access food and other necessities and support her husband, a military veteran, who was in hiding. During that time Russian authorities sent her to a short teacher

⁹³ Human Rights Watch Viber interview with a local resident (name withheld), July 2, 2024.

⁹⁴ Human Rights Watch phone interviews with a lawyer (name withheld), March 21 and April 5, 2024.

⁹⁵ In November 2023, Olha’s daughter was found dead on the local train tracks. Human Rights Watch was not in the position to determine the circumstances that led to her death. Olha told Human Rights Watch that she thought it was an act of retaliation from one of the local residents for “cozying up to Russian soldiers,” but she had no proof. The police concluded her death was an accident and closed the case.

⁹⁶ Human Rights Watch phone interview with a teacher of Ukrainian language and literature (name withheld), April 28, 2024.

training course in Russia. Because of that, after the city was de-occupied, she faced employment barriers, including being barred from her previous position and denied employment at other educational facilities. Even though she passed the “filtration process,” she said, she was told that she’ll never work as a teacher again.

She eventually got a manual job at a railway station.

During the interview with Human Rights Watch, she spoke at length about her ongoing psychological stress, anxiety, and fear, her loss of livelihood, and reprisals for actions she said she took under pressure: “All I want is to work with children. I can’t imagine my life without it. I started from kindergarten, then taught at school—this has been my whole life. And now because of one thing, that I did to save a loved one, my life has been destroyed. I did nothing wrong.”

A resident of another city said: “Kindergarten teachers, cleaners, librarians—all who used to receive money from the [municipal] budget—even if they didn’t step out of their homes, didn’t work, but just remained under occupation—[most were] immediately fired. When the authorities returned, the order [must have been] issued to fire them all.”⁹⁷

Another individual also told Human Rights Watch that once their city was de-occupied and local authorities returned, they adopted a policy of firing anyone who continued to work under the occupation. This person was familiar with the case of the teacher whose criminal prosecution for agreeing to become a lyceum director is described above (“Prosecuting Medical and Education Workers for Collaboration.”) The person said the teacher had initially passed her filtration screening, but objected when she was subsequently fired, and authorities prosecuted her to discourage other people from challenging being fired.

She said, “Why did they lock her [the teacher] up? Because it was a precedent and because she fought back, she argued that she shouldn’t have been fired. If she didn’t fight back, others who were fired might have started arguing why they were fired. But once she was in jail, no one dared to make a peep. No one argued.”

⁹⁷ Human Rights Watch phone interview with a local resident (name withheld), April 15, 2024.

Seeking Balance Between Justice and Reintegration

Nearly three years after the shock of the Russia’s full-scale invasion and the rushed passage of the anti-collaboration laws, some Ukrainian legislators, as noted above, are rethinking their impact and proposing amendments. The European Union Advisory Mission in Ukraine (EUAM) also recommended that lawmakers consider the broader context of transitional justice. This includes adequately taking into consideration the views of the public and civil society groups on balancing punishment and amnesty for those who might be considered collaborators, as well as addressing society’s reconciliation goals. The EUAM analysis noted, in particular: “Criminalization of collaboration activities is only one possible tool of transitional justice. Balanced use of different tools is a prerequisite for the restoration of lasting peace and justice in the liberated territories.”⁹⁸

Several Ukrainian legal experts interviewed by Human Rights Watch concur. With respect to people who provided regular services to civilians, these experts argue that the Ukrainian government should be encouraging them to stay in communities that come under occupation to provide these services, rather than make it clear they will later be punished if they stay.

A Supreme Court judge said that the high conviction rates in collaboration cases will only contribute to increased tensions within occupied territories:

I think [remaining in the community] should not be punished but encouraged. The same goes for doctors, for community workers. There is even a question about the police—if they continue to patrol the streets, protecting people from crime—well, I personally have a lot of doubt that they are collaborators.⁹⁹

A legal expert, who specialized in analyzing collaboration legislation in Crimea, said:

⁹⁸ Conclusion of the EUAM in Ukraine on the draft Law of Ukraine No. 7570 “On amendments to the Criminal and Criminal Procedure Codes of Ukraine on improving responsibility for collaborative activities and related criminal offenses,” as well as on alternative draft laws No. 7646 and No. 7647. On file with Human Rights Watch.

⁹⁹ Human Rights Watch interview with a judge (name withheld), July 12, 2024.

From a purely legal prospective, there are so many ways this legislation can be improved, especially on public harm. There are so many issues that are unclear. And yet, when all these recommendations are voiced by Ukrainian lawyers, human rights defenders and so on, it doesn't seem enough to break the tide and force the [parliamentarians] to make these changes.¹⁰⁰

Among the purposes of deterring collaboration is to safeguard Ukraine's security interests and make Russia's occupation harder and more costly—all in the service of restoring Ukraine's territorial integrity. Many residents of de-occupied areas as well as Ukrainian lawyers, suggested that the anti-collaboration laws, and the way they are being implemented, can have the opposite effect.

A defense attorney said, “This law is so vague that it makes Russia’s job as occupiers easier, by making people under occupation live in fear that if Russia leaves, they will all be penalized.”¹⁰¹ A legal analyst said: “What about people in Crimea? They’ve been living there for 10 years, there are children who grew up under Russia. People who have been working, paying taxes there—are they all collaborators? Should they all be punished?”¹⁰²

Residents of formerly occupied areas, as well as activists and human rights groups consistently reported that prosecutions of alleged collaborators have fostered fear, suspicion, and distrust in those communities. Many viewed prosecuting residents for collaboration as a severe obstacle to future reintegration efforts. As the judge said: “In addition to recently occupied territories, there are also long-occupied territories: Crimea, parts of the Luhanska and Donetska regions. If Ukraine's approach is ‘if you stayed—you are a collaborator,’ we are potentially creating a resistance front there. We will not be met as victors. We will not be welcomed.”¹⁰³

¹⁰⁰ Human Rights Watch interview with a legal expert (name withheld), April 25, 2024.

¹⁰¹ Human Rights Watch interview with a defense attorney (name withheld), March 8, 2024, Warsaw.

¹⁰² Human Rights Watch phone interview with a human rights advocacy expert from ZMINA (name withheld), May 26, 2024.

¹⁰³ Human Rights Watch phone interview with a judge (name withheld), July 12, 2024.

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Appendix I: Human Rights Watch Letter to the Ministry of Justice of Ukraine

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HRW.org

October 11, 2024

Ms. Olha Stefanishyna
Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine -
Minister of Justice of Ukraine
13 Horodetsko str., Kyiv
01001, Ukraine

Via email: callcentre@minjust.gov.ua, themis@minjust.gov.ua

Re: Implementation of anti-collaboration laws

Dear Minister Stefanishyna,

I am writing on behalf of Human Rights Watch to share our provisional research findings related to the impact of Ukraine's anti-collaboration laws on an array of rights of Ukrainian citizens. As you may know, Human Rights Watch is an international, nongovernmental organization that documents violations of human rights and humanitarian law and seeks accountability for abuses in more than 90 countries worldwide.

Since the start of Russia's full-scale invasion of Ukraine, we have extensively [documented](#) war crimes, crimes against humanity, and other violations of international humanitarian law by Russian forces in Ukraine. We value exchanges we have had with your office on a wide range of issues and are grateful for the time and attention your staff have provided.

We have also been researching, among other things, the impact of several aspects of anti-collaboration laws, adopted in March 2022, and their implementation. This letter includes a summary of our provisional findings and a set of questions we would like to bring to your attention.

Summary of provisional findings

We fully understand that the legitimate purpose of anti-collaboration laws is to deter threats to Ukraine's national security at a time when the country is under attack by preventing and punishing collaboration with Russian forces, including in areas of Ukraine that are under Russian occupation.

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NAIROBI - NEW YORK - PARIS - SAN FRANCISCO - SÃO PAULO - SILICON VALLEY - STOCKHOLM - SYDNEY - TOKYO - TORONTO - WASHINGTON - ZÜRICH

Our research examined, in particular, Law 2108 -IX, which amended the Criminal Code of Ukraine by introducing article 111-1, because we are concerned that several of its provisions criminalized legitimate civilian activities under occupation. We examined instances in which the authorities used the provisions of this article to penalize municipal workers, medical personnel, education personnel, and others solely for the act of continuing to work under Russian occupation, regardless of whether any actual damage was inflicted as a result their actions or any intent to undermine Ukraine's security.

For instance, in one documented case, a veterinarian was sentenced, in absentia, to 10 years in prison for accepting an administrative role in the local veterinary service, and in another, an electrician who took part in the efforts to restore electrical supply to a city, damaged by hostilities, was handed a three-year prison term, accompanied by confiscation of property and a professional ban of 10 years.

We found that laws that address interactions with occupying forces do not clarify what might constitute "exchange of material resources" or what can be considered engaging in "economic activity" with them (part 4 of criminal code article 111-1), or clearly define the meaning of performing "organizational-administrative or administrative-economic functions" (criminal code article 111-1 parts 2 and 5). The lack of clear definitions has also led to inconsistencies in how the law is applied.

In some instances, courts have issued identical verdicts for very different acts and seemingly very different levels of culpability under a given criminal code article. And vice versa: courts have viewed almost identical actions by defendants under similar circumstances differently depending on the prosecutor's interpretation or the judge's discretion, resulting in varying penalties.

Our preliminary analysis of existing court verdicts shows that the conviction rate in collaboration cases is close to 100 percent. We found that most collaboration cases never advance to appeal and that appellate courts grant very few defense appeals in such cases.

According to our preliminary data, Ukrainian authorities have opened 8,699 criminal cases under article 111-1 of the Criminal Code (acts of collaboration) and 1,360 proceedings under article 111-2 (abetting an aggressor state).

As of September 2024, Human Rights Watch preliminarily tabulated 1,948 verdicts under article 111-1 of the criminal code and 84 verdicts under article 111-2, using the state register of decisions. We note that the Office for Democratic Institutions and Human Rights of the

Organization for Security and Co-Operation in Europe (ODIHR) reported that as of May 2024 first-instance courts had issued a total of 1,622 decisions on collaboration cases.

We have found the full scope of the sentencing for these verdicts is difficult to ascertain due to several factors, among them security-related restrictions on public access to parts of the national court register and duplications and gaps in the register itself.

We also found that plea bargaining in collaboration cases remains pervasive and that the numbers of in absentia rulings is rising. We also understand that there is a scarcity of lawyers willing to handle collaboration cases.

We are aware that the on May 15, 2024, the Prosecutor General issued instructions to his office to comply with international law during pre-trial investigations in cases of “collaboration activities.” We understand that this instruction referenced provisions of international humanitarian law that specify that certain activities can, in principle, be lawfully compelled by the occupying power and the need to assess whether “collaboration activities” were undertaken under physical or mental coercion.

We understand that new draft amendments to the criminal code concerning collaboration have been proposed, some of which aim to make current language more precise and address inconsistencies, and that others seek to impose even stricter penalties. We understand that far, none has advanced in parliament.

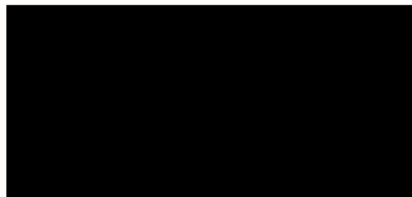
We would appreciate additional information on the following:

1. Has the Ministry of Justice issued any assessments of the collaboration legislation and its compatibility with international human rights and humanitarian norms at any stage of the legislative process? If so, can you kindly share these with us?
2. Is the ministry aware of or concerned about the dearth of defense lawyers willing to take on collaboration cases, and does the ministry have any concerns about the quality of legal defense provided in the courtroom on collaboration cases? Do you have any concerns about the potential impact of high rates of plea bargains and in absentia rulings, low rate of appeals, on due process and fair trial rights?
3. Does the ministry maintain data on plea bargains, and if so can you kindly share with us the number of plea bargains concluded generally for criminal cases in 2022, 2023, and 2024, and the number of plea bargains concluded under article 111-1 for these years?

4. Have you considered notifying the parliament of the discrepancy between articles 111-1 and 111-2 of the Criminal Code of Ukraine and Ukraine's obligations under international law?

We would welcome your response to the questions so that we may reflect the official position of the Ministry of Justice in our final report. As the report is scheduled for publication in mid-November 2024, we would be grateful for your reply by October 28. The reply can be sent by email to my colleagues Rachel Denbe [REDACTED] and Yulia Gorbunova [REDACTED] or my Kyiv-based colleague, Kseniya Kvitka at: [REDACTED]. As always, we remain open to dialogue and would welcome meeting with your office in Kyiv to discuss our findings and other ongoing research.

Sincerely,



Hugh Williamson
Director, Europe and Central Asia Division
Human Rights Watch

Appendix II: Human Rights Watch Letter to the Prosecutor General of Ukraine

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

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Isabelle de Wismes
Masa Yanagisawa
Andrew Zoli



HRW.org

October 11, 2024

Mr. Andriy Kostin
Prosecutor General of Ukraine
13/15 Riznytska str., Kyiv
01011, Ukraine

Via email: office@gp.gov.ua

Re: Implementation of anti-collaboration legislation

Dear Mr Kostin,

I am writing on behalf of Human Rights Watch to share our provisional research findings related to the impact of Ukraine's anti-collaboration laws on an array of rights of Ukrainian citizens. As you know, Human Rights Watch is an international, nongovernmental organization that documents violations of human rights and humanitarian law and seeks accountability for abuses in more than 90 countries worldwide.

Since the start of Russia's full-scale invasion of Ukraine, we have extensively [documented](#) war crimes, crimes against humanity, and other violations of international humanitarian law by Russian forces in Ukraine. We greatly value the dialogue we have had with your office on a wide range of issues and are grateful for the time and attention your staff have provided.

We have been researching, among other things, the impact of several aspects of the anti-collaboration laws and their implementation. This letter includes a summary of our provisional findings and a set of questions we would like to bring to your attention.

Summary of provisional findings

We fully understand that the legitimate purpose of anti-collaboration is to deter threats to Ukraine's national security at a time when the country is under attack by preventing and punishing collaboration with Russian forces, including in areas of Ukraine that are under Russian occupation.

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We understand that on May 15, 2024, you issued instructions to your office to comply with international law during pre-trial investigations in cases of “collaboration activities.” We understand that this instruction referenced provisions of international humanitarian law that specify that certain activities can, in principle, be lawfully compelled by the occupying power and emphasized the need to assess whether “collaboration activities” were undertaken under physical or mental coercion. We welcome this initiative.

Our research examined, in particular, Law 2108-IX, which introduced article 111-1 in the Criminal Code of Ukraine, because we are concerned that several of its provisions criminalized legitimate civilian activities under the occupation, that were accommodated by international humanitarian law. We examined instances in which the authorities used the provisions of this article to penalize municipal workers, medical personnel, education personnel, and others solely for the act of continuing to work under Russian occupation, regardless of their intent to undermine Ukraine’s security or whether any actual damage was inflicted as a result their actions.

For instance, in one documented case, a veterinarian was sentenced, in absentia, to 10 years in prison for accepting an administrative role in the local veterinary service, and in another, an electrician who took part in the efforts to restore electrical supply to a city, damaged by hostilities, was handed a three-year prison term, accompanied by confiscation of property and a professional ban of 10 years.

Our preliminary analysis of existing court verdicts shows that the conviction rate in collaboration cases is close to 100 percent. We found that most collaboration cases never advance to appeal and that appellate courts grant very few defenses appeals in such cases. We understand that in the three months after you issued the May 15 instruction, the number of newly initiated collaboration investigations (511) declined by 21.6 percent as compared to the number initiated (652) in the three months before May 15.

We also found that plea bargaining remains pervasive in collaboration cases and that the numbers of in absentia rulings is rising. We also understand that there is a scarcity of defense lawyers willing to handle collaboration cases.

Finally, we documented instances that indicate that some provisions of the anti-collaboration amendments contained in Law 2108-IX fostered a sense of fear and distrust among local communities towards individuals who continued to work during occupation, regardless of whether they stood accused of a collaboration offense.

Human Rights Watch has documented cases where local authorities in de-occupied areas harassed, publicly stigmatized, and deemed ineligible for employment residents simply because they continued to work during occupation. In cases we documented, this practice was applied even after they had undergone filtration and were cleared by it of any suspicion of involvement in collaboration.

We understand that new draft amendments to the criminal code concerning collaboration have been proposed, some of which aim to make current language more precise and address inconsistencies, and that others seek to impose even stricter penalties. We understand that so far, none has advanced in parliament.

Considering the findings mentioned above, we would appreciate additional information on the following:

1. Could you kindly share with us the internal instruction you issued on May 15, 2024, regarding the compliance with international humanitarian law in the prosecution of individuals for acts of collaboration?
2. Have there been further initiatives to review collaboration investigations initiated, and convictions handed down by courts, before May 15, 2024? If not, are you considering issuing further instructions to examine previously initiated investigations and verdicts handed down by courts, to ensure that they comply with your instruction and to offer redress to persons unfairly prosecuted and convicted for collaboration?
3. Prior to May 15, 2024, did your office issue any other instructions or guidelines for implementing criminal code article 111-1, and if so, could you kindly share them with us?
4. To what do you attribute the decline in new collaboration investigations for the three-month period following May 15?
5. Can you kindly provide us with comprehensive data on the number of investigations initiated in 2022, 2023, and 2024 under criminal code article 111-1, disaggregated by its constituent parts? Does your office track the number of dropped investigations, and if so, can you kindly share that data with us?
6. Does your office maintain data on plea bargains, and if so, can you kindly share with us the number of plea bargains concluded for cases under article 111-1 for 2022, 2023, and 2024?
7. Is your office aware of or concerned about the dearth of defense lawyers willing to take on collaboration cases, and does your Office have any concerns about the quality of legal defense provided in the courtroom on collaboration cases? Do you

have any concerns about the potential impact of high rates of plea bargains and in absentia rulings, low rate of appeals, on due process and fair trial rights?

8. Can you kindly share with us your office's views about draft amendments that have been proposed to the criminal code concerning collaboration? If you have issued an advisory opinion or expert analysis of these proposals, could you kindly share them with Human Rights Watch?

We would welcome your response to the questions so that we may reflect the official position of the Office of the Prosecutor General in our final report. As the report is scheduled for publication in mid-November 2024, we would be grateful for your reply by October 28. The reply can be sent by email to my colleagues Rachel Denber [REDACTED] and Yulia Gorbunova [REDACTED] or my Kyiv-based colleague, Kseniya Kvitka at: [REDACTED]. As always, we remain open to dialogue and would welcome meeting with your colleagues in Kyiv to discuss our findings and other ongoing research.

Sincerely,

[REDACTED]

Hugh Williamson
Director, Europe and Central Asia Division
Human Rights Watch

Appendix III: Letter from the Ministry of Justice of Ukraine to Human Rights Watch



МІНІСТЕРСТВО ЮСТИЦІЇ УКРАЇНИ

Мін'юст

вул. Архітектора Городецького, 13, м. Київ, 01001

тел.: (044) 364-23-93, факс: (044) 271-17-83

E-mail: callcentre@minjust.gov.ua,

themis@minjust.gov.ua,

Web: <http://www.minjust.gov.ua>,

код згідно з ЄДРПОУ 00015622

Human Rights Watch

Міністерство юстиції України розглянуло Ваш лист від 11 жовтня 2024 року стосовно надання інформації та в межах компетенції повідомляє таке.

Щодо надання оцінки законам про боротьбу з колаборацізмом та їх відповідності міжнародному праву та гуманітарним нормам на будь-якій стадії законотворчого процесу.

03 березня 2022 року Верховною Радою України прийнято Закон України «Про внесення змін до деяких законодавчих актів України щодо встановлення кримінальної відповідальності за колабораційну діяльність», яким Кримінальний кодекс України доповнено статтею 111¹ (реєстр. № 2108-IX, набрав чинності 15 березня 2022 року), внесений 24 лютого 2021 року на розгляд народними депутатами України та 14 квітня 2022 року прийнято Закон України «Про внесення змін до Кримінального та Кримінального процесуального кодексів України щодо удосконалення відповідальності за колабораційну діяльність та особливостей застосування запобіжних заходів за вчинення злочинів проти основ національної та громадської безпеки», яким Кримінальний кодекс України доповнено статтею 111² (реєстр. № 2198-IX, набрав чинності 23 квітня 2022 року), внесений 21 березня 2022 року на розгляд народними депутатами України, до яких Міністерством юстиції України висновки не надавались.

Щодо питання про нестачу адвокатів, готових брати участь у справах про колабораціонізм, на якість правового захисту в суді під час розгляду таких справ.

Відповідно до підпункту 3 пункту 3 Положення про Міністерство юстиції України, затвердженого постановою Кабінету Міністрів України від 02 липня 2014 року № 228, одним з основних завдань Мін'юсту є здійснення загального управління у сфері надання безоплатної первинної правничої допомоги та безоплатної вторинної правничої допомоги.

Водночас відповідно до пункту 1 Положення про Координаційний центр з надання правничої допомоги, затвердженого постановою Кабінету Міністрів України від 06 червня 2012 року № 504, Координаційний центр з надання правничої допомоги утворений з метою формування та забезпечення функціонування в Україні ефективної системи надання безоплатної правничої допомоги, забезпечення її доступності та якості надання послуг.

Так, за інформацією Координаційного центру з надання правничої допомоги згідно зі статистичними даними за період з 01 січня 2024 року по 30 вересня 2024 року центрами з надання безоплатної правничої допомоги видано 3049 доручень адвокатам для надання безоплатної вторинної правничої допомоги у справах про кримінальні правопорушення, передбачені статтями 109, 110, 111, 111¹, 436², 438 Кримінального кодексу України (далі – КК), у тому числі із застосуванням статей 27, 28 КК, також включені справи, у яких провадження здійснюється у виді спеціального досудового розслідування або спеціального судового розгляду (IN ABSENTIA).



Міністерство юстиції України
№ 151076/173449-30-24/11.1.1 від 21.11.2024
Підписувач: Банчук Олександр Анатолійович
Сертифікат: 382367105294AF9704000000175A0500854ED602
Дійсний з 10.09.2024 14:27:45 по 10.09.2025 14:27:45

У зазначених справах безоплатну вторинну правничу допомогу надають 668 адвокатів для здійснення захисту осіб: які відповідно до положень Кримінального процесуального кодексу України (далі – КПК) вважаються затриманими; у кримінальних провадженнях, стосовно яких відповідно до положень КПК залучається захисник для здійснення захисту за призначенням; у кримінальних провадженнях, стосовно яких відповідно до КПК залучається захисник для проведення окремої процесуальної дії.

Враховуючи викладене, на сьогодні система надання безоплатної правничої допомоги в повному обсязі забезпечує реалізацію права на захист осіб, у тому числі у справах про колабораційну діяльність, шляхом призначення адвокатів, які співпрацюють з системою.

Крім того, щодо якості правового захисту в суді під час розгляду справ про колабораційну діяльність, зазначаємо, що безоплатна вторинна правнича допомога надається адвокатами з урахуванням вимог Стандартів якості надання безоплатної вторинної правової допомоги у кримінальному процесі, затверджених наказом Міністерства юстиції України від 25 лютого 2014 року № 386/5, зареєстрованих в Міністерстві юстиції України 26 лютого 2014 року за № 337/25114.

Центри з надання безоплатної правничої допомоги в межах своїх повноважень здійснюють моніторинг дотримання адвокатами зазначених стандартів та у разі виявлення відповідних порушень звертаються до комісій з оцінювання якості, повноти та своєчасності надання адвокатами безоплатної правничої допомоги, утворених для цієї мети радами адвокатів регіонів відповідно до частини другої статті 25 Закону України «Про адвокатуру та адвокатську діяльність» (далі – Закон).

За інформацією Координаційного центру з надання правничої допомоги за період з 01 січня 2024 року по 30 вересня 2024 року таких звернень не було.

Також в порядку інформування повідомляємо, що правові засади організації і діяльності адвокатури та здійснення адвокатської діяльності в Україні визначено Законом.

Положеннями статті 2 Закону, передбачено, зокрема, що адвокатура України – недержавний самоврядний інститут, що забезпечує здійснення захисту, представництва та надання інших видів правничої допомоги на професійній основі, а також самостійно вирішує питання організації і діяльності адвокатури в порядку, встановленому цим Законом.

З метою забезпечення належного здійснення адвокатської діяльності, дотримання гарантій адвокатської діяльності, захисту професійних прав адвокатів, забезпечення високого професійного рівня адвокатів та вирішення питань дисциплінарної відповідальності адвокатів в Україні діє адвокатське самоврядування.

Адвокатура є незалежною від органів державної влади, органів місцевого самоврядування, їх посадових та службових осіб (частина перша статті 5 Закону).

Згідно з пунктами 2, 5 частини першої статті 44 Закону підтримання високого професійного рівня адвокатів, забезпечення відкритості інформації про адвокатуру та адвокатську діяльність є завданням адвокатського самоврядування.

Відповідно до положень статті 45 Закону Національна асоціація адвокатів України є недержавною некомерційною професійною організацією, яка об'єднує всіх адвокатів України та утворюється з метою забезпечення реалізації завдань адвокатського самоврядування.

Національна асоціація адвокатів України, зокрема, представляє адвокатуру України у відносинах з органами державної влади, органами місцевого самоврядування, їх посадовими і службовими особами, підприємствами, установами, організаціями незалежно від форми власності, громадськими об'єднаннями та міжнародними організаціями, забезпечує високий професійний рівень адвокатів України, забезпечує доступ та відкритість інформації стосовно адвокатів України.

Щодо надання статистичних даних про кількість угод про визнання вини у справах про колабораціонізм за 2022-2024 роки.

Відповідно до положень статті 152 Закону України «Про судоустрій і статус суддів» до повноважень Державної судової адміністрації України віднесено організацію роботи з ведення судової статистики.

Також згідно з приписами статті 36 вказаного Закону Верховний Суд здійснює аналіз судової статистики, узагальнення судової практики.

Щодо звернення до Верховної Ради України стосовно невідповідностей статей 111¹ та 111² Кримінального кодексу України.

Наразі у Верховній Раді України перебуває низка законопроектів, спрямованих на вдосконалення відповідальності за колабораційну діяльність:

«Про внесення змін до статті 111¹ Кримінального кодексу України щодо розширення переліку кримінальних правопорушень за здійснення колабораційної діяльності» (реєстр. № 7223 від 28 березня 2022 року);

«Про внесення змін до Кримінального та Кримінального процесуального кодексів України щодо удосконалення відповідальності за колабораційну діяльність та порядку досудового розслідування злочинів проти основ національної безпеки України» (реєстр. № 7329 від 29 квітня 2022 року);

«Про внесення змін до Кримінального та Кримінального процесуального кодексів України щодо удосконалення відповідальності за колабораційну діяльність та суміжні кримінальні правопорушення» (реєстр. № 7570 від 20 липня 2022 року);

«Про внесення змін до Кримінального кодексу України щодо удосконалення відповідальності за колабораційну діяльність» (реєстр. № 7647 від 08 серпня 2022 року);

«Про внесення змін до статті 111¹ Кримінального кодексу України щодо вдосконалення кримінальної відповідальності за колабораційну діяльність» (реєстр. № 8077 від 26 вересня 2022 року);

«Про внесення змін до статті 111¹ Кримінального кодексу України щодо вдосконалення відповідальності за колабораційну діяльність» (реєстр. № 8301 від 23 грудня 2022 року; № 8301-1 від 05 січня 2023 року).

«Про внесення змін до Кримінального кодексу України щодо кримінальної відповідальності за пособництво державі-агресору» (реєстр. № 11525 від 28 серпня 2024 року).

Заступник Міністра

Олександр БАНЧУК

Персональні дані, вказані Вами у зверненнях, захищаються та обробляються Міністерством юстиції відповідно до Закону України "Про захист персональних даних" з метою розгляду Ваших звернень згідно із законодавством.

Appendix IV: Unofficial Translation of the Letter from the Ministry of Justice of Ukraine to Human Rights Watch

Unofficial translation of letter from the
Ministry of Justice of Ukraine to Human
Rights Watch

Human Rights Watch

THE MINISTRY OF JUSTICE
OF UKRAINE

Horodetskogo Str., 13, Kyiv, 01001

tel. (044) 364-23-93, fax: (044) 271-17-83

Email: callcentre@minjust.gov.ua,

themis@minjust.gov.ua,

Web: <http://www.minjust.gov.ua>,

EDRPOU Code 00015622

The Ministry of Justice of Ukraine has reviewed your letter dated October 11, 2024, regarding the provision of information and, within its competence, informs you of the following.

Regarding the evaluation of anti-collaboration laws and their compliance with international legislation and humanitarian law at any stage of the legislative process.

On March 3, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts Regarding the Establishment of Criminal Liability for Acts of Collaboration Activities”, which introduced Article 111-1 to the Criminal Code of Ukraine (Reg. No. 2108-I, entered into force on March 15, 2022), submitted for consideration by the People's deputies of Ukraine on February 24, 2021. On April 14, 2022, the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Acts of Collaboration and Features of the Application of Preventive Measures for Committing Crimes against the Foundations of National and Public Security” was adopted, which introduced Article 111-2 to the Criminal Code of Ukraine (Reg. No. 2198-IX, entered into force on April 23, 2022), submitted for consideration by the People's deputies of Ukraine on March 21, 2022. The Ministry of Justice of Ukraine did not provide any opinions regarding either of them.

Regarding the lack of lawyers willing to take on collaboration cases and the quality of legal defense in such cases in court.

According to subparagraph 3 of paragraph 3 in the Regulation on the Ministry of Justice of Ukraine No. 228, approved by the Cabinet of Ministers of Ukraine on July 2, 2014, one of the primary functions of the Ministry of Justice is to provide general management on the provision of free primary and free secondary legal aid.

At the same time, according to clause 1 of the Regulation on the Coordination Center for Legal Aid Provision No. 504, approved by the Cabinet of Ministers of Ukraine on June 6, 2012, the Coordination Center for Legal Aid Provision was created to develop and support an effective system of free legal aid in Ukraine and to ensure its accessibility and quality of service.

According to the Coordination Center for Legal Aid Provision, statistics from January 1, 2024, to September 30, 2024, indicate that free legal aid centers issued 3,049 instructions

to lawyers for providing free secondary legal aid in criminal cases covered by Articles 109, 110, 111, 111-1, 436-2, and 438 of the Criminal Code of Ukraine (CC). This includes cases related to Articles 27 and 28 of the CC, as well as instances where proceedings are conducted as a special pre-trial investigation or a special court hearing (in absentia).

The Ministry of Justice of Ukraine

No. 161076/173449-30-24/11.1.1 dated 21.11.2024 Signatory Banchuk Oleksandr Anatoliiovych

Certificate 382367105294AP9704000000175A0500854EP602

Valid from 9/10/2024 2:27:45 PM to 9/10/2025 2:27:45 PM

In these cases, 668 lawyers provide free secondary legal aid to defend those who: are considered detained under the provisions of the Criminal Procedure Code of Ukraine (CPC); when a defense lawyer is appointed to provide legal defense in criminal proceedings under the provisions of the CPC; and when a defense lawyer is involved in carrying out a specific procedural action in criminal proceedings as outlined in the CPC.

Given the above, today, the system of free legal aid guarantees the full realization of the right to defense, including in collaboration cases, by assigning lawyers associated with the system.

Additionally, with respect to the quality of legal defense in collaboration cases, we would like to highlight that lawyers offer free secondary legal aid under the Quality Standards for the Provision of Free Secondary Legal Aid in Criminal Proceedings. These Standards were approved by Order No. 386/5 by the Ministry of Justice of Ukraine on February 25, 2014, and were registered with the Ministry of Justice of Ukraine on February 26, 2014, registration number 337/25114.

The Centers for Free Legal Aid are responsible for monitoring the adherence to the established standards by advocates within their scope of competence and authority. If they identify any violations, they can refer the matter to commissions that assess the quality, completeness, and timeliness of the free legal aid the advocates provide. These commissions were established by regional bar councils under part two of Article 25 of the Law of Ukraine, “On the Bar and Practice of Law” (the Law).

According to the Coordination Center for Legal Aid Provision, there were no such appeals for the period from January 1, 2024, to September 30, 2024.

We would also like to inform you that the Law defines the legal framework for the organization and operation of the Bar and the practice of law in Ukraine.

In particular, Article 2 of the Law states that the Bar of Ukraine is a non-governmental, self-governing institution responsible for providing professional defense, representation, and various forms of legal assistance. It independently addresses organizational and operational matters of the Bar according to the procedures established by this Law.

Bar self-government was established in Ukraine to ensure the proper practice of law. Its goals include upholding the guarantees of legal practice, protecting the professional rights of lawyers, maintaining a high standard of legal expertise, and addressing issues related to the disciplinary accountability of lawyers.

The Bar operates independently of state authorities, local self-government bodies, their officials, and employees (part one of Article 5 of the Law).

According to paragraphs 2 and 5 of Part One of Article 44 of the Law, it is the responsibility of the bar self-government to maintain a high professional standard for lawyers and to ensure transparency regarding information about the Bar and the practice of law.

According to Article 45 of the Law, the Ukrainian National Bar Association is a non-governmental, non-commercial, and non-profit professional organization that unites all of the advocates of Ukraine. established to fulfill the objectives of bar self-government.

The Ukrainian National Bar Association represents the Bar in its interactions with state authorities, local self-government bodies, their officials and employees, as well as enterprises, institutions, organizations of any ownership form, public associations, and international organizations. It is committed to maintaining a high professional standard among Ukrainian advocates and ensuring transparency and accessibility of information regarding these advocates.

Regarding providing statistical data on the number of plea bargains in collaboration cases for 2022-2024.

Under Article 152 of the Law of Ukraine, “On the Judicial System and Status of Judges,” the State Judicial Administration of Ukraine oversees judicial statistics.

Under Article 36 of the aforementioned Law, the Supreme Court reviews judicial statistics and consolidates court practices.

Regarding an appeal to the Verkhovna Rada of Ukraine concerning inconsistencies in Articles 111-1 and 111-2 of the Criminal Code of Ukraine.

The Verkhovna Rada of Ukraine is currently reviewing several draft laws to improve liability for collaboration:

“On Amendments to Article 111-1 of the Criminal Code of Ukraine to Expand the List of Criminal Offenses for Acts of Collaboration” (Reg. No. 7223 of March 28, 2022);

“On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Acts of Collaboration and the Procedure for Pre-trial Investigation of Crimes Against the Fundamentals of National Security of Ukraine” (Reg. No. 7329 of April 29, 2022);

“On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Acts of Collaboration and related criminal offenses” (Reg. No. 7570 of July 20, 2022);

“On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Acts of Collaboration” (Reg. No. 7647 of August 8, 2022);

“On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Liability for Acts of Collaboration” (Reg. No. 8077 of September 26, 2022);

“On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Liability for Acts of Collaboration” (Reg. No. 8301 of December 23, 2022, Reg. No. 8301-1 of January 5, 2023);

“On Amendments to the Criminal Code of Ukraine on Criminal Liability for Aiding and Abetting an Aggressor State” (Reg. No. 11525 of August 28, 2024);

Deputy Minister
BANCHUK

Oleksandr

The personal data you provide in your applications are protected and processed by the Ministry of Justice under the Law of Ukraine, “On Protection of Personal Data,” to consider your requests by the law.

Appendix V: Letter from the Office of the Prosecutor General of Ukraine to Human Rights Watch



Прокуратура України
ОФІС ГЕНЕРАЛЬНОГО ПРОКУРОРА
вул. Різницька, 13/15, м. Київ, 01011 факс: (044) 280-26-03
e-mail: office@gp.gov.ua, web: www.gp.gov.ua
Код ЄДРПОУ 06034051

30.10.2024 № 10-10264-24

На № _____ від _____

Директору
Human Rights Watch
з питань Європи та
Центральної Азії
пану Г'ю ВІЛЬЯМСОНУ



Шановний пане Вільямсоне!

Офіс Генерального прокурора засвідчує свою повагу організації Human Rights Watch з питань Європи та Центральної Азії та Вам особисто.

У відповідь на лист направляємо додаткову інформацію з питань, які стосуються досудового розслідування та судового розгляду кримінальних проваджень про колабораційну діяльність та з інших питань, що стане у нагоді для підготовки підсумкового звіту Вашої організації.

Насамперед важливо зазначити, що внаслідок збройної агресії Російської Федерації, яка призвела до тимчасової окупації частини території України, гостро постає питання надання правової оцінки фактам співпраці населення тимчасово окупованих територій з представниками держави-агресора та її окупаційними адміністраціями, що становить безпосередню загрозу державному суверенітету, територіальній цілісності, конституційному ладу та іншим національним інтересам держави.

Офіс Генерального прокурора постійно приділяє увагу питанню особливостей притягнення до кримінальної відповідальності за вчинення колабораційної діяльності. Одним із завдань діяльності правоохоронних органів визначено встановлення осіб, винних у злочинах проти основ національної безпеки, до яких також належать кримінальні правопорушення за фактом вчинення колабораційної діяльності.

Керуючись Законом України «Про прокуратуру» та внутрішніми нормативно-правовими актами, Офіс Генерального прокурора у межах повноважень серед іншого забезпечує вжиття заходів до покращання якості та підвищення ефективності роботи обласних прокуратур на закріплених напрямках,



Офіс Генерального прокурора
Х-1013-88694ВІХ-24 від 30.10.2024
КІІЕ: Бурдєва М.В. 30.10.2024 18:02
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Офіс Генерального прокурора
30.10.2024 №10/3-88694ВІХ-24
10-10264-24



у тому числі шляхом підготовки листів орієнтовного та інформаційного характеру.

Так, листом від 15.05.2024 № 10/4-1132вих-275окв-24 Офіс Генерального прокурора орієнтував прокурорів на дотримання вимог міжнародного права прав людини (МППЛ) та міжнародного гуманітарного права (МГП) під час організації досудового розслідування та процесуального керівництва у кримінальних провадженнях за фактами колабораційної діяльності (копія листа додається).

Зокрема, звернуто увагу прокурорів на необхідність неухильного врахування конкретних обставин кожної справи, у тому числі об'єктивної та суб'єктивної сторони кримінального правопорушення вказаної категорії.

Колабораційна діяльність як кримінальне правопорушення характеризується саме як суспільно-психологічне явище добровільної, ідейно-вмотивованої співпраці з ворогом, за результатами якої підривається національна безпека України, створюється загроза державному суверенітету, територіальній цілісності, конституційному ладу та іншим національним інтересам держави.

Наведена позиція також узгоджується із судовою практикою Касаційного кримінального суду у складі Верховного Суду. Зокрема, у постанові від 07.02.2024 (справа № 202/4850/23) колегія суддів, надаючи оцінку діям особи за вчинення колабораційної діяльності, зазначила, що відповідні дії особи свідчать про її добровільну співпрацю з ворогом та не є способом виживання в умовах окупації.

Крім того, з метою удосконалення здійснення нагляду за додержанням законів під час проведення досудового розслідування у формі процесуального керівництва досудовим розслідуванням кримінальних проваджень наведеної категорії, Офісом Генерального прокурора спільно з Консультативною місією Європейського Союзу з реформування сектору цивільної безпеки в Україні (КМЄС в Україні) розроблено Методичні рекомендації на тему: «Колабораційна діяльність, особливості процесуального керівництва досудовим розслідуванням у кримінальних провадженнях щодо правопорушень, передбачених ст.111-1 Кримінального кодексу України», які використовуються прокурорами в практичній діяльності.

Офіс Генерального прокурора й надалі вивчатиме питання щодо доцільності та необхідності вжиття подальших заходів з метою ефективного досудового розслідування та об'єктивного судового розгляду кримінальних проваджень цієї категорії.

Разом з тим відповідно до Порядку ведення Єдиного державного реєстру судових рішень, затвердженого рішенням Вищої ради правосуддя від 19.04.2018 № 1200/0/15-18 (зі змінами), володільцем інформації Єдиного державного реєстру судових рішень (держателем Реєстру) є Державна судова адміністрація України, яка вживає організаційних заходів, пов'язаних із забезпеченням ведення Реєстру.

Отже, результати судового розгляду кримінальних проваджень узагальнюються у звітності Державної судової адміністрації України, яка є

розпорядником цих даних. Такі відомості містяться в загальному доступі на офіційному сайті Судової влади України за відповідний рік у вкладках «Річна звітність» за формами № 1-к та № 6.

З приводу кількості розпочатих, направлених до суду кримінальних проваджень протягом 2022 – 2024 років за ст. 111-1 Кримінального кодексу України повідомляємо наступне, що відомості про зареєстровані кримінальні правопорушення (провадження) та результати їх розслідування, узагальнюються у звітності за формою №1 «Єдиний звіт про кримінальні правопорушення». Зазначена звітність формується на підставі даних, внесених до Єдиного реєстру досудових розслідувань користувачами інформаційної системи, щомісячно, нарастаючим підсумком з початку звітного періоду (року) у розрізі статей та розділів Кримінального кодексу України за регіоном вчинення злочину.

Проте у цій звітності не передбачено виокремлення даних про зареєстровані кримінальні правопорушення за окремими частинами статті 111-1 КК України, а також відомостей щодо кримінальних правопорушень (проваджень), які скеровані до суду з угодами, у тому числі про визнання винуватості, у зв'язку з чим надати запитувану інформацію в цій частині не виявляється можливим.

З урахуванням наведеного надаємо відомості про кримінальні правопорушення (провадження) за статтею 111-1 Кримінального кодексу України (Колабораційна діяльність) та результати їх розслідування, відповідно до звітності за формою № 1 «Єдиний звіт про кримінальні правопорушення» за 2022 – 2023 роки, січень – квітень 2024 року, січень – травень 2024 року, січень – серпень 2024 року, січень – вересень 2024 року.

Також роз'яснюємо, що відповідно до ст. 59 Конституції України, кожен має право на професійну правничу допомогу. У випадках, передбачених законом, ця допомога надається безоплатно. Кожен є вільним у виборі захисника своїх прав.

Крім того, ст. 52 Кримінально процесуального кодексу України передбачено, що державою гарантовано обов'язкове безоплатне залучення захисника за призначенням слідчим, прокурором, слідчим суддею чи судом для здійснення захисту, яка неухильно виконується компетентними особами.

Разом з тим, відповідно до ч. 1 ст. 20 Закону України «Про адвокатуру та адвокатську діяльність» (далі – Закон) під час здійснення адвокатської діяльності адвокат має право вчиняти будь-які дії, не заборонені законом, правилами адвокатської етики та договором про надання правничої допомоги, необхідні для належного виконання договору про надання правничої допомоги.

Крім того, ч. 2 ст. 21 Закону передбачено, що адвокату забороняється: використовувати свої права всупереч правам, свободам та законним інтересам клієнта; без згоди клієнта розголошувати відомості, що становлять адвокатську таємницю, використовувати їх у своїх інтересах або інтересах третіх осіб; займати у справі позицію всупереч волі клієнта, крім випадків, якщо адвокат впевнений у самообмові клієнта; відмовлятися від надання правничої допомоги, крім випадків, установлених законом.

Також, відповідно ч. 2 ст. 25 Закону оцінка якості, повноти та своєчасності надання адвокатами безоплатної первинної правничої допомоги здійснюється за зверненням органів місцевого самоврядування, а безоплатної вторинної правничої допомоги - за зверненням органу (установи), уповноваженого законом на надання безоплатної правничої допомоги, комісіями, утвореними для цієї мети радами адвокатів регіонів.

Проте, ч. 3 ст. 34 Закону передбачено, що не є підставою для притягнення адвоката до дисциплінарної відповідальності винесення судом або іншим органом рішення не на користь його клієнта, скасування або зміна судового рішення або рішення іншого органу, винесеного у справі, в якій адвокат здійснював захист, представництво або надавав інші види правничої допомоги, якщо при цьому не було вчинено дисциплінарного проступку.

З приводу внесення змін до законодавства України щодо колабораційної діяльності зазначаємо, що Офіс Генерального прокурора неодноразово залучався до опрацювання проєктів законів України з цих питань, які вже перебувають на розгляді у Верховній Раді України (реєстр. № 7223 від 28.03.2022, № 7241 від 01.04.2022, № 7279 від 12.04.2022, № 7329 від 29.04.2022, № 7570 від 20.07.2022, № 7647 від 08.08.2022, № 8077 від 26.09.2022, № 8301 від 23.12.2022, № 8301-1 від 05.01.2023, № 8301-2 від 09.01.2023).

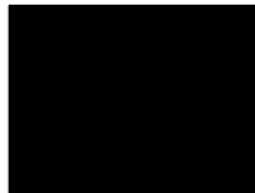
Одночасно інформуємо, що на даний час в Офісі Генерального прокурора перебуває на розгляді проєкт Закону України «Про внесення змін до Кримінального кодексу України щодо кримінальної відповідальності за пособництво державі-агресору» (реєстр. № 11525 від 28.08.2024), яким пропонується у статті 111-2 КК України змінити мету вчинення злочину, що необхідно довести для кваліфікації дій як пособництво державі - агресору (замість мети завдання шкоди Україні встановити мету підтримки агресії проти України). Стаття доповнюється приміткою, у якій визначається, що слід розуміти під «передачею матеріальних ресурсів», «під користю», кого вважати представниками держави-агресора.

Користуємося нагодою, щоб поновити Human Rights Watch з питань Європи та Центральної Азії свідчення своєї поваги та підтвердити готовність до подальшої плідної співпраці.

Додаток: лист-орієнтування та таблиці, всього на 6 арк.

3 повагою

Заступник начальника
Департаменту нагляду
за додержанням законів
органами безпеки



Марія БУРДЕЙНА

Код заповнюється згідно з інструкцією щодо заповнення форм статистичної звітності, затверджені в Україні до 2023 року та в п.п. 1.2, 4, 6, 9-1 ч. 1 ст. 284 КМКУ України на 2023 року

Україна: організаційного забезпечення банного реструлізованих розслідувань та інформаційно-аналітичної роботи

Відомості

про зареєстровані вироки: січня-серпня 2024 року українські правоохоронці (приведення) за ст. 111-1 ККУ України та результати в. судового розслідування

За даними статистичної звітності за формулю №1 "Єдиний звіт про кримінальні правопорушення"

Річки / Період	січень-липень 2024 року					сіпень-липень 2024 року					січень-липень 2024 року				
	Зареєстровано приміщення у звітному періоді	Кримінальні провадження, у яких проваджені заходи	Об'єкти* у т.ч. за п. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 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999, 1000	Зареєстровано приміщення у звітному періоді	Кримінальні провадження, у яких проваджені заходи	Об'єкти* у т.ч. за п. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 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* - Без урахування зареєстрованих приміщень, включених до звітності за м.с. 1, 2, 4, 6, 9, 1, 1 ст. 204 ККУ України

Appendix VI: Unofficial Translation of the Letter from the Office of the Prosecutor General of Ukraine to Human Rights Watch

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EDRPOU Code 00034051

10.31.2024 No. 10-10264-24

To Hugh WILLIAMSON,
Director of Europe
and Central Asia Division

October 31, 2024

Dear Mr. Williamson,

.

The Office of the Prosecutor General presents compliments to the Human Rights Watch Europe and Central Asia Division and to you personally.

In response to your letter, we are providing additional information on issues related to the pre-trial investigation and trial of criminal proceedings concerning collaboration and other matters that will help your organization prepare the final report.

It is important to note that the armed aggression of the Russian Federation has led to the temporary occupation of some territories in Ukraine. This intensifies the need for a legal

assessment of cases involving cooperation between residents of the temporarily occupied territories and representatives of the aggressor state and its occupation administrations. Such cooperation directly threatens Ukraine's state sovereignty, territorial integrity, constitutional order, and other national interests.

The Office of the Prosecutor General pays particular attention to the specifics of criminal prosecution for collaboration. One of the tasks of law enforcement agencies is to identify individuals guilty of crimes against national security, including offenses related to collaboration.

According to the Law of Ukraine “On the Public Prosecutor's Office” and its internal regulations, the Office of the Prosecutor General is responsible for ensuring that measures are implemented to enhance the performance and efficiency of regional prosecutors’ offices. This includes preparing guidelines and directive letters.

On May 15, 2024, in letter No. 10/4-1132ВІХ-2750КВ-24, the Office of the Prosecutor General instructed prosecutors to adhere to standards of international human rights law (IHRL) and international humanitarian law (IHL) during pre-trial investigations and while providing procedural guidance in criminal cases involving collaboration. A copy of the letter is attached.

In particular, the prosecutors were advised to consider the specific circumstances of each case, including both the objective and subjective aspects of the criminal offense in this category.

Collaboration as a criminal offense is a social and psychological phenomenon involving voluntary, ideologically motivated cooperation with the enemy. This cooperation undermines Ukraine's national security and threatens its state sovereignty, territorial integrity, constitutional order, and other national interests.

This approach is also consistent with the case law of the Criminal Cassation Court of the Supreme Court. In particular, in its ruling dated February 7, 2024 (case No. 202/4850/23), the panel of judges evaluated the actions of an individual engaged in collaboration. They noted that these actions demonstrated their voluntary cooperation with the enemy and were not essential for their survival during the occupation.

To enhance supervision of legal compliance during the pre-trial investigation of criminal cases in this category, the Office of the Prosecutor General, in collaboration with the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine), has developed the Methodological Recommendations called “Collaboration activities, specifics of procedural guidance of pre-trial investigation in criminal proceedings on offenses under Article 111-1 of the Criminal Code of Ukraine”, which are used by prosecutors in practice.

The Office of the Prosecutor General will continue to assess the feasibility and necessity of implementing further measures to ensure effective pre-trial investigations and objective court evaluations in this category of criminal proceedings.

At the same time, according to the Procedure for Maintaining the Unified State Register of Court Decisions, approved by the High Council of Justice on April 19, 2018 (decision No. 1200/o/15-18, as amended), the State Judicial Administration of Ukraine is the owner of the information contained in the Unified State Register of Court Decisions and is responsible for taking the necessary organizational measures to maintain the Register.

Thus, as the data processor, the State Judicial Administration of Ukraine summarizes the results of criminal proceedings in reports. This information is publicly available on the Judiciary of Ukraine's official website under the “Annual Reporting” section for Forms No. 1-k and No. 6 for the corresponding year.

Regarding the number of criminal proceedings initiated and submitted to the court under Article 111-1 of the Criminal Code of Ukraine during the years 2022 to 2024, we would like to inform you that data on registered criminal offenses and the results of their investigations is summarized in Form 1, titled “Unified Report on Criminal Offenses.” The reports are generated based on data entered monthly into the Unified Register of Pre-trial Investigations by information system users. This data is compiled cumulatively from the beginning of the reporting period (year), organized by articles and sections of the Criminal Code of Ukraine, and categorized by the region where the crime was committed.

However, these reports do not single out data on registered criminal offenses under specific provisions of Article 111-1 of the Criminal Code of Ukraine or information on criminal offenses submitted to the court with agreements, such as plea agreements. As a result, it is not possible to provide the requested information.

Considering the above, we provide information on criminal offenses (proceedings) under Article 111-1 of the Criminal Code of Ukraine (Collaboration Activities) and the outcomes of their investigations. This is in accordance with the reporting requirements outlined in Form No. 1, “Unified Report on Criminal Offenses,” for the following periods: 2022, 2023, January to April 2024, January to May 2024, January to August 2024, and January to September 2024.

We want to clarify that, according to Article 59 of the Constitution of Ukraine, everyone has the right to receive professional legal assistance. This assistance is offered at no cost in cases provided for by law. Everyone has the right to choose the defender of their rights.

Article 52 of the Criminal Procedure Code of Ukraine also states that the state guarantees the right to a free mandatory attorney appointed by an investigator, prosecutor, investigating judge, or court. Competent authorities strictly enforce this obligation.

<https://unba.org.ua/assets/uploads/legislations/pologennya/1-law-of-ukraine-on-the-bar-and-practice-of-law.pdf>

At the same time, according to Part 1 of Article 20 of the Law of Ukraine, “On the Bar and Practice of Law” (the Law), lawyers have the right to take any actions that are not prohibited by law, the rules of legal ethics, or the legal aid agreement, as necessary for fulfilling their obligations under the legal aid agreement.

Additionally, part 2 of Article 21 of the Law provides that the attorney may not exercise his/her rights contrary to the rights, freedoms, and legitimate interests of a client; disclose attorney-client confidential information and use it in his/her interests or the interests of the third parties without the client’s consent; take a stand on the case contrary to the client’s will, except when the attorney is confident of the client’s self-incrimination; refuse to provide legal services, except when otherwise established by law.

Also, part 2 of Article 25 of the Law provides that assessment of the quality, completeness, and timeliness of attorneys' provision of free primary legal aid shall be made upon request by bodies of local self-government, and in the case of free secondary legal aid, upon request by a body (agency) authorized by law to provide free legal aid and by the commissions formed by regional bar councils for that purpose.

But part 3 of Article 34 of the Law provides that a judgment by a court or another body passed against a client of the attorney, or quashing or modification of a judgment by a court or another body passed in a case in which the attorney provided legal defense, representation, or other types of legal services shall not be the grounds for discipline of the attorney, provided that no misconduct was involved.

Concerning amendments to Ukraine's legislation on collaboration, we would like to emphasize that the Office of the Prosecutor General has consistently participated in

developing draft laws related to this issue. These proposed laws are currently being considered by the Verkhovna Rada of Ukraine (reg. No. 7223 dated 28.03.2022, No. 7241 dated 01.04.2022, No. 7279 dated 12.04.2022, No. 7329 dated 29.04.2022, No. 7570 dated 20.07.2022, No. 7647 dated 08.08.2022, No. 8077 dated 26.09.2022, No. 8301 dated 23.12.2022, No. 8301-1 dated 05.01.2023, No. 8301-2 dated 09.01.2023).

At the same time, we would like to inform you that the Office of the Prosecutor General is currently reviewing the draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine on Criminal Liability for Collaboration with the Aggressor State” (Reg. No. 11525 of 28.08.2024), whereby it is suggested to change the purpose of the crime outlined in Article 111-2 of the Criminal Code of Ukraine for the actions to be classified as collaboration with the aggressor state (the specified purpose should be to support aggression against Ukraine instead of causing harm to Ukraine) A note has been added to the article to clarify the meanings of “exchange of material resources” and “benefit,” as well as to define who should be considered representatives of the aggressor state.

We want to take this opportunity to reiterate our respect for Human Rights Watch Europe and Central Asia Division and to confirm our willingness to continue our productive cooperation.

Appendix: directive letter and tables, six pages in total.

Yours sincerely,

Mariia BURDEINA

Deputy Head of the Department for Supervision over Compliance with Laws by Security Agencies

“All She Did Was Help People”

Flawed Anti-Collaboration Legislation in Ukraine

Russia’s full-scale invasion of Ukraine in February 2022 has wreaked devastation on the civilian population, causing immense suffering. Russian forces have committed numerous apparent war crimes and crimes against humanity in Ukraine, including torture, enforced disappearances, and killings of civilians.

In the weeks following Russia’s full-scale invasion, Ukrainian authorities put in place laws to punish those who collaborated with Russian forces. However, although anti-collaboration laws adopted in March 2022 serve to deter collaboration with occupying forces, some of their provisions in effect criminalize Ukrainian civilians who provide routine public services to their fellow Ukrainians, as they are expected to do under occupation.

“All She Did Was Help People” is based on analysis of current and draft legislation, court decisions found in the Unified State Register of Court Decisions, and in-depth interviews with Ukrainian legal professionals, civil society representatives, human rights activists, and Ukrainian civilians with direct experience of living under occupation.

The report analyzes Ukraine’s anti-collaboration laws and their impact on a range of rights. It highlights how some anti-collaboration provisions criminalize legitimate civilian activities under occupation. It describes how the authorities at times have criminally prosecuted such individuals without adequate regard to establishing the accused’ intent to undermine Ukraine’s security or the actual damage inflicted. The report documents cases of Ukrainian citizens, including volunteers, municipal workers, medical personnel, and educators, who were prosecuted for actions that had no criminal content and caused no public harm. It also examines fair trial problems, with many prosecutions involving trials in absentia and plea bargains, as well as the broader consequences of these laws and their implementation on communities emerging from occupation.

The Ukrainian government should revise the anti-collaboration legislation, in close consultation with civil society, to ensure compliance with the norms and standards of international humanitarian law and international human rights law. The European Union should, as part of Ukraine’s EU accession process, work with the Ukrainian government to help align the collaboration laws with EU and international humanitarian and human rights law norms.



A statue of Themis, the Greek goddess of justice, near Kyiv’s Court of Appeal.

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