

BASELINE STUDY ON IMPLEMENTATION OF TRANSITIONAL JUSTICE IN UKRAINE

Abstract review

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Abstract review reflects the main content of a collective monograph: prepared by the academics, legal practitioners and civil society experts, it for the first time detailed the essence, key elements and implementation mechanisms of Transitional Justice. Transitional Justice is considered in the context of simultaneous transition of the Ukrainian society from the authoritarian past to a democratic modernity and from the military conflict to post-conflict situation.

The paper includes analysis of implementation of Transitional Justice models in other countries; the main emphasis was made on a simple inability to borrow any model of Transitional Justice due to different social and cultural characteristics of each country, where these models are used.

The given paper intends to raise the subject-matter understanding by deputies, public servants working in the field of criminal justice, law enforcement, culture and social welfare; representatives of international and non-governmental organizations.

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BACKGROUND OF STUDY

At the beginning of 2016 the idea of introducing the principles of Transitional Justice to case law of Ukraine has been the subject of preliminary discussion involving experts of the Ukrainian Helsinki Human Rights Union, the USAID “Fair justice” Project, the International “Renaissance” Foundation and the Office of the UN High Commissioner for Human Rights. A meeting resulted in a developed concept of the study and an authoring team was formed engaging 16 experts – representatives of the scientific community, NGO sector, judiciary and the BAR.

On May 25, 2016, at the initiative of the UHHRU at the Ministry of Justice of Ukraine there was held an international round table discussion “Prospects for implementing Transitional Justice in Ukraine”, which brought together about 50 representatives of government agencies and authorities, experts from international and non-governmental organizations, scientists of leading academic institutions of Ukraine. Recommendations of the round table on implementation of Transitional Justice were sent to the Presidential Administration and the Cabinet of Ministers of Ukraine. The undisputed positive result of the round table was the start of forming of a network of experts in the field of Transitional Justice, ready to integrate the world’s best practices into Ukrainian realities.

The actual work on the study included coverage of three subject blocks: review of other countries' experience; practically-oriented assessment of the current situation in Ukraine (analysis of legislation, statistics and existing practices); assessment of prospects for the implementation of the Transitional Justice principles and formation of its national model. This approach has determined the structure of the study, which appears as follows within a collective monograph:

Chapter 1	When the law is not enough: the historical and intellectual foundations of Transitional Justice	
1.1	<i>Theory of Transitional Justice</i>	
	Characteristics of transitional period	O. Uvarova
	Development of the concept of Transitional Justice	O. Uvarova
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	Transitional Justice as an analytical model	O. Ievsieiev
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	Experience of Bosnia and Herzegovina	O. Ievsieiev
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	Experience of truth and reconciliation commissions	N. Sakhotina
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	European Court of Human Rights and its role in provision of standards of due court procedure on the implementation of Transitional Justice	O. Ovcharenko
	View of Transitional Justice in Latin America through the practice of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights	S. Kulitska
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	International standards of organization and functioning of the criminal justice agencies as a model for implementation of Transitional Justice in Ukraine	O. Ovcharenko
	Role of the International Criminal Court in the processes of Transitional Justice	O. Semeniuk
	War crimes in international law	V. Mykhailenko
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	Social conditions of introduction of Transitional Justice elements in the national system of criminal justice	O. Ovcharenko
	Conceptual framework of introducing elements of Transitional Justice in the national system of criminal justice in the context of European standards	O. Ovcharenko, O. Shcherbatiuk
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	Peculiarities of criminal proceedings in the ATO zone and proceedings in absentia	P. Parkhomenko
	Databases on criminals	V. Mykhailenko
	Elements of Transitional Justice and issues of implementation in the national criminal justice system	O. Ovcharenko, O. Shcherbatiuk
4.2	<i>Civil law</i>	
	Protection of victims of armed conflict and assuring access to justice and reparations	Ya. Melnyk, P. Parkhomenko, K. Karamzina

4.3	<i>Remedies for human rights violations</i>	
	Justice in the post-conflict territories (for instance, the Donetsk and Lugansk regions)	O. Ievsieiev
	Problem of legal protection and restitution of rights of IDPs in Ukraine as an element of Transitional Justice	O. Ovcharenko, O. Shcherbatiuk
Chapter 5	The way forward: what else can/should be done in Ukraine?	
5.1	<i>Creating a foundation</i>	
	Possible ways/model of transition from armed conflict to post conflict period in Ukraine	Zh. Balabaniuk
	Restoring trust between citizens and the state	Ya. Melnyk
	Effective public control over the armed forces and security forces	Zh. Balabaniuk
	Lustration as an important tool to restore trust to the criminal justice agencies in Ukraine	O. Ovcharenko
	Strengthening the independence of the judiciary as an important element of Transitional Justice	O. Ovcharenko
	Legal socialization of legal education in Ukraine during the «Transitional Justice» period	T. Gubanova
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5.2	<i>Access to justice</i>	
	Protection of victims of crimes and assuring access to justice in the ATO zone	P. Parkhomenko
5.3	<i>Amnesty</i>	
	Application of the amnesty	O. Semeniuk
5.4	<i>Restitution</i>	
	Restoration of violated rights (restitution)	P. Parkhomenko
	Establishment of national mechanisms for compensation and other assistance to victims	O. Ovcharenko
5.5	<i>Satisfaction</i>	
	Commemoration and tribute to the fallen during the anti-terrorist operation	O. Semeniuk
	Inclusion of accurate information on the offense commitment in the curricula at all levels	R. Lyhachev
5.6	<i>Guarantees of non-repetition</i>	
	Operation of civil procedural security regime during «Transitional Justice»: on the example of application of the Law of Ukraine "On sanctions"	Ya. Melnyk

We hope that reading of the monograph text will contribute to raise awareness of the legislators and experts on Transitional Justice as a model for comprehensive reform of government activities amid the armed conflict and on its completion. Results of the study will also be useful for the development of certain legislative and civil initiatives, as well as in forming of public perception and understanding of the need to implement Transitional Justice, and interest in creating its national model.

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THE MAIN RESULTS OF THE STUDY

The situation of armed conflict is certainly one of the biggest ordeals for any state. Particularly serious this ordeal is for young states that not long ago became independent and appeared on the political map of the world. Ukraine is a young state, in which for a long time one of the main achievements was the civil peace and calmness. Despite the corruption, low income of citizens, social injustice and inequality, our state and society managed to preserve civil peace and not to enter into situations of very serious internal disturbances and tensions that could escalate into armed conflict. In fact, during the years of independence of our country anyone in Ukraine even did not think about armed conflict and its possible consequences.

Civil riots of early 2000's, the Orange Revolution in 2004 were serious challenges for our country and important stages in the transformation of the Ukrainian people into a real civil society that appreciates their rights and freedoms most of all and ready to defend their choice and their dignity. Euromaidan of 2013-2014 has become another important milestone in the development of Ukrainian civil society. Citizens of Ukraine wanted to defend the right to European integration, European civilizational choice. Therefore, Euromaidan has become one of the key stages in the development of our young state. However, it was Euromaidan or rather a violent response to it that caused the first deaths of peaceful protesters in the history of independent Ukraine. It was namely violent response of the law enforcement bodies on peaceful protest of Euromaidan that destroyed civil peace in Ukraine and, as it turned out later, opened the «Pandora's box» of military confrontation in various parts of our country.

Today it is clear that another state, the aggressor state - the Russian Federation is involved in the violent suppression of peaceful Euromaidan protest, the occupation of the ARC and Sevastopol, the beginning of armed conflict.

THE TOTAL AREA OF THE OCCUPIED TERRITORIES IS

44 THOUSAND SQ. KM.
(EQUAL TO THE TERRITORY OF SWITZERLAND OR THE NETHERLANDS)



3 700 000

MILLION VICTIMS OF THE CONFLICT (EQUAL TO THE POPULATION OF BERLIN), WHOM **580 THOUSAND** - CHILDREN



LOSSES FROM DESTRUCTION OF INFRASTRUCTURE DURING THE HOSTILITIES REACHES

15 USD 15 BLN

THE CONFLICT IN THE EAST OF UKRAINE:



9 500 DEAD

OF WHOM ABOUT **2 THOUSAND** - CIVILIANS
MORE THAN **22 THOUSAND** WOUNDED

AS A RESULT OF SHELLING CONFLICT ZONE IS CONTAMINATED WITH HEAVY METALS (TITANIUM, VANADIUM, STRONTIUM). FLOODING OF MINES, POISONING OF DRINKING WATER AND THE APPEARANCE OF RADIOACTIVELY CONTAMINATED WATERS OF THE AZOV SEA AND THE SIVERSKY DONETS COULD LEAD TO ENVIRONMENTAL DISASTER OF CHERNOBYL LEVEL. ACTIONS OF COMBATANTS CAUSED CONSIDERABLE DAMAGE TO CULTURAL HERITAGE DUE TO SHELLING, ROBBERY AND USE THEM AS PROTECTIVE STRUCTURES.

1 783 649

INTERNALLY DISPLACED PEOPLE (EQUAL TO THE POPULATION OF VIENNA), OF WHOM

228 049 - CHILDREN

ACTIONS OF OCCUPATION AUTHORITIES IN CRIMEA:



MORE THAN **330** STATE-OWNED COMPANIES, INSTITUTIONS AND ORGANIZATIONS AND **280 PRIVATE** ENTERPRISES WERE UNLAWFULLY NATIONALIZED



MORE THAN **1600** OBJECTS OF PRIVATE PROPERTY WERE DESTROYED

SIMFEROPOL - 450
SIMFEROPOL DISTRICT - 590
SUDAK - 338
YALTA - 225
YEVATORIA - 36



Kostroma paratroopers tell their version of how they got to Ukraine

Костромські десантники розповідають свою версію того, як вони потрапили до України

Actually, this state has caused a deep and severe crisis, which lasts in Ukraine for more than three years already. Of course, the state should bear international legal responsibility for his actions and restore the territorial integrity and sovereignty of Ukraine. However, the state can not restore peace and trust between the citizens of Ukraine who have different political views, different visions of development of Ukraine and its future. Because, unfortunately, many citizens of Ukraine supported the actions of the aggressor state and combated with weapons against their Motherland. And when the enemy state aggression, occupation of Crimea and armed conflict in the Donbas come to the end, Ukrainian citizens themselves will need to be reconciled with each other and learn to continue to live together and build the future together. Nobody will do this job for us and we should be ready for it.

Even now, when the active phase of Crimea occupation and armed conflict in the Donbas is still continue, Ukrainian society should think about how to build their postwar future. How to reconcile citizens with different views and visions.

How to restore trust to each other of residents of different regions. How to apply amnesty to people who have not committed serious crimes. How to impose criminal liability to persons who have committed the most serious crimes, including crimes against humanity and war crimes. How can the international community and international law help us with all this? It is not easy to answer these questions, but already now we need to look for answers, not to be late.

Transitional Justice (transitive justice) as a model, which provides the legal and political mechanisms of national reconciliation and bringing to justice those who have committed serious crimes can help with this. Namely Transitional Justice mechanisms can ensure a balance between criminal responsibility and national reconciliation. It is clear that a wide-ranging dialogue should lead to such reconciliation, the subject of which, in particular, will be amnesty for those who took up arms during the armed conflict in some areas of the Donetsk and Luhansk regions. It is Transitional Justice that is meant to provide a balance between the need to ensure criminal

prosecution for the most serious crimes and the need to apply the amnesty and other mechanisms of reconciliation on persons who did not commit the most serious or serious crimes.

It should also be taken into account that after the collapse of the USSR there were formed several areas where armed conflicts took place: Nagirny Karabakh, Transdnister, Abkhazia, South Ossetia. All these armed conflicts began in early 1990 and then were “frozen”, so they remain unsolved till now. Such uncertainty in the status of the territories, in their relations with other states and the world turns such areas into “gray” zones, which often have serious problems with respect for rights and freedoms. Most of all such “frozenness” of armed conflicts affects the population of these territories, as they often lose important social benefits and their whole life is connected with the struggle for survival.

It should be noted that in these armed conflicts in the territories of former Soviet Union Transitional Justice mechanisms were not used or were used insufficiently, and it is likely that their use could improve the situation and contribute to its solving. The armed conflict in some parts of the Donetsk and Luhansk regions started in April 2014 and has claimed many lives, leading to pain and suffering of many families. Despite all the efforts of Ukraine and the international community to resolve it, this conflict continues to this day, and the probability of its “freezing” is rather high. Minsk agreement, a key as of today mechanism of the international community to end the armed conflict in the Donbas actually is also a mechanism of Transitional Justice that establishes the requirements and criteria for the gradual reintegration of temporarily uncontrolled territories.

Considering all this, it is essential that the state and civil society were aware of how Transitional Justice can be used during and after the armed conflict in some areas of the Donetsk and Luhansk regions and actively participated in the development of such mechanisms. That is why the Ukrainian Helsinki Human Rights Union de-



ecided to conduct the study entitled “Baseline Study on Implementation of Transitional Justice in Ukraine”. This study was prepared in the form of collective monograph, prepared by scientists, legal practitioners and experts from NGOs. It for the first time reveals in detail the content of essential elements and mechanisms of implementation of Transitional Justice. Transitional Justice is considered in the context of simultaneous transformation of Ukrainian society from authoritarian past to democratic present and from conditions of armed conflict to post-conflict situation. The study analyzed the experience of implementing Transitional Justice models that exist in other countries. There was made an accent on inability of simply borrowing of any model of Transitional Justice due to different social and cultural features of each country where these models were applied. This collective monograph is meant for deputies, public sector employees working in the field of criminal justice, law enforcement, culture and social welfare, representatives of international and non-governmental organizations and all those interested in Transitional Justice and national reconciliation.

I **Criminal prosecutions**

Potential Areas of assessment:

- legal proceedings in war crimes, crimes against humanity and genocide;
- lodging of criminal charges;
- databases on criminals;
- protection of crime victims and ensuring their access to justice;
- establishment of standards and values to be followed;
- restoring trust between citizens and the state.

II **Reparations**

Potential Areas of assessment:

Restitution (restoration of violated rights): restoration of liberty, opportunity to use all the scope of human rights; reissuance of documents of identity, marital status and nationality; returning to the previous place of residence; reinstatement in a job; return of property.

Compensation (reparation of loss) for:

- physical, mental or moral damage;
- moral damages;
- missed opportunities, including of employment, education and receiving social benefits;
- financial loss and loss of expected profit, including loss of earning potential;
- costs of legal or expert assistance;
- costs of medicines and medical care as well as psychological services and social services.

Rehabilitation: providing medical and psychological care as well as legal and social services.

Satisfaction:

- effective measures to stop continuing violations;
- verification of facts and full and public disclosure of the truth;
- search for missing persons, check of the identity of kidnapped children, and identification of bodies of killed and assistance in returning, identification and reburial of bodies;
- official statement or court decision on restoring the dignity, reputation and rights of victims, recognition of aggrieved persons as victims;
- public apology from the official authorities, recognition of facts and personal responsibility;
- the prosecution of those responsible;
- commemoration and tribute to the victims (monuments, museums and places, renaming streets, celebration of commemorative days, etc.);
- inclusion of accurate information on violations committed to the curricula at all levels.

Guarantee of non-repetition:

- effective public control over military forces and security forces;
- ensuring that all civilian and military judicial procedures meet international standards regarding due litigation, fairness and impartiality;
- strengthening of judiciary system independence;
- protection of professionals working with victims (lawyers, doctors, health care specialists) and those working in the media and human rights sphere;
- continuous raising awareness of all sections of the population on international humanitarian law (IHL) and human rights, education on these issues for law enforcement and armed forces officials;
- promotion of compliance with codes of conduct by public officials;
- promotion of the establishment of mechanisms for control and prevention of social conflicts and their resolving;
- revision and reforming of laws that promote or allow serious violations of IHL and human rights;

creation of national mechanisms for reparations of losses and other assistance to victims;

III **Truth-telling**

Potential areas of assessment:

- documenting violations;
- documented restoration of events;
- declassification of archives;
- establishing different forms of inquiry bodies involving Truth commissions;
- investigation on persons who have disappeared and missing;
- establishment of victims and perpetrators;
- ensuring the availability and security of documents on rights violations.

IV **Institutional reforms**

Potential Areas of assessment:

- reforms of security sector, law enforcement, judicial sector, the education sector and the media;
- check of public officials or candidates to posts to determine whether they were involved in human rights violations.

Our study is constructed in the way that enables the reader to learn about the concept of Transitional Justice, to evaluate it in the light of the experience of other countries, to get know about international instruments of Transitional Justice, to analyze this concept in terms of various international institutions from different regions of the world, to explore the first steps and elements of application of Transitional Justice in Ukraine and to analyze possible future steps to further implementation of the concept.

The study is also aimed to develop a special, Ukrainian model of Transitional Justice, which will take into account all the peculiarities of the conflict in Ukraine and possible ways to overcome it.

Our study begins with a theoretical presentation of the principles of Transitional Justice, namely the overview of characteristic of the transitional period, the emergence of the concept of Transitional Justice and its philosophical dimension. The concept of Transitional Justice is relatively new. In general it is associated with the wave of democratization around the world that began in the end of the twentieth century. This concept has teleological and ideological dimensions. Both de-

scribe the interrelated aspects of the completion of the process of transition to liberal democracy. The concept of Transitional Justice mainly is used in two meanings - to describe the post-conflict and post-authoritarian periods¹.

Accordingly, the idea of Transitional Justice shows the movement between two points:

1) departure (the dictatorship, communism, war, including civil, foreign occupation, chaos, anarchy, genocide);

2) arrival (developed liberal constitutional democracy).

Transitional Justice includes legal practices and challenges the state and the society, which are transformed when the right is used in two ways: as a means of transformation and as the direction of transformation, face with. Each form of democratization face with different challenges and Transitional Justice in various hot spots around the world has its own problems. Under peaceful transformation the most important issue is to deal with the past, which is not limited only by the remains or legacy of the previous regime. Transitional Justice is a constitutional issue for new social, political and legal systems that have replaced the old situation. Different coun-

Hakeem O. Yusuf. Transitional justice, judicial accountability and the rule of law. – Routledge, 2010. – P. 133.

tries have embraced different approaches to Transitional Justice, which had an effective impact on the form and structure of the new regimes².

The conventionality of the term “Transitional Justice” should be taken into account since the moment of completion of this transition can not be clearly defined in the time. Firstly, the transition may take decades. Secondly, the transition covers various spheres of relations, and therefore can be completed for some areas and continue for others. In this regard, some researchers prefer another term - post-conflict justice, to move away from having to decide what the aim of the transition is and when such transition can be considered complete. But then there is another problem: if the issue is not an armed conflict, but the change of regime, the elimination of authoritarian rule, under which were organized mass repression, such changes can not be covered by the concept of post-conflict justice.

In general, if we analyze proposed in the literature approaches, we can conclude that Transi-

tional Justice describes the period of application of mechanisms, tools and practices in response to repressions, events of conflict or war to counter and overcome the consequences of the violation of human rights and/or humanitarian law that occurred in the past.

Development of the concept of Transitional Justice began from the mid-90 of the XX century, and that is why it is called a relatively new area of research. But the events that have become the de facto basis for the relevant theoretical developments took place a bit earlier in Inter-American region (Chile, Argentina, Guatemala, El Salvador and others) and in other regions of the world (primarily, it is about South Africa).

It is accepted that starting from 1974 more than 100 countries have had experience of transition from non-democratic regime to democracy or from armed conflict to peace. The concept of Transitional Justice appeared in the main thanks to advocacy campaigns that were launched around the world in response to serious violations of human rights and/or humanitarian law³.



«BULLDOZER REVOLUTION» (2000, SERBIA)

«ROSE REVOLUTION» (2003, GEORGIA)

MAIDAN (2004, UKRAINE)

«TULIP REVOLUTION» (2005, KYRGYZSIA)

THE ACTION «OCCUPY WALL-STREET» (2011, USA)

«ARAB SPRING» (2011, MIDDLE EAST AND NORTH AFRICA)

At that time there was a sense (it persists till now) of a strong need to combat impunity, and human rights were seen as a suitable means to achieve this. Lawyers in human rights area launched ad-

vocacy campaigns, rather powerful, to conduct, in accordance with the standards of international law, investigations, prosecutions and punishment of those responsible for serious human rights vi-

² Čarnota A. About the bright case of uncertainty or transitional justice and rule of law // Philosophy of Law and the general theory of law. - 2013. - № 2. - P. 185.

³ Artur P. 2009. How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice / Paige Artur // Human Rights Quarterly. - 2009. - Vol. 31. - N 2. - P. 336.



olations⁴, and ensure the right to know what happened⁵, and the right to reparations⁶. It was also determined that states are bound to adopt and implement the guarantees of non-repetition of violations that occurred, and conduct institutional reforms to prevent that what happened will never happen again⁷.

However, it should be realized that the concept of Transitional Justice arose not in a theoretical vacuum, not in a void. It is a part of a more global project of human rights. Its ideological origin lies in liberal theory.

Therefore, a complete understanding of the concept of Transitional Justice is possible only in the context of the theory of human rights. Its tools and mechanisms - truth commissions, trials, cross-sectoral reforms in the law area and law enforcement structures, modification of the political system - all this is only a single manifestation of a vision of the society, which creation becomes desirable at some point in history. In other words, recourse to mechanisms of Transitional

Justice involves a set of values and commitment to certain results.

A key thesis of the concept of Transitional Justice is that this time of changes, which every state where there have been massive violations, must pass through, should include the administration of justice on offenses committed in the past. It is a condition of establishing peace, strengthening the values of a democratic society and the rule of law. This thesis put as a basis of the work concept of Transitional Justice proposed by the UN. In accordance with it the Transitional Justice includes a complete set of processes and mechanisms associated with a society attempts to come to terms with the legacy of large-scale abuses of the past and to ensure accountability, justice and reconciliation.

Despite the fact that now you can see quite a wide range of approaches to the understanding of Transitional Justice, now there is a certain consensus on the objectives and content of this process. Its foundation is composed of four elements

⁴Mendez J. Accountability for Past Abuses / Mendez, Juan // Human Rights Quarterly. - 1997. - V. 19. - N 2. - P. 255; Orentlicher D. Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime / Orentlicher, Diane // The Yale Law Journal. - 1991. - V. 100. - N 8. - P. 2537-2615; Settling Accounts Revisited: Reconciling Global Norms and Local Agency // International Journal of Transitional Justice. - 2007. - V. 1. - N 1. - P. 10-22.

⁵Hayner P. Unspeakable Truths: Confronting State Terror and Atrocity / Priscilla Hayner. - New York, London: Routledge, 2001; Rule-of-Law Tools for Post-Conflict States: Truth Commissions / Office of the High Commissioner for Human Rights. - UNITED NATIONS, 2006.

⁶Shelton D. Remedies in International Human Rights Law. Second edition / Dinah Shelton. - Oxford: Oxford University Press, 2005; Report of Diane Orentlicher, independent expert to update the Set of principles to combat impunity - Updated Set of principles for the protection and promotion of human rights through action to combat impunity Joint Principles / UNITED NATIONS, 1997; Basic principles and guidelines on the right to a remedy and preparation for victims of gross violations of international human rights law and serious violations of international humanitarian law Van Boven-Bassiouni Principles / Office of the High Commissioner for Human Rights. - UNITED NATIONS, 2005.

⁷Shelton D. Remedies in International Human Rights Law. Second edition / Dinah Shelton. - Oxford: Oxford University Press, 2005; History of Transitional Justice // Human Rights Quarterly. - V. 31. - N. 2. - P. 321-367.



(another thing that the debates about what each of these elements represents and how they relate to each other go on), usually transition stage involves the process of bringing the perpetrators of massive violations to justice and punishment for the committed crimes; process of reparation to victims of course losses; the process of establishing the truth, a full investigation of violations that occurred during the conflict or were repressive; institutional reform process, which will ensure that such violations do not recur⁸.

It should also be understood that Transitional Justice is the way of development of the past as the correlation of “space of experience” in the

form of massive human rights violations with “horizon of expectations” which covers the disclosure of truth, justice and reconciliation. The reclaim of the past includes not forgetting, but rather the hard work of memory in the form of recognition: recognition of past events, recognition of a self as a subject of experience and mutual recognition of people as bearers of dignity and rights.

Transitional Justice shifts the focus from retributive (punitive) justice dimension, focused on bringing the perpetrators to justice, to the recovery dimension focused on rehabilitation and restoration of human dignity. However, an example

⁸Sandoval C. Transitional Justice: Key Concepts, Processes and Challenges / Clara Sandoval // Villalba Institute for Democracy & Conflict Resolution – Briefing Paper (IDCR-BP-07/11). – Part of the University of Essex Knowledge Gateway, 2011. – 13 p.; Annan K., UN Secretary-General. The Rule of Law in Conflict and Post-Conflict Societies. – NY: United Nations, 2004; Arthur P. (2009), How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice / P. Arthur // Human Rights Quarterly. – 2009. Vol. 31(2). – P. 321-367; Bell C. Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field” / Bell C. // International Journal of Transitional Justice. – 2009. – Vol. 3(1). – P. 5-27; Cassel D. The Inter-American Court of Human Rights / in Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America. – Washington DC: Due Process of Law Foundation, 2007. – P. 151-167.

of Transitional Justice highlights the nature and purpose of justice as such, it is intended to allow peaceful coexistence of people.

As for the foreign experience with Transitional Justice mechanisms, then, of course, the first point that should be noted is that the finished standardized recipes of Transitional Justice mechanisms application do not exist and their use will depend on the particular country, the features of the society, ethnic, religious and gender issues. But, of course, one of the most interesting for Ukraine is the experience of the Balkans, as in this case we are talking about events that took place relatively recently in Europe.

But of course, we must also consider the fact that the war in the Balkans is largely different from the armed conflict in the Donbas, in particular that an important role in it played religious, ethnic and national factors. As for the experience of Bosnia and Herzegovina, here we first of all need to note the experience of “hybridization” of trials in this country, where national judges were usually engaged in fact-finding issues and foreign – in issues of law.

Such hybridity in Bosnia and Herzegovina has affected even the Constitutional Court, in which three of the nine members are appointed by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina (a kind of collective body with the functions of a head of state).

EXAMPLES OF HYBRID COURTS:

- Special court chambers on serious crimes in Timor-Leste (2000);
- Mixed judicial divisions in Kosovo (2000);
- Special Court on Sierra Leone (2002);
- Court Chamber on investigation of war crimes in Bosnia and Herzegovina (2005);
- The extraordinary court chambers in Cambodia (2006);
- Special Tribunal on Lebanon (2007).

Another element of Transitional Justice is lustration, under which the system should understand the measures taken, as a rule, during the political transformation and aimed at identifying politically unreliable persons and to restrict access of such persons to public posts⁹. In time slot lustration in Bosnia and Herzegovina took place in two stages: 1) 1999 - 2002 (reform of the police,

numbering in post-war Bosnia, about 24 thousand people, which was carried out by the UN mission); 2) 2002 - 2004 (reform of the judiciary and the prosecution, which collectively totaled about 1,000 persons that they were to be lustrated by high judicial and prosecutorial councils which half consisted of foreigners and acted both at the level of the federation, and at its compo-

⁹We note straight away that lustration is a term used primarily on post-socialist transformation in Europe. In UN documents another term traditionally is used - vetting. Although some authors, as N.A. Bobrinskii rightly notes, fine semantic differences between lustration and «vetting» for the purposes of our study we will take these terms as synonymous. See: Bobrinskyy N. The International standards in the field of lustration: reality or wishful thinking? // Comparative Constitutional Review. 2015. No. 6. P. 13-29; Smorodinsky V. Problem of implementing lustration procedures for cleaning government, European and domestic experience // Law of Ukraine. 2015. No. 5. P. 111- 120. Of more early referential is considered the publication of: S. Shevchuk European standards of lustration measures limitation: legal aspect // Bulletin of the Academy of Sciences. 2006. № 2. P. 32-42. A good overview of the practice of constitutional justice in Europe on various aspects of lustration was published in No.No. 2-3 of «Bulletin of the Constitutional Court of Ukraine» for 2015



nents: actually at the level of Bosnia and Herzegovina and Republika Srpska¹⁰).

The introduction in the territory of the former Yugoslavia, including Serbia, theoretical and applied concept of “transitive justice” was not only a procedural innovation, but can and should be considered in the broader context of democratic changes that have intensified in the region after the fall of S. Milosevic regime.

The main impetus that gave rise to the introduction of the concept of Transitional Justice in Serbia, was the “Bulldozer Revolution” of October 5, 2000, which ended with the overthrow of the President S. Milosevic. There should be noted a certain unevenness in the legal development of the “Balkan model” of transitive justice: if in Bosnia and Herzegovina, one more republic of the former Yugoslavia, the first steps in a specified direction were taken soon after the cessation of bloodshed in 1995¹¹, in Serbia judicial and law enforcement agencies remained virtually unreformed not only during the war of 1991 - 1995, but the next five years after its completion. Only coming to power in 2000 of the first democratically elected president V. Kostunica has changed the status quo, prevailing in the country.

It should be kept in mind that the former Yugoslavia became a kind of “laboratory” of transitive justice. “This is where we saw the first attempt to create an international tribunal, the first regional system of special hybrid courts and prosecutors to investigate violations of international humanitarian law, first resorted to technology of “reconciliation with the past” as an essential condition of interethnic concord”¹². One of the key mechanisms of justice of Transitional Justice was International Criminal Tribunal for the former Yugoslavia, one more important mechanisms was truth commissions that operated in the territories of mainland Serbia and Serb autonomies in composition of other republics of the former Yugoslavia.

Accordingly, one of the mechanisms of Transitional Justice are the Truth and Reconciliation Commissions. The Truth Commissions (Commission on the establishment of the truth) are officially approved interim authorities, which are given relatively short period of collecting evidence, investigation and study of materials and public hearing in cases, after which they complete their work and publish the final report¹³. Since 1974, when the first such commission was created in Uganda (Commission of Inquiry into people disappearances in Uganda), such non-judicial truth

authorities received wide international recognition everywhere as a tool of Transitional Justice¹⁴.

In addition, the Truth Commissions may be authorized to promote reconciliation and to break the cycle of violence, hatred and revenge between enemies (individual reconciliation) or op-

posing forces in society (national and political reconciliation). In some cases, it can be argued that the purpose of reconciliation was integral or even the main purpose of creating of the truth commission¹⁵ “The truth is the path to reconciliation” was the motto of the most famous in the history truth commission¹⁶.

EXAMPLES OF THE TRUTH COMMISSIONS:

- The National Commission for Truth and Reconciliation (Chile)
- The Truth Commission (El Salvador)
- The Commission on Missing (Argentina, Uganda, Sri Lanka);
- The Truth and Justice Commission (Ecuador, Haiti, Mauritius, Paraguay, Togo);
- The Commission of truth, justice and reconciliation (Kenya);
- The Truth and Reconciliation Commission (South Africa, Chile, Peru, etc.).

In general, the Truth and Reconciliation Commissions take a special place in the development of mechanisms of reclaiming the past within the Transitional Justice, because they not only investigate individual cases, but first of all try to understand the nature and extent of human rights violations, and also causes and consequences of these violations. Apart from the execution of the right to the truth, commissions are also intended to pay tribute to the victims of crimes (to hear their opinion, to restore their dignity and to develop recommendations on reparations) to help to counteract impunity, promote accountability for human rights violations at the level of institutions and develop reforms needed to prevent such violations in the future, to promote reconciliation - individual, national policy and, ultimately, reconciliation with its own past. Not replacing the legal procedure,

the Commissions successfully supplement it, shifting the focus from the responsibility to establishing truth and reconciliation, from punishment, which criminals are to be exposed to, to compensation, which victims require. However, the achievements of the commissions, as a rule, significantly contribute to further justice.

Given the universal nature of the rights enshrined in the European Convention on Human Rights, the issue of “Transitional Justice” was not left without attention of the European Court of Human Rights as a key element of a European mechanism to protect human rights. Since the adoption of the European Convention on Human Rights the European Court of Human Rights considered a significant number of cases, which covered issues related to “Transitional Justice” related to a broad range of issues.

BEGINNING OF 2017 - THE CITIZENS OF UKRAINE FILED 3,619 INDIVIDUAL COMPLAINTS AGAINST RUSSIA TO THE EUROPEAN COURT OF HUMAN RIGHTS

¹⁰ In total in these councils 17 national members (judges, prosecutors and lawyers) and 8 foreigners, two of whom occupied the post of president and vice president of the Council respectively have worked.

¹¹ See., e.g.: Mayer-Rieckh A. Vetting to prevent future abuses: reforming the police, courts, and prosecutor’s office in Bosnia and Herzegovina // Justice as prevention / Ed. by A. Mayer-Rieckh & P. de Greiff. N. Y.: SSRIC, 2007. P. 180-220.

¹² Dragovic-Soso J., Gordy E. Coming to terms with the past: transitional justice and reconciliation in the post-Yugoslav lands // New perspectives on Yugoslavia: key issues and controversies / Ed. by D. Djokic, J. Ker-Lindsay. L.: Routledge, 2011. P. 193.

¹³ Tools to ensure the rule of law in post-conflict states. The Truth Commission. UN. New York, Geneva, 2006. P. 1.

¹⁴ Detailed analysis and generalization of the experience of truth commissions represented in the study of Prystysly B. Heyner on which we will primarily rely also later: Priscilla B. Hayner. Unspeakable truths: Transitional justice and the challenges of truth commissions. 2-nd ed. New York, London: Routledge, 2011. 376 p.

¹⁵ Priscilla B. Hayner. Unspeakable truths: Transitional justice and the challenges of truth commissions. P. 20–23.

¹⁶ The South African Truth and Reconciliation Commission report [Electronic resource]. – Access mode: <http://www.justice.gov.za/trc/report/index.htm>.

At that, the European Court studying whether there are violations of human rights took into account the “special conditions” (peculiarities of interference in human rights), which one or another person, society or state found themselves in during transitional period. Issues relating to the transitional period and that in relation to this period usually are considered by the European Court, are issues of investigating crimes against humanity and prosecutions of perpetrators after the regime changed, the issues of amnesty, lustration, restitution and reparations for losses. In crisis situations that lead to the onset of transitional period, countries that found themselves in the “transitional situations” can commit violation

to in paragraph 3 of Article 2 and Articles 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights and Articles 5, 6, 8 and 13 of the Convention on Human Rights and Fundamental Freedoms in some areas of the Donetsk and Luhansk regions of Ukraine determined by the Anti-Terrorist Center of the Security Service of Ukraine in connection with the anti-terrorist operation for the period until the complete cessation of military aggression of the Russian Federation, recovery of constitutional order and order in the occupied territory of Ukraine. Ukraine also has reserved the right to take measures that may be grounds for derogations of obligations under other articles of these international treaties.

As for other parts of the world, in Latin America Transitional Justice is provided in particular by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Transformations in Latin America occurred usually during the change of state and legal (political) regimes, during which there have been armed conflicts and [mostly internal, of non-international nature, although there were exceptions: the so-called “Football War” – in Spanish Guerra del Fútbol - between El Salvador and Honduras having lasted from 14 to 20 July 1969] due to the resistance of the previous regime or in response to the violence used by this regime. The experience of these two bodies, and also Latin America countries can be useful for Ukraine, of course, subject to consideration of regional features and the nature of the conflict in Ukraine (foreign aggression and intervention).

One of the most effective mechanisms that can be used during the transitional period is the International Criminal Court (ICC). ICC is a body of international criminal justice, which aims to attract individuals criminally responsible for committing the most serious crimes against international law: genocide, crimes against humanity, war crimes, aggression¹⁷.

ICC does not accept any personal immunities and may prosecute any individuals, even current officials who have high chances to avoid responsibility in the national judicial system. In the grand scheme of things, the ICC works when the state can not or do not want to provide fair justice against perpetrators of crimes against international law on their own.

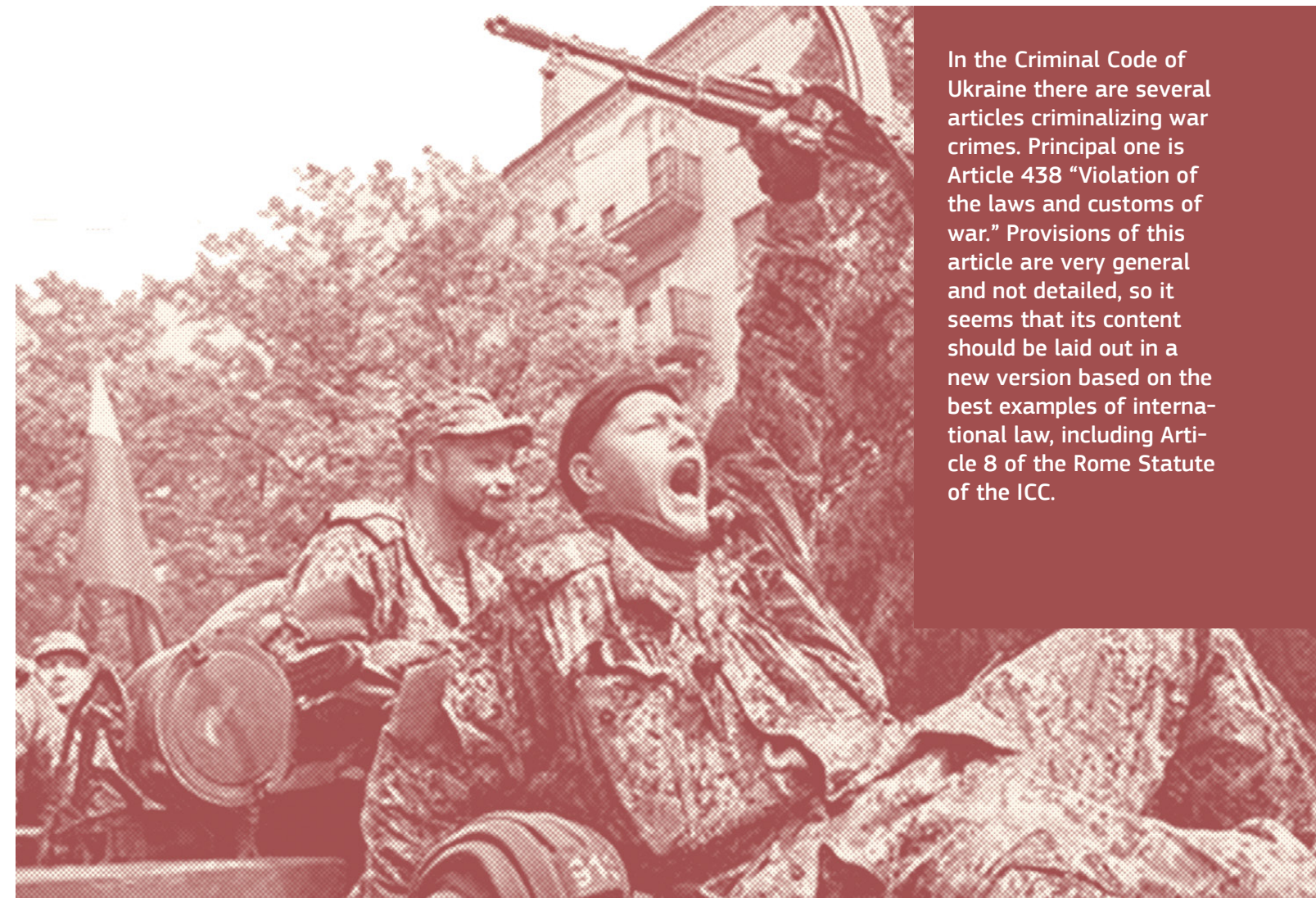
Particular attention during armed conflict and the transitional period should be given to possible war crimes. War crimes is a serious violation of international humanitarian law, commission of which involves the individual criminal responsibility. War crimes are classified as crimes against international law (international crimes) together with genocide, crimes against humanity and aggression. War crime differs from the ordinary one by its contextual element - that it is com-

mitted during the armed conflict and is a serious violation of international humanitarian law. That is a war crime violates the prohibition that exists in the contractual or common law of armed conflicts. The overall assessment of the system's ability to work during the transition period depends upon the way the national legal and judicial system prosecute those responsible for war crimes. Another important point is that the persons who committed war crimes, crimes against humanity or genocide can not be subject of amnesty. It always should be kept in mind during the negotiations on the winding-up of the armed conflict.

The need for introduction in Ukraine of elements of Transitional Justice confirmed not only the revolutionary events of recent years, the occupation of Crimea and armed conflict initiated by



of human rights, which under normal conditions would have been unacceptable, that, however, does not preclude the obligation to abide by the rule of law and international standards of human rights, but this special situation requires a balanced approach and a more detailed analysis of the right, which is violated, taking into account the relationship between the interests of society and the individuals. May 21, 2015 the Parliament of Ukraine adopted the Statement “On derogation of Ukraine from certain commitments under the International Covenant on Civil and Political Rights and the European Convention on Human Rights.” According to cl. 9 of this Statement, Ukraine used the right of derogation of obligations referred



In the Criminal Code of Ukraine there are several articles criminalizing war crimes. Principal one is Article 438 “Violation of the laws and customs of war.” Provisions of this article are very general and not detailed, so it seems that its content should be laid out in a new version based on the best examples of international law, including Article 8 of the Rome Statute of the ICC.

¹⁷ According to the Rome Statute of the International Criminal Court ICC will have jurisdiction over the crime of aggression as soon as provision, including the definition of the crime and the conditions for the application of this provision is adopted and enter into force.



the aggressor state in the East of the state, but also by social trends and a number of events which occurred on the eve of the stormy days that completely changed habitual settled life of the peaceful country. In such way, during 2010-2013 in Ukraine there could be observed several trends: on the one hand, the reform of criminal and criminal procedure and military legislation aimed at its full humanization, and on the other - a growing dissatisfaction with the judicial system, the system of criminal justice that manifested in numerous protests, which were organized by citizens in front of courts, evolution of such socio-legal phenomenon as "high-profile criminal cases", accompanied by meticulous attention of media, coverage of their peculiarities from the initial stages of criminal proceedings until the consideration and resolution of cases on the merits by court. Some of these high-profile cases were of a purely political nature associated with criminal prosecution of officials of last term. The processes of selective justice received extremely negative assessment from the international community, including the comments from EU leaders, USA, adopting PACE resolutions and making decisions by the European Court of Human Rights.

According to the European Social Survey in 2013 the level of trust to the judicial system in Ukraine under a 5-point scale amounted to 2.1 points,

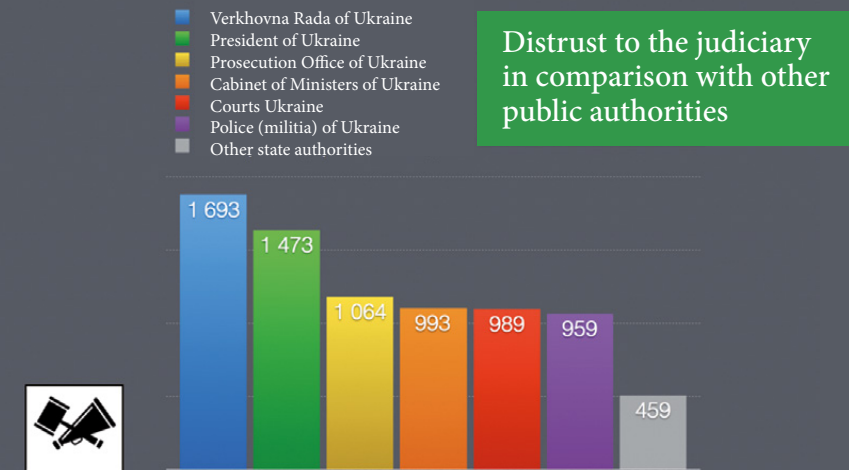
that is it was not high. However, the same level of trust in our country was also to the Government and to the prosecution, and to the Ministry of Interior¹⁸. Needless to say how relevant is the increasing of trust to Ukrainian criminal justice agencies. Content analysis of global and regional standards in the area of organization and functioning of the criminal justice system shows that declaration of the priority of the rights and freedoms of man and citizen, and their overall protection by the state creates a significant public demand for a system of fair and effective criminal justice.

One of the prerequisites for the effectiveness of the criminal justice system is trust of citizens to it. The relevant provision is contained in the recommendations of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. The same applies to the judicial branch, it is necessary to strengthen public trust to the judiciary and wider recognition of the validity of its independence and impartiality, in particular by guaranteeing transparency in the work of judiciary and its relationship with the executive and legislative branches, and also by an active policy of judicial system representatives and courts in relation to the media and dissemination of general information with regard to the rights of the defense party and dignity of victims.

¹⁸ Romaniuk Ya M.: Interview of the President of the Supreme Court of Ukraine to "Journal of Law of Ukraine" Weekly // Legal. Journal. Ukraine. - 2013 - November 16 (№ 46).

Analysis of current Ukrainian reality proves reduce of public trust to the national judicial system and judges, which is manifested both by specific opinion polls and by certain social processes going on in recent years. The level of trust to other criminal justice agencies is also extremely low.

However, based on the results of various opinion polls, we can also note that the level of trust to the court of people who, for various reasons, applied to court, is higher than in general among citizens.



II Block of Poll

Analysis of social and political events and trends of 2010-2014 shows that in Ukrainian society the prerequisites for social and political protests were brewing for a long time, they have been caused by several factors, including the following:

- Widespread practice of so-called "selective" justice related primarily to the criminal prosecution of former government officials who have lost their jobs;
- Inability to achieve a just and lawful decision at national criminal justice authorities and courts;
- Critical reduce of public trust to authorities, including law enforcement agencies and courts;
- Numerous attempts to find an alternative to traditional justice through public protests, investigative journalism, applications to supranational court institutions, including the European Court of Human Rights, spontaneous lynching practices (widely known as Lynch's court);
- Sudden outbreak of violence in the society that spawned both high-profile criminal investigations and flows of uncontrolled violence directed at judges and other members of law enforcement agencies.

Thus, the society was trying to solve problems that have accumulated over the years on their own, against the background of unsuccessful attempts of the state to cope with these dangerous tendencies and condemnation of acts of official representatives of the state and some decisions of national justice at the international level, in particular through the European Court of Human Rights in cases related to selective justice. In this way Transitional Justice started its development in Ukraine.

The revolutionary events of 2013-2014 and subsequent occupation of Crimea and development of the armed conflict in the East of Ukraine, which is not yet finished, arose the urgent need to find new, qualitatively different forms for domestic justice.

Transitional Justice must address the twin objective: to promote resolving acute social conflict in the country and apply effective tools of reparation of losses to all victims of crimes, and to promote the establishment of new, independent, self-sufficient system of criminal justice agencies that can not only effectively resolve social conflicts, but meet the need of citizens to justice, ensuring the application of the principles of the rule of law in practice.

One of the important tools of Transitional Justice, designed to provide a constant internal development of this system have to become corporate standards of professional ethics. Latter are important benchmarks for professional and out-of-service behavior of employees of criminal justice. Observance of ethical prescriptions is their essential obligation which arises from the constitutional and legal status of the law enforcement agencies. Corporate ethics based on universal moral imperatives, is an effective mechanism to ensure accountability of the criminal justice system to civil society and to enhance public trust to it.

An effective mechanism of legal liability of employees of criminal justice agencies is a necessary condition to ensure public trust to the relevant authorities and legitimation of the state legal system as a whole. Institute of liability is formed as a result of regulatory consolidation of social values, norms and rules generally recognized and accepted in the society. Namely through the internalization of social values there is provided the efficacy of liability for its subjects that are also integral members of the society. Judges, prosecutors, employees of the police or other law enforcement agency as a citizen is a part of a certain social group for which certain moral precepts and imperatives are important and significant. Respect by them as officials of generally recognized rules provides inter-subjective social relationship between them and the society, while their violation is a prerequisite of responsibility.

According to the Inter-American Court of Human Rights in the case of Velasquez Rodriguez against Honduras, all states have five fundamental responsibilities regarding human rights protection: to take reasonable actions to prevent

human rights violations; to conduct a serious investigation of violations when they occur; to identify both victims and those responsible for this violation; provide appropriate punishment for those responsible and to initiate and provide compensation to victims of crime. Subsequently, this decision was proved with its practice by the European Court of Human Rights and various UN documents, including the report of the Secretary-General on the rule of law and Transitional Justice in conflict and in a post-conflict society in 2004.

These responsibilities were assigned to the four basic elements of Transitional Justice, criminal justice, establishing the truth, reparations and institutional reforms. These elements are practically and conceptually interrelated. Most societies that come out of a violent transitional period and use transitional legal mechanisms combine some or all of these mechanisms.

As noted above, one of the most effective mechanisms that can be applied during the transitional period is the International Criminal Court (ICC). Ukraine has been actively involved in the preparation of the Agreement, signed it and joined the Agreement on the Privileges and Immunities of the International Criminal Court¹⁹, but the Rome Statute is not ratified so far in connection with the Opinion of the Constitutional Court of Ukraine in the case on constitutional petition of the President of Ukraine on provision of the opinion on constitutionality of the Rome Statute of the International Criminal Court (case on the Rome Statute) of July 11, 2001²⁰ The Constitutional Court of Ukraine in its Opinion formulated the legal position according to which the provisions of the Rome Statute, namely the tenth paragraph of the preamble and Article 1 do not meet the first and the third paragraph of Article 124 of

the Constitution of Ukraine. This was put to the basis of the impossibility of Ukraine's accession to the Rome Statute without making appropriate changes to the Constitution of Ukraine.

Article 8 of the Association Agreement between Ukraine and the European Union stipulates that the parties cooperate in order to strengthen peace and international justice by ratifying and implementing the Rome Statute of the International Criminal Court and related instruments. Accordingly, the ratification of the Rome Statute is an obligation of Ukraine under Association Agreement. In June, 2016 there were adopted amendments to the Constitution of Ukraine in terms of justice. Part six of Article 124 of the Constitution stipulates that Ukraine may recognize the jurisdiction of the International Criminal Court on the conditions specified by the Rome Statute of the International Criminal Court. However, this provision shall take effect only from June 30, 2019²¹.

So, by that time the issue of potential ratification by Ukraine of the Rome Statute shall not be put. This is quite a controversial provision that provides for delaying ratification of the Rome Statute for a period of three years.

However, although Ukraine has not ratified the Rome Statute, it accepted the jurisdiction of the International Criminal Court based on cl. 3 of Article 12 of the Rome Statute by adoption by the Verkhovna Rada of Ukraine of two Statements about the jurisdiction of that Court. The first Statement was adopted on February 25, 2014 and relates to the recognition by Ukraine of the jurisdiction of the International Criminal Court on crimes against humanity committed by top state officials, which have led to very serious consequences and mass murder of Ukrainian citizens during peaceful protests in the period from November 21, 2013 to February 22, 2014²². The second Statement was adopted on February 4,

PROSECUTOR'S GENERAL OFFICE OF UKRAINE (2016):

58 Procedural management of joint criminal proceedings against participants of the «DPR» and «LPR»



76 people were held liable

On 43 proceedings investigations suspended in connection with search of

73 suspected

13 of them citizens of the Russian Federation

42 against participants of the «DPR»

16 against participants of the «LPR»

¹⁹ Rome Statute of the International Criminal Court, International Document of 17.07.1998. [Electronic resource] // Access mode: http://zakon3.rada.gov.ua/laws/show/995_588

²⁰ The opinion of the Constitutional Court of Ukraine in the constitutional petition of the President of Ukraine on provision of the opinion on the constitutionality of the Rome Statute of the International Criminal Court (case on the Rome Statute) of 11 July 2001. // Official Bulletin of Ukraine of 27.07.2001 - 2001., No. 28, p. 104, article 1267, code of act 19454/2001

²¹ Part six of Article 124 of the Constitution of Ukraine [Electronic resource] // Access mode: <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/print1479553545937860>

²² Statement of the Supreme Council of Ukraine to the International Criminal Court for recognition by Ukraine the jurisdiction of the International Criminal Court in relation to crimes against humanity committed by top state officials, which have led to very serious consequences and mass murder of Ukrainian citizens during peaceful protests in the period from November 21, 2013 to February 22, 2014 [Electronic resource] // Access mode: <http://zakon4.rada.gov.ua/laws/show/790-vii>

2015 and relates to the recognition by Ukraine of the jurisdiction of the International Criminal Court on crimes against humanity and war crimes committed by top officials of the Russian Federation and the leaders of terrorist organizations “DPR” and “LPR”, which have led to very serious consequences and mass murder of Ukrainian citizens²³. After adoption these Statements on recognition of the jurisdiction were sent to the International Criminal Court and as of now its Prosecutor’s Office conducts procedure of the preliminary examination of the situation in Ukraine for clarification of possible crimes against international law at Euromaidan, in Crimea and in the Donbas.

However, the ICC will not perform our work instead of us. The International Criminal Court works as an additional complementary body to the national judicial system. It will take in the proceedings a case only if the state can not or does not want to provide a fair trial in the case. In addition, traditionally international criminal justice authorities focus on the highest level officials.

The bulk of cases related to the armed conflict in the Donbas, should be considered in the courts of Ukraine and our state has an obligation to ensure fair trial for all its territories.

The objectives of Transitional Justice, inter alia, is prosecution of those who committed war crimes and/or application of amnesty to certain categories of persons who participated in armed conflict. In particular, Minsk arrangements provided not only a cease-fire and the removal of heavy military equipment, but also amnesty for participants of military operations that have not committed serious crimes.

For the prosecution, amnesty and/or commitment of preventive measures in relation to persons involved in war crimes, it is necessary to system-

atize and summarize information about them. However, the problem is that at national level such special systematization has not been carried out, and those registers (databases) which are available and used, are not of official nature.

So, according to the National Police of Ukraine, information about started criminal proceedings against members of terrorist organizations “LPR” and “DPR” and/or their representatives falls under the category of service information of restricted access. In its turn, according to the Prosecutor’s General Office of Ukraine, information about registered criminal offenses (proceedings) and the results of their investigation are summarized in the report under form no. 1, “The unified report on criminal offenses.” Information about persons who have committed criminal offenses are summarized in the report under form No. 2 «Report on perpetrators of criminal offenses”, formed monthly on cumulative basis from the beginning of the reporting period (year) in terms of articles and sections of the Criminal Code of Ukraine on the basis of data entered into the Unified register of pre-trial investigations by users of the information system. At the same time, the current reporting does not provide separation of data on crimes committed by individual actors, including representatives of “Luhansk People’s Republic” and “Donetsk People’s Republic” terrorist organizations. In this regard, a separate database on persons suspected / accused of committing crimes in terms of international law referred to war crimes is not conducted. However, the information about such persons may be entered to general databases under other (common) criteria, especially in the event of adding such persons on wanted list, including internationally.

Certain issues related to the armed conflict in the Donbas is the issue of the rights and freedoms of internally displaced persons. The status of such

persons is defined by the Law of Ukraine “On the rights and freedoms of internally displaced persons”²⁴. Internally displaced person is a citizen of Ukraine, foreigner or stateless person who stays in the territory of Ukraine on legal grounds and is entitled to permanent residence in Ukraine, who was forced to leave or abandon his place of residence as a result of or in order to avoid the negative effects of armed conflict, the temporary occupation, widespread violence, human rights violations and emergencies of natural or man-made disasters. A citizen of Ukraine, foreigner or stateless person who stays in Ukraine on legal grounds and is entitled to permanent residence in Ukraine has the right to protection from forced internal displacement or forced return to the abandoned residence. The main problem of practical focus related to the legal status of this category of persons is to establish the real number of IDPs: Firstly, not all of these people arrived in the controlled by state territories register to obtain the corresponding status; Secondly, many of the IDPs after the registration in Ukraine returned to the occupied territory or the territory of hostilities; Thirdly, some of this category of persons buy housing in Ukraine, thus losing de facto a status of internally displaced persons, while continuing to enjoy the benefits arising from their status.

Practical implementation of rights of this category of people is very problematic. Firstly, none of public authorities today can “boast” clear database on the number of internally displaced persons and the situation on ensuring their rights. The information, which comes from human rights activists and international funds, working in Ukraine is more objective and reflects the real picture.

NUMEROUS REPORTS OF HUMAN RIGHTS ORGANIZATIONS RECORD THE PROBLEM OF INTERNALLY DISPLACED PERSONS AS OF FOLLOWS:

1. Getting status of internally displaced person.
2. Extension of status.
3. Getting targeted assistance to migrant.
4. Registration for IDPs pensions, subsidies and other social benefits at the place of residence after displacement.
5. Accession to the heirship²⁵.
6. Search of job and official employment under the labor laws (often internally displaced persons are denied employment, illegally arguing that they have no official “residence”).
7. Search of accommodation: both rent and purchase of housing for IDPs accompanied by a number of problems as dishonorable agents try to involve these people in the fraudulent transactions. Fairly typical is charging for the provision of non-existent rented dwelling, attempts to make illegal residential contract for sale and purchase and others.
8. Re-issuance of documents lost due to exit from the uncontrolled by the government territory (passports, birth certificates, diplomas, references from universities about study, employment records and many others.)

In general, the domestic system of justice in connection with the events in the East of Ukraine and Crimea faced a number of legal and practical problems, resolving of which directly affected the efficiency and effectiveness of the system. First of all it is the lack of adequate legal protection of victims in connection with the events in the East of Ukraine and Crimea, which had to be resolved urgently. The maximum load was placed on the national system of justice, which had to decide both staffing and technical issues associated with the transfer of state authorities to the

²³ Resolution of the Verkhovna Rada of Ukraine “On Statement of the Verkhovna Rada of Ukraine “On recognition by Ukraine the jurisdiction of the International Criminal Court on crimes against humanity and war crimes committed by senior officials of the Russian Federation and the leaders of terrorist organizations “DPR” and “LPR”, which have led to very serious consequences and mass murder of Ukrainian citizens” [Electronic resource] // access mode: <http://zakon4.rada.gov.ua/laws/show/145-19>

²⁴ On the provision of rights and freedoms of internally displaced persons: Law of Ukraine of 20.10 2014 // Supreme Council Bulletin. - 2015. - No. 1. - Article 1.

²⁵ Zakharov B. Rights of internally displaced persons / B. Zakharov [Electronic resource]. - Access mode: <http://helsinki.org.ua/prava-vnu-trishno-peremischnykh-osib-b-zaharov/>. - Heading from the screen.

territory controlled by the Government and the procedural and organizational issues arose due to the complexity of new categories of cases. These issues are:

- resources and technical support of the state authorities transferred to the territory controlled by the Government;
- lack of funding;
- transporting of cases and documents of public authorities from occupied territory;
- transfer of judges and employees of courts;
- separation of jurisdiction of the courts of Luhansk / Donetsk of jurisdiction of the courts where they were transferred;
- ensuring physical and technical accessibility of courts;
- high quality and prompt consideration and resolution by court of cases related to war crimes and protection of internally displaced persons.

STAFFING PROBLEMS IN THE JUDICIAL SYSTEM:



judges staffing level is

7968

persons actually work

6228

judges.

Among them are entitled to administer justice

4937

(62% of the authorized staffing).

In **72 court** regular judgeships occupancy is **less than 50%**, in the **12 courts** the number of judges entitled to administer justice not exceed **25%**.

Our study shows that the domestic system of criminal justice agencies makes only the first, immediate steps to address these issues. Now its task is to adapt to new situation, implement new and more effective methods of solving the aforementioned issues. It is necessary to adjust both the institutions and procedures to develop and adopt new legislation.

An important element of Transitional Justice is lustration, a special procedure of state officials' responsibility, containing both legal and political components. If the goal and objectives of lustration are, as a rule, of political overtones, its procedural aspects should be consistent with the general principles of due legal procedure, such as justice, the presumption of innocence, individualization and proportionality of penalties, assurance of the right of the accused to defense and the right to appeal decision on holding a person accountable. Particular attention should be paid

to the composition and the procedure for forming the body authorized to impose measures of lustration nature. Activities of latter should consider the legal status of employees who are brought to justice, and provide all the guarantees of a fair judicial proceedings, provided by cl. 1, Art. 6 of the European Convention on Human Rights. Grounds and procedural aspects of lustration should be clearly defined in a special law. The Venice Commission noted national features of Ukrainian lustration: "The Law of Ukraine "On cleansing of authorities" differs from the lustration laws adopted in other countries of Central and Eastern Europe, by broader scope. It has two different objectives. The first - to protect the society against persons who due to their past behavior can harm newly established democratic regime. Second - to clean government bodies of people who were involved in large-scale corruption. The term "lustration" in its traditional sense covers only the first process"²⁶. Lustration in Ukraine is an important ele-

ment of Transitional Justice because: (a) aims to complete cleansing of public administration, its building based on democratic European standards, eradication from it of illegal and corrupt

practices; (b) satisfies the demand of the society to justice and provides a "reset" of the domestic criminal justice system, improves public trust to courts and law enforcement agencies.

The Law of cleansing authorities (Law on lustration) 2014: of about 9,000 judges - only 2% (167 persons) voluntarily retired;

2017	Same, but re-elected court chairmen	New court chairmen
General courts	81,10 %	18,9 %
Economic courts	69,7 %	30,3 %
Administrative courts	68,8 %	31,3%
Courts of first instance	81,7 %	18,3%
Appeal and High courts	53,7 %	46,3%

Another important element of Transitional Justice is strengthening the independence of the judiciary. The independence of the judicial branch is one of the fundamental tenets underlying the rule of law state and providing comprehensive principles of rule of law. This widely recognized in national and international guidelines element represents one of the most important achievements of human civilization in public construction and plays a role not only of legal but also of social value that allows for a person whose rights have been grossly violated to hope to justice balance under the results of the trial of his/her case, for the state to maintain law and order and stability in the society, and for the international community to observe the level of functioning of democratic freedoms through national judicial institutions. In societies with constant standards of development the judiciary acts as an institution which deals with and decides disputes on right, certifies legally significant facts. In transitional societies, societies that are in conflict or in crisis trends, the judiciary takes additional mission - it

is to promote the restoration of peace and stability in the country, the restoration of the rights of victims of the conflict, the removal of social tensions by adopting reasonable and motivated decisions that satisfy the current request to restore the balance of justice.

With the armed aggression of neighboring state ongoing in certain territories of Ukraine, the judiciary is charged with twin objective: to provide seamless protection of its citizens fairly and impartially consider and resolve criminal proceedings related to the punishment of those involved in war crimes, while preserving and strengthening guarantees of own integrity and independence. The Court is an integral element of Transitional Justice system that is why in the new conditions to this branch there are put new higher demands from the party of the state, and higher expectations of citizens. On the ability of the national judicial system to effectively carry out its tasks the state's ability to overcome internal and external hazards caused by the events of recent years

amendments submitted to the Verkhavna Rada on 21 April 2015, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015) [Electronic resource]. - Access mode: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)012-e). - Heading from the screen.

²⁶ Final Opinion № CDL-REF(2015)015 on the Law on Government Cleansing (Lustration Law) of Ukraine as would result from the

depends. To enhance the functional capacity of the judicial branch affords should first focused on strengthening the guarantees of independence. The independence of the judiciary is critical, because a significant portion (if not most) of objectives of Transitional Justice are laid on the existing judicial system of Ukraine. In addition to the new challenges, the latter will have to carry out its old “intransitive” tasks to guarantee human rights and freedoms, to ensure justice and order. The independence of the court is required for court performed both “transitional” and “ordinary” tasks, for which among other things there should be provided public control over judges, which, however, can not be unlimited; it should be consistent with the principle of judicial independence, not to encroach on the process of justice, not to interfere with the judges to perform their core functions; it has to be fair and impartial and should not turn into a prosecution of the judge in certain individual, subjective reasons; and control by public should exclude pressure to a judge in making his judgment in a case and not infringe on the security of judges. Thus, the objective of the ideal model of public control over the judges is achieving the optimal balance of independence and accountability of the judiciary and ensuring public demand on objective informing on the activities of the judiciary.

An important element for the transition is to reform legal education, as it is obvious that the transitional period entails new requirements and criteria for the modern lawyer who should be able to work efficiently both with domestic law and with the principles and norms of international law. Just during the transitional type of state and law, which aimed to implement the fundamental principles of the rule of law, especially young professionals, properly oriented qualified lawyers should participate in that area of work, which today lacks experience, particularly in the area of analysis of the international regulatory base, the ability to apply the basic principles of

international law, to freely study documents in the language of the original, etc. That is why the training of young qualified lawyers familiar with national laws and regulations and rules of international law, is a crucial element of transitional period and establishment of the rule of law state.

An important issue is access to justice in the area of ATO. Exploring problems of access to justice in the Donetsk and Luhansk regions, the OSCE held the appropriate summery and singled out the following key negative issues:

- lack of institutions that provide services in the field of law and justice in the territories beyond the control of government;
- loss of case files;
- restricted freedom of movement and reports of proceedings;
- lack of legal assistance in the uncontrolled by the government territories;
- lack of resources;
- failure to enforce judgments²⁷.

Another problem was the unreadiness of the Criminal legislation of Ukraine to situation of armed conflict, lack of relevant crime components in it related to the armed conflict (e.g., crimes against humanity, etc.), which as a common consequence impedes the proper protection of the rights of victims of such crimes and does not let bring the perpetrators to criminal liability with imposing of proper punishment.

An obstacle to the protection of victims of crimes is the same distrust of citizens of Ukraine to law enforcement system and the court and uncertainty in the protection of their rights. For example, the human rights organization Amnesty International in Ukraine said that most Ukrainians do not believe that the law enforcement agencies are able to investigate crimes such as torture and ill-treatment²⁸.

In its turn, the United Nations is concerned about the situation in Ukraine, when murders in the conflict zone stay unpunished because the murders actually are non investigated on the both sides of the front in the East of Ukraine. This creates a dangerous atmosphere of impunity in the conflict zone and undermines hope for a fair punishment. The Office of the UN High Commissioner noted the lack of motivation in investigating some cases. Especially when it comes to the crimes where suspected are Ukrainian military. Also, there are secrecy and political bias. On the territory controlled by separatists, investigations are selective, and the right to a fair trial is not guaranteed. In such situations investigations more often are initiated by relatives of the victims, not by the government, and in some cases, law enforcement agencies only accept applications but refrain from investigation under various grounds²⁹.

Another important issue in the application of Transitional Justice in relation to the Donbas is the issue of restitution as Transitional Justice is meant both to ensure human rights and to stop their abuse, and as a result - must necessarily provide restitution. The state's responsibility is to restore the violated rights through appropriate mechanisms and appropriate policies in this regard, which is embodied in articles 3, 19, 21, 55-57, 59 of the Constitution of Ukraine. We should especially note that in terms of temporary occupation of the territory of Ukraine and Russian military aggression in some areas of the Donetsk and Luhansk regions the problem of protection of human rights is especially acute. Along with priorities to strengthen national security, to overcome the economic crisis, to reform public administration, ensuring of human rights and freedoms is the main duty of the state and should

determine the content and directions of the state in all its efforts. In a crisis risks of disproportionate restriction of the rights and freedoms are increased, which requires special control by the society³⁰.

In turn, it should be emphasized that the UN General Assembly, describing the basic principles and guidelines concerning the right to a restitution and reparation for victims of gross violations of international human rights and serious violations of international humanitarian law enshrined the important provision that states should strive to create national mechanisms for reparation and providing assistance to victims in case the parties responsible for the damage, are not able or unwilling to meet their obligations³¹.

In addition to the consistent implementation of the criminal justice, there are also reasonable programs of further restitution of the rights of persons affected by the conflict that put the corresponding positive obligations on the state. At that it is often advisable to use the same Transitional Justice in its broadest sense.

The feature of legal relations within the Transitional Justice is a role that should belong to the victim, who deserves special attention in terms of moral, and political and pragmatic perspectives.

In its turn, restitution should include besides measures of “material” nature, mechanisms for the provision of services and the restoration of rights, which may include the restoration of freedom, the opportunity to enjoy all scope of human rights, reissuance of documents of identity, marital status, citizenship, etc. The state should, and in a number of situations certainly must include restitution to its practice and legislation, and it

²⁷ Access to justice in the context of the conflict in Ukraine // Special Report. - Special monitoring mission of the OSCE in Ukraine 2015. - December 2015. - P. 14-33

²⁸ Amnesty International: torture in Ukraine have not disappeared [Electronic source] // Access mode: http://www.bbc.com/ukrainian/politics/2015/06/150626_torture_police_amnesty_international_report_sd

²⁹ [Electronic source] // Access mode: <http://tsn.ua/ukrayina/v-oon-sturbovani-bezkarnistyu-zlochiv-na-donbasi-695676.html>

³⁰ National Strategy for Human Rights, approved by Decree of the President of Ukraine on August 25, 2015 No. 501/2015 [Electronic source] // access mode: <http://zakon0.rada.gov.ua/laws/show/501/2015/page>

³¹ Basic principles and guidelines concerning the right to a remedy and compensation of losses for victims of serious gross violations of international human rights and serious violations of international humanitarian law, UN General Assembly resolution A / RES / 60/147 of 16 December 2005 - p. 15-16.

should provide victims of its implementation.

Terms of today require from our state to ensure the creation of an effective comprehensive national mechanism to protect the rights of persons who are victims of massive human rights violations, which is an element of Transitional Justice.

Of course, it is very difficult or even impossible to identify a single “formula” of compensation that would be able to meet the needs of all victims, and that is why such a mechanism should be an integral part of human rights, which will include the legal basis, logistics and institutional human rights guarantees.

To ensure the feasibility of the implementation of the mechanism for the protection of human rights during the transition period, it should include not only law enforcement agencies and human rights organizations, but all other public authorities as ensuring the implementation of fundamental rights and freedoms constitutionally declared as the main objective of the state.

Thus, in the post-conflict period (after massive violations of human rights took place in the state) the state itself becomes a major player in the creation of mechanisms of compensation, introducing relevant programs and affecting various institutions of the society as a whole, which holds the state responsible for number of positive obligations. However, such obligations are the subject of national law and national policy and therefore government authorities of the countries have a very wide discretion.

So, based on the Action Plan for the implementation of the National Strategy on human rights for the period until 2020, among positive obligations of the state there are distinguished commitments to implement the measures necessary for comprehensive possession and use of guaranteed human rights and a commitments to proper organize national legal procedures of protection

in human rights violation cases, where the second group of commitments covers the issue we raised.

Talking about the features of the creation of national mechanisms of reparations, it is important to remember that the attempts of the state must be carried out in conjunction with other initiatives in the field of Transitional Justice or restitution, which allows it to consider such measures as elements of justice, and not just as a part of the policy of allocation of funds or services in exchange for silence or inaction of victims.

Developing these mechanisms there should be provided a link between the criminal justice and measures for reparation of damage as, for example, the condemnation of several perpetrators, without any effective effort to provide real reparation to victims can be perceived as inconsistent revanchism. On the other hand, reparations without any effort in criminal justice can be considered by victims only as “fee” for giving evidence. National mechanisms of reparations as a part of Transitional Justice is a “multifaceted mechanism”, including judgment in its narrow sense and other measures (public policy programs, regulatory and legal framework, physical infrastructure and institutional human rights guarantees) that are closely linked and connected with sole goal – the reparations of damages as a result of human rights violations.

Tribute to the memory of the victims of armed conflict is a moral and civic duty of our state and its civil society. These actions are aimed at expression of gratitude to defenders of the Motherland, creating an eternal memory of the victims, expressing national grief to parents and relatives of the victims, raising patriotic feelings in future generations. At present, Ukraine has already begun processes to commemorate fallen in the East of Ukraine during the anti-terrorist operation. September 23, 2015 by the Resolution of the Cabinet of Ministers of Ukraine No. 998-p “On

measures to perpetuate the memory of defenders of Ukraine till 2020³²», there was approved the Plan of Actions on the commemoration of the defenders of Ukraine till 2020. Ukrainian Institute of National Memory is a central body of executive branch, which activity is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Culture and which implements the state policy in the field of restoration and preservation of the national memory of the Ukrainian people. The other body dealing with commemoration of the victims during the antiterrorist operation is the State Interagency Commission for perpetuating the memory of the participants of the antiterrorist operation, victims of war and political repressions³³. One more body which in its activity is also engaged in these issues is the State Service for war veterans and members of the anti-terrorist operation³⁴.

In many cities of our country there are conducted activities including in particular: the creation of the National Pantheon, the establishment of relevant Internet resources, publication of memory books and books related to the perpetuation of the memory of the participants of the antiterrorist operation; installation of memorials, naming of infrastructure objects and streets, creating museums, establishing nominal awards, prizes, scholarships, holding official events, exhibitions and others. Honoring the memory, people create a legacy of memory for future generations that should know the hard way of the state to ensure

its independence.

Another issue related to the truth establishment is the inclusion of accurate information on violations committed to the curricula on international rules of human rights and international humanitarian law to textbooks at all levels³⁵. It is necessary to teach the young generation the reliable information about the real state of the situation and put it in clear language to ensure the main goal - to provide victims of gross violations of international rules the full and effective reparation, as well as to prepare the ground for guarantees of non-repetition of what happened.

Such guarantees of non-repetition should include measures that will help prevent violations³⁶. In this context, a social dialogue as a process of coordination at various levels of directions of economic and social policy, sector, region or individual companies is critically important. We should note that in recent years there was adopted a series of regulations and agreements for the involvement of the social dialogue parties in the development and implementation of public policy. For instance, there were amended the Regulation of the Cabinet of Ministers of Ukraine, Laws of Ukraine “On the Cabinet of Ministers of Ukraine”, “On Trade Unions, their Rights and Guarantees”, there was adopted a new Law of Ukraine “On the employers’ organizations and their associations, rights and guarantees of their activities.”

³² On the actions of commemoration of the defenders of Ukraine for the period until 2020, the Cabinet of Ministers of Ukraine; Resolution of 23 September 2005 No. 998-p “[Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/998-2015-%D1%80>

³³ On the State Interdepartmental Commission for perpetuating the memory of the participants of antiterrorist operation, victims of war and political repressions, Cabinet of Ministers of Ukraine; Decree of August 2, 1996 No. 897 “[Electronic resource]. – Access mode: <http://zakon4.rada.gov.ua/laws/show/897-96-%D0%BF>

³⁴ Some issues of the State Service of Ukraine for war veterans and members of anti-terrorist operation: Cabinet of Ministers of Ukraine; Decision of September 10, 2014 No. 416 “[Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/416-2014-%D0%BF>

³⁵ Basic principles and guidelines concerning the right to a remedy and reparation of losses for victims of gross violations of international human rights and serious violations of international humanitarian law: UN; Principles, International document of 25.07.2005 “[Electronic resource]. – Access mode: http://zakon5.rada.gov.ua/laws/show/995_e53

³⁶ Basic principles and guidelines concerning the right to a remedy and reparation of losses for victims of gross violations of international human rights and serious violations of international humanitarian law: UN; Principles, International document of 25.07.2005 “[Electronic resource]. – Access mode: http://zakon5.rada.gov.ua/laws/show/995_e53

CONCLUSIONS

1. The aggression of the Russian Federation and follow-up armed conflict in the East of Ukraine strongly inhibited the transition of government policy from post-Soviet and corrupt practices to implementing European principles of activity. In addition, new challenges have created the risk of human rights observance failure and the rule of law because of the need for military security. Under these circumstances, Ukraine in building a coherent strategy of departure from old practices was forced to additionally consider the factor of armed conflict to get out of it not as the authoritarian state of the past, but as a democratic country governed by the rule of law.

2. The result of the conflict appeared to be 9,500 deaths on both sides (2014-2017), of whom about 2 thousand are civilians, more than 22 thousand wounded, about 1.7 million of IDPs. Losses from destruction of infrastructure during hostilities reached USD 15 bln. Conflict zone is contaminated with heavy metals (titanium, vanadium, strontium) as a result of shelling. Flooding of mines, poisoning of drinking water and the appearance of radioactively contaminated waters of the Azov Sea and the Siversky Donets could lead to environmental disaster of a Chernobyl level. Actions of combatants caused considerable damage to cultural heritage due to attacks, robbery and use them as defensive structures.

3. Unfortunately, the authorities were unable to adequately adapt their activities to new challenges. Investigation of crimes committed in the conflict zone is carried out independently and uncoordinated by three different entities – the Prosecutor General’s Office of Ukraine, the Security Service, the Ministry of Internal Affairs in accordance with their jurisdiction. However, such division do not allow to make a complete picture of Russian aggression, and accordingly to compose an evidence base for further consideration of materials in the International Criminal Court.

As a result, in Ukraine there is no unified database of persons who died during the conflict; the base of the damaged property; separate base of combatants suspected / accused of crimes committed in the conflict zone.

4. There are no legal mechanisms for the exchange of prisoners and reparations for victims of the conflict, effective procedures for the movement of citizens across the demarcation line. Judicial statistics is maintained in general terms, without separation of the existing criminal proceedings for acts committed in armed conflict. The Supreme Court of Ukraine, for example, as of July 2016 had not planned as well as not conducted the analysis and summery of judicial practice of restitution of dignity, reputation and rights of victims injured during the antiterrorist operation, and recognition of sufferers during its implementation as victims of armed conflict.

5. The above problems lead to poorly coordinated national policies, inability to solve new problems through traditional legal mechanisms, lack of social protection and legal assistance to victims of war, distorted perception of the real situation in the conflict zone, complexity of peacekeeping of international organizations. At the same time these factors create a constant threat to the whole range of human rights.

6. Approaches that can neutralize these factors logically are inserted into the model of Transitional Justice, which is based on four structural elements:

- the process of bringing the perpetrators of massive violations to justice and punishing them for the committed crimes;
- reparations of caused damage to victims;
- the process of establishing the truth, a full investigation of violations that occurred during the conflict or were of repressive nature;
- institutional reforms process that will ensure

that such violations will do not repeat.

7. The introduction of Transitional Justice mechanisms in Ukraine address a twofold objective: to promote resolving of the acute social conflict in the country and to apply effective tools of reparations to all victims of crimes, and to promote the establishment of new, independent, self-sufficient system of criminal justice that can not only effectively address social conflicts, but also meet the need of citizens to justice, to ensure the application of the principles of the rule of law in practice.

8. Transitional Justice shifts the focus from retributive (punitive) justice dimension, focused on bringing the perpetrators to justice, to the recovery dimension focused on rehabilitation and restoration of human dignity. However, an example of Transitional Justice highlights the nature and purpose of justice as such, it is intended to allow peaceful coexistence of people.

9. An important principle of Transitional Justice, worked out both at the national and at international levels, is the state responsibility for massive human rights violations. This responsibility may lie both in the form of reparations to affected persons of property losses by the state itself and by its officials guilty of violating human rights and fundamental freedoms. For victims of any illegal and arbitrary actions caused by the conflict situation in the society it is important to get both moral and material compensation for the losses incurred by them. Such compensation not only provides for psychological sense of security to the victim, but also contributes to resolving the conflict and reconciliation of parties of the conflict. It is necessary to note that today it is the weakest element in the national system of Transitional Justice.

10. However, at present provisions of Art. 124 of the Constitution of Ukraine prohibits the establishment of special and extraordinary courts, in such way block the introduction of some accepted in international practice models

of Transitional Justice (in particular, the creation of so-called “hybrid courts”, the introduction of international courts in Ukraine). Constitutional and legal regulation of the judiciary also makes more complicated the recognition by Ukraine of the jurisdiction of the International Criminal Court, and the delay in the ratification of the Rome Statute of this Court is a significant negative factor, a substantial obstacle to bringing to justice those who committed war crimes in the ATO area.

11. In addition to the consistent implementation of criminal justice, reasonable are also programs, further mechanisms and measures to recover rights of persons affected by the conflict (restitution) that lay the corresponding positive obligations to the state. At that it is often advisable to use namely the elements of Transitional Justice in its broadest sense. The peculiarity of legal relations within the Transitional Justice is a role that should belong to a victim of the crime, who deserves special attention in terms of moral, and political and pragmatic perspectives. In its return, restitution should include besides measures of “material” nature, mechanisms for the provision of services and the restoration of rights, which may include the restoration of freedom, the opportunity to enjoy all scope of human rights, reissuance of documents of identity, marital status, citizenship, etc. The state should and in a number of situations certainly must include restitution to its practice and legislation, and assure its implementation.

12. The Ukrainian authorities should take the necessary steps helping to move from armed conflict to post-conflict situation. They are as follows:

- To make every effort towards implementation of the Transitional Justice mechanisms into work of law enforcement and judicial authorities of Ukraine. To direct expertise to create national mechanisms for truth-telling, focused on reconciliation and non-traumatizing of victims of the conflict (centralized database, mutual work of governmental and

- non-governmental sector, documentary restoration of events).
- Make assessment of available elements of Transitional Justice implemented in the current governmental activities of Ukraine and evaluate resources and programs that may be involved in their further development within domestic state policy.
- Continue the reform of law enforcement and judicial systems with a focus on the possible introduction of so-called hybrid judicial mechanisms, particularly of hybrid courts with the legally enshrined procedures for involving of foreign judges to their composition.
- Determine at the level of law enforcement and judicial systems the need of common approaches to the identification of victims of armed conflict, providing them with effective compensatory remedies of restoration of their rights and freedoms on the basis of international law.
- Conduct a national consultation on reform of the civil security sector; development of policies and strategies to protect the right of population to life during military and emergency situations.
- Strengthen competence of Ukrainian specialists who work in the field of documenting and investigation of war crimes and violations of international humanitarian law through educational specialized programs.
- Speed up the development of legal mechanisms for the exchange of prisoners, recording cases of shelling of civilian objects, transparent mechanism for determining the distribution of compensations for damaged and lost property.



The American people, through the U.S. Agency for International Development (USAID), have provided economic and humanitarian assistance worldwide for 55 years. In Ukraine, USAID's assistance focuses on three areas: Health and Social Transition, Economic Growth and Democracy and Governance. USAID has provided 1.8 bln. technical and humanitarian assistance to Ukraine since 1992.

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