

**LAW OF UKRAINE
ON AMENDING THE CRIMINAL CODE OF UKRAINE TO ENSURE HARMONISATION
BETWEEN THE CRIMINAL CODE OF UKRAINE AND THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

The Verkhovna Rada of Ukraine hereby resolves as follows:

I. The Criminal Code of Ukraine (Vidomosti Verkhovnoi Rady Ukrainy (VVR) [Data of the Verkhovna Rada of Ukraine], 2001, Vol. 25 – 26, Art. 131) shall be amended as follows:

1) Part 3 of Article 3 shall be amended to include the following new paragraph:

“Nothing in this provision shall bar the criminality of acts being also determined by international law. Ukraine shall recognise the criminality of acts containing elements of genocide, crimes against humanity, war crimes, and aggression as from the time when relevant prohibitions under international law came into existence.”;

2) Article 4 shall be amended to include Part 4 read as follows:

“4. Persons who committed aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), or genocide (Article 442) shall be criminally responsible under this Code and where the acts they committed were recognised as crimes under international law at the time they took place but have not been recognised as such under Ukraine’s laws on criminal responsibility yet. To the extent provided above, the application of provisions of this Code to acts committed prior to their entry into force shall not be regarded as the retroactivity of the law on criminal responsibility.”;

3) Articles 6 to 8 shall read as follows:

“**Article 6.** Applicability of the law on criminal responsibility to crimes committed on the territory of Ukraine

1. Persons who committed crimes on the territory of Ukraine shall be criminally responsible under this Code.

2. A crime shall be recognised as committed on the territory of Ukraine if it was commenced, continued, completed or repressed on the territory of Ukraine and if in furtherance of the person’s intent, a crime should have been completed on the territory of Ukraine.

3. A crime shall be recognised as committed on the territory of Ukraine if the perpetrator or at least one of the co-perpetrators was or, according to an agreement between perpetrators, should have been acting on the territory of Ukraine.

Article 7. Applicability of the law on criminal responsibility to crimes committed outside the territory of Ukraine

1. Ukrainian nationals and stateless persons permanently residing in Ukraine who committed a crime outside its territory shall be criminally responsible under this Code, except to the extent otherwise required by Ukraine’s international obligations.

2. Persons who committed crimes as outlined below shall be criminally responsible under this Code:

1) on board a sea vessel, river vessel or an aircraft outside the territory of Ukraine sailing or flying under the flag or identification mark of Ukraine;

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2) on the territory of artificial islands, installations and structures established under the legislation of Ukraine but located outside its territory;

3) against legal interests of Ukraine within the exclusive (maritime) economic zone or the continental shelf of Ukraine.

3. Foreign nationals or stateless persons not permanently residing in Ukraine shall be responsible and liable under this Code where:

1) a crime committed constitutes a grave or especially grave crime against the rights or freedoms of Ukrainian nationals, or the rights or interests of legal entities organised under the laws of Ukraine, except to the extent otherwise required by Ukraine's international obligations;

2) a crime committed constitutes a crime against national security or a grave or especially grave crime against the interests of Ukraine, except to the extent otherwise required by Ukraine's international obligations;

3) outside Ukraine, they committed any of crimes referred to in Articles 368, 368-3, 368-4, 369, and 369-2 of this Code jointly with officials who are Ukrainian nationals, or if they offered, promised, and gave any undue advantage to such officials or accepted an offer and/or promise of such undue advantage, or received such advantage from them;

4) Ukraine is under obligation to prosecute the committed crime stemming from an intentional treaty accepted as binding by the Verkhovna Rada of Ukraine, and given that:

a) an international treaty contains an obligation or possibility to extend the application of the law of Ukraine on criminal responsibility for relevant acts on grounds other than those referred to in Articles 6 and 7 of this Code and other parts of this Article; and

b) the act on acceptance of an international treaty as binding by the Verkhovna Rada of Ukraine does not contain a reservation to the effect that the legal effect of the treaty provision providing for such obligation should be excluded or modified or, conversely, contains a declaration of accepting the treaty provision providing for that the application of the law of Ukraine on criminal responsibility may only be extended to relevant acts as binding for Ukraine;

5) Ukraine denies extradition of such persons to a foreign state and the acts they committed constitute crimes under Ukraine's laws on criminal responsibility.

4. Persons who committed acts of piracy shall be criminally responsible under Article 446 of this Code.

Article 8. Applicability of the law on criminal responsibility to crimes regardless of where they were committed

1. Ukrainian nationals, foreigners, and stateless persons who committed aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5) or genocide (Article 442) shall be criminally responsible under this Code regardless of where such crimes were committed.”;

4) new Article 8-1 shall be added and read as follows:

“Article 8-1. Territorial application of Ukraine's laws on criminal responsibility

1. Ukraine's laws on criminal responsibility shall apply to persons who committed crimes covered by such laws, on the territory of Ukraine only.

2. Where diplomatic agents of foreign states and other persons who are not within the jurisdiction of the courts of Ukraine in criminal cases under the laws of Ukraine and international treaties accepted as binding by the Verkhovna Rada of Ukraine commit a crime on the territory of Ukraine, the issue of their criminal responsibility shall be addressed through diplomatic channels. An exception to this rule is where a request for the surrender of a person to whom privileges and immunities are accorded is received from an international criminal court (tribunal) the jurisdiction of which is accepted by Ukraine and provided that the statute (or other legal act) by virtue of which the court (tribunal) is acting outlines that such privileges and immunities shall not be a bar to the prosecution of such person or imputing responsibility.

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3. Criminal prosecution under Ukraine's laws on criminal responsibility may also be limited within its territory to the extent required by international obligations of Ukraine.

5) Article 9 shall be amended to read as follows:

“Article 9. Enforcement and recognition of foreign judgments, amnesty and pardon, and verdicts of international criminal courts (tribunals)

1. Foreign judgments, amnesty and pardon or verdicts of international criminal courts (tribunals) may be recognised and enforced or taken into account by Ukraine.

2. The judgment of a foreign court or verdict of an international criminal court (tribunal) may be enforced in Ukraine where the act underlying the judgment (verdict) is recognised as a crime or would constitute a crime if committed on the territory of Ukraine, under this Code.

Enforcement of the judgments of foreign courts and international criminal courts (tribunals) shall be governed by the laws of Ukraine and/or an international treaty accepted as binding by the Verkhovna Rada of Ukraine.

Judgments of foreign courts and international criminal courts (tribunals) recognised and enforced on the territory of Ukraine shall have the same legal consequences as those of Ukrainian courts provided that such approach is not inconsistent with the laws of Ukraine or its international obligations.

3. No criminal prosecution may be brought against a person and no conviction may be obtained in the territory of Ukraine if the criminal prosecution of such person, on the same charges, has already resulted in a final court judgement, or amnesty or pardon granted by a foreign state where:

1) the person is a Ukrainian national or a stateless person permanently residing in the territory of Ukraine; or

2) criminal prosecution or conviction may not occur due to an international treaty accepted as binding by the Verkhovna Rada of Ukraine; or

3) under an international treaty accepted as binding by the Verkhovna Rada of Ukraine, Ukraine shall take into account the verdict of a foreign court when it comes to repeated offence or criminal record.

No criminal prosecution may be brought against a person and no conviction may be obtained in the territory of Ukraine if the criminal prosecution of such person, on the same charges, has already resulted in the verdict of an international criminal court (tribunal).

Circumstances referred to in this Part of the Article are also the grounds for refusing international assistance in criminal proceedings to a third country.

4. Where provisions of Part 3 of this Article not apply to a foreigner or a stateless person not permanently residing in the territory of Ukraine, the period of imprisonment served by such persons under the verdict of a foreign court shall be credited to the sentence by the court on a day for a day basis or following the rules laid out in Part 1 of Article 72 of this Code, if sentenced to imprisonment. When imposing sentences not referred to in Part 1 of Article 72 of this Code, the court, taking into account the sentence served under the verdict of a foreign court earlier, may mitigate the sentence or exempt the convict from serving it completely.

The rules laid out in this Part of the Article shall apply unless otherwise stated in an international treaty accepted as binding by the Verkhovna Rada of Ukraine.

5. In addition, verdicts of foreign courts shall be taken into account in the territory of Ukraine in a manner other than outlined in Part 3 of this Article, more specifically, in terms of repetition of crime (Article 34, Part 1 of Article 67 of this Code) and criminal record (Article 88 of this Code), where:

1) such verdicts were delivered for a Ukrainian national or a stateless person permanently residing in the territory of Ukraine; or

2) it is required by an international treaty accepted as binding by the Verkhovna Rada of Ukraine; or

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3) an international treaty accepted as binding by the Verkhovna Rada of Ukraine implies that no criminal prosecution may be brought against a person and no conviction may be obtained on the charges of committing the same crime as that underlying the verdict of a foreign court.

To the extent specified in Paragraph 1 of this Part of the Article, verdicts of international criminal courts (tribunals) the jurisdiction of which is accepted by Ukraine shall also be taken into account in a different manner.

6. International treaties accepted as binding by the Verkhovna Rada of Ukraine may outline other rules for taking into account foreign judgments rendered in absentia.

7. Ukraine shall not recognise the validity of amnesty or pardon granted by foreign states granted to persons who committed acts of torture (Parts 1 to 3 of Article 127), enslavement (Article 146-1), aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), genocide (Article 442) or piracy (Article 446).

The verdict of a foreign court shall not be a bar to imputing criminal responsibility under this Code for crimes referred to in the preceding paragraph where the case trial by a foreign court:

1) aimed at shielding a person from criminal responsibility for crimes referred to in this Part of the Article; or

2) were not conducted independently and impartially in accordance with proper legal procedures recognised in international law and they were conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice; or

3) was intended to apply a legal act aimed at providing the setting for releasing a person from a sentence or substantially mitigating it, which were not provided for when the act was committed, to the person.

8. Ukraine shall recognise only those verdicts rendered in its temporarily occupied territories by an occupying power that were rendered by the latter in compliance with international humanitarian law. In any other case, if a person is actually unlawfully deprived of liberty or subjected to any restriction of rights and freedoms on temporarily occupied territories, which is underpinned by criminal sanctions, the Ukrainian court shall consider it as grounds for mitigating the person's sentence when sentencing or exempting him or her from a sentence.”;

6) Article 10 shall be amended as follows:

The words “, and enforcement of verdicts of foreign courts or international judicial institutions” shall be removed from the title of the Article;

Part 1 shall be amended to read as follows:

“1. Ukrainian nationals may not be surrendered to a foreign state, however, they may be surrendered to an international criminal court (tribunal) the jurisdiction of which is accepted by Ukraine for criminal prosecution.”;

Part 4 shall be amended to read as follows:

“4. A takeover of the criminal proceedings by Ukraine shall be mandatory, at least where:

1) a person who may not be surrendered or whose surrender has been denied is accused of committing acts of torture (Parts 1 to 3 of Article 127), enslavement (Article 146-1), aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), genocide (Article 442) or piracy (Article 446);

2) it is required by Ukraine's international treaties accepted as binding by the Verkhovna Rada of Ukraine.

Nothing in the provisions of the preceding paragraph shall be deemed a bar to other grounds for taking over criminal proceedings being outlined in criminal procedure laws.”;

7) new Article 10-1 shall be added and read as follows:

“**Article 10-1.** Taking into account foreign laws on criminal responsibility in the territory of Ukraine

1. Ukrainian or foreign courts shall not apply foreign laws on criminal responsibility in the territory of Ukraine, unless judgments of the latter are rendered in the temporarily occupied territory of Ukraine in compliance with international humanitarian law.

2. To the extent provided by the laws of Ukraine, legal consequences for a person may be limited to instances where an act committed by such person, constitutes a crime under both foreign state and Ukraine’s laws on criminal responsibility.

In such instances, particularities of labelling an act under the laws of a foreign state shall not be taken into account.

8) new Article 27-1 shall be added and read as follows:

“**Article 27-1.** Particularities of criminal responsibility for certain crimes against the peace and security of mankind, and international law.

1. Persons who committed crimes referred to in Articles 437 to 438-5 and 442 of this Code through another person who is criminally responsible as a perpetrator if the latter acted pursuant to an order given within a command structure that ensured its unconditional implementation, shall also be recognised as perpetrators of such crimes. This being the case, the latter person shall also be recognised as the perpetrator of a crime committed.

2. The following persons shall also be deemed to be perpetrators of crimes referred to in Articles 437 to 438-5 and 442 of this Code:

1) a military commander or person effectively acting as a military commander shall be criminally responsible for a crime in the event of committing one of the crimes listed above if it was committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

a) that military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit a crime referred to in this Law;

b) that military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution; and

2) with respect to superior and subordinate relationships not described in Clause 1 of this Part of the Article, a superior shall be criminally responsible in the event of committing one of the crimes listed above if it was committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

a) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crime;

b) the crime concerned activities that were within the effective responsibility and control of the superior; and

c) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”

9) Article 44 shall be amended to include Part 3 as follows:

“3. Persons who committed acts of torture (Parts 1 to 3 of Article 127), enslavement (Article 146-1), aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), genocide (Article 442) or piracy (Article 446) may not be exempt from criminal responsibility.”;

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10) Article 49 shall be amended as follows:

Part 2 of the Article shall be amended to include the following new paragraph:

“As regards crimes committed on the occupied territories of Ukraine, the running of the statute of limitations shall be suspended at the time that such crimes are committed. In such instances, the running of the statute of limitations shall start running again on the date a person appears to confess, is detained, or when the occupation of the territory concerned is terminated.”

Part 5 of the Article shall be amended to read as follows:

“Crimes against the national security of Ukraine or crimes referred to in Parts 1 to 3 of Article 127, Articles 146-1, 437-439, 442, and 446 of this Code shall not be subject to any statute of limitations.”;

11) a new Article 71-1 shall be added and read as follows:

“**Article 71-1.** Sentencing a person in relation to which Ukraine has recognised a judgment of a foreign court or a verdict of an international criminal court (tribunal) in the event that such person commits other crimes covered by Ukraine’s laws on criminal responsibility

1. In the event that a judgment of a foreign court or a verdict of an international criminal court (tribunal) are recognised and enforced on the territory of Ukraine, Articles 70 and 71 of his Code may apply to a person concerned provided that it is not inconsistent with the laws or international obligations of Ukraine. When this is not the case, a judgment of a foreign court or a verdict of an international criminal court (tribunal) and a verdict of a Ukrainian court in relation to other crimes covered by Ukraine’s laws on criminal responsibility shall be enforced independently on the territory of Ukraine.

2. If a judgment of a foreign court or a verdict of an international criminal court (tribunal) are recognised and taken into account on the territory of Ukraine only, Articles 70 and 71 of this Code may not be applied to a person concerned. In such instances, a judgment of a foreign court or a verdict of an international criminal court (tribunal) and a verdict of a Ukrainian court in relation to other crimes covered by Ukraine’s laws on criminal responsibility shall be enforced independently at all times.”

12) Paragraph 1 of Part 5 of Article 72 shall be amended by adding a new sentence reading as follows:

“As regards convicted persons who committed acts of torture (Parts 1 to 3 of Article 127), enslavement (Article 146-1), aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), genocide (Article 442), and piracy (Article 446), time previously spent in detention shall be taken into account by the court in calculating the period of imprisonment as follows: one day previously spent in detention for one day of imprisonment.”;

13) Article 75 shall be amended by adding Part 5 reading as follows:

“5. This Article shall not apply to persons who committed acts of torture (Parts 1 to 3 of Article 127), enslavement (Article 146-1), aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), genocide (Article 442), and piracy (Article 446).”;

14) Article 80 shall be amended as follows:

Part 2 shall be amended by adding Paragraph 2 reading as follows:

“In the event that a verdict is rendered in criminal proceedings involving a special trial (trial

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in absentia), the statute of limitations shall stop running on the date the verdict comes into force. In the event of a convicted person's appearance for serving the sentence or his or her detention, the rules outlined in Paragraph 1 of this Part of the Article shall apply.”;

Part 6 shall be amended to read as follows:

“Crimes against the national security of Ukraine or crimes referred to in Parts 1 to 3 of Article 127, Article 146-1, Articles 437 to 439, 442, and 446 of this Code shall not be subject to any statute of limitations.”;

15) new Article 81-1 shall be added and read as follows:

“**Article 81-1.** Conditional release from serving a sentence by a person sentenced to life imprisonment

1. Persons serving a sentence of life imprisonment may be conditionally released from serving the sentence if the aggregate of the following circumstances exists:

1) at least twenty years have elapsed since the person started serving this type of sentence, or at least twenty years have elapsed since the person, previously conditionally released from serving a sentence of life imprisonment, was transferred for further serving the sentence;

2) convicted person has repaired the damage caused by the crime he or she has been convicted of;

3) convicted person has undergone the supervision with the probation service at least twice;

4) convicted person has demonstrated a conscientious attitude to work given he or she was work while serving the sentence;

5) convicted person has been given positive feedback by management of the penitentiary and/or the Supervisory Commission.

2. A person serving a sentence of life imprisonment may be conditionally released from serving the sentence only to the extent that the court reasonably believes the person's prospects of social reintegration to exceed risks of new crimes being committed by him or her.

3. In the event of a person's conditional release from serving a sentence of life imprisonment, such person shall be placed on probation for ten years.

4. The court may impose obligations referred to in Article 76 of this Code on a person conditionally released from life imprisonment.

5. After probation expires, a convicted person who has fulfilled the obligations imposed on him or her and has not committed any new crimes shall be finally released, by the court, from serving a sentence of life imprisonment imposed on him or her.

6. During a probation period, the court shall consider extension of the convicted person's parole or his or her transfer for further serving a sentence of life imprisonment on an annual basis.

When making its decision, the court should study the person's lifestyle extensively and be guided by the criteria set out in Part 2 of this Article.

Circumstances evidencing the risk of new crimes being committed by the person may include such as the person's failure to fulfil his or her obligations referred to in Part 4 of this Article, commission of more than three administrative offences over a year, or two administrative offences, for which the person has been subjected to administrative detention, throughout the parole period, or inconsistencies between the person's expenses and his or her legal income.

7. In the event that a convicted person commits a new crime during probation, the court shall impose a sentence under the rules outlined in Articles 71 and 72 of this Code on him or her.”;

16) Article 84 shall be amended by adding Part 5 reading as follows:

“5. A person sentenced to life imprisonment who develops a terminal incurable disease after sentencing shall be released from further serving the sentence if under specific circumstances further holding the person in conditions of detention would be inhumane or if the person would be

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subjected to outrages upon his or her personal dignity. Criteria for qualifying a disease as terminal and incurable shall be set by law.”;

17) Article 88 shall be amended by adding Part 5 reading as follows:

“5. Section XIII of the General Part of this Code shall apply in full to a person convicted by the verdict of a foreign court or an international criminal court (tribunal) recognised and enforced by Ukraine.

Persons convicted by the verdict of a foreign court or an international criminal court (tribunal) recognised and taken into account by Ukraine shall be deemed persons who have a criminal record. The following expungement period shall be set for such persons:

1) for a person convicted by the verdict of an international criminal court (tribunal), Clause 10 of Article 89 of this Code shall apply;

2) for a person convicted by the verdict of a foreign court, the expungement period shall be determined with reference to the laws on criminal responsibility of a foreign state under which the verdict was rendered. When applying this provision, possible discrepancies between the criminal record provisions of Ukraine’s laws on criminal responsibility and those of a foreign state shall be taken into account properly.

Article 91 of this Code shall not apply to persons referred to in Paragraph 2 of this Part of the Article. The decision of a foreign court on clearing the criminal record of a person convicted by the state’s verdict, which is recognised and taken into account by Ukraine, shall be deemed equivalent to the decision of a Ukrainian court on clearing the criminal record.”;

18) Article 89 shall be amended by adding Paragraph 10 reading as follows:

“10) persons sentenced to life imprisonment provided they do not commit a new crime over ten years of the date of final release from serving such sentence.”;

19) Clause 4 of Part 1 of Article 96-3 shall be amended to read as follows:

“4) where its [legal entity’s] authorised person commits any of the crimes referred to in Articles 109, 110, 113, 146, 146-1, 147, Parts 2 to 4 of Article 159-1, Articles 160, 260, 262, 436 to 438-5, 442, 444, 446, and 447 of this Code for and on behalf of the legal entity.”

20) the words “that constitute torture,” shall be removed from Part 2 of Article 126;

21) Article 126 shall be amended by adding Parts 3 and 4 reading as follows:

“3. Torture, i.e. intentional infliction of severe pain or suffering, whether physical or mental, by beating, anguish or other acts of violence, -

shall be punishable with imprisonment for a term of two to five years.

4. Acts referred to in Part 3 of this Article, when committed by a group of persons or to intimidate the victim or his or her close ones, or motivated by racial, national or religious intolerance, -

shall be punishable with imprisonment for a term of three to six years.”

22) Article 127 shall be amended to read as follows:

“**Article 127. Torture**

1. Torture, i.e. intentional infliction, by a public official or a person acting with the permission of, support from or the sanction of a public official, of severe pain or suffering, whether physical or mental, by beating, anguish or other acts of violence to force the victim or a third person to commit acts against their will, including for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her or a third person for an act they have

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committed or are suspected of having committed, or intimidating or discriminating against him or her or a third person, -

shall be punishable with imprisonment for a term of three to six years.

2. The same acts, if repeated or committed in collusion by a group of persons, or motivated by racial, national or religious intolerance, -

shall be punishable with imprisonment for a term of five to eight years.

3. The same acts, where they caused grievous bodily harm or death of a person, -

shall be punishable with imprisonment for a term of seven to ten years.

4. Failure by a public official to take adequate measures to repress or investigate acts referred to in Parts 1 to 3 of this Article or concealing such acts, where they are committed by his or her subordinate, -

shall be punishable with imprisonment for a term of two to five years.”

23) new Article 146-1 shall be added and read as follows:

“**Article 146-1. Enslavement**

1. Enslavement of a person or other practices similar to slavery, keeping the victim in such condition or using his or her labour, -

shall be punishable with imprisonment for a term of three to six years.

2. The same acts committed in collusion by a group of persons or if repeated or directed against two or more persons, -

shall be punishable with imprisonment for a term of five to eight years.

3. An act referred to in Parts 1 or 2 of this Article, where caused death of a person or other grave consequences, -

shall be punishable with imprisonment for a term of seven to ten years.”;

24) the words “where there are no signs of torture,” shall be removed from Part 2 of Article 365 and Part 2 of Article 373;

25) Section XVIII of the Special Part of this Code shall be amended to include the following Note after the title :

“*Note.* 1. For the purposes of Articles 376, 377, 378, 379, and 382 of this Code, any reference to the “court” and “judges”, except for Ukrainian courts and judges, shall also include international criminal courts (tribunals) the jurisdiction of which is accepted by Ukraine and judges and officials of such courts.

2. Articles 384 to 386 of this Code shall also apply when perpetrators or victims concerned participate in proceedings before an international criminal court (tribunal) the jurisdiction of which is accepted by Ukraine.”

26) Articles 433 to 435 shall be removed;

27) Section XX of the Special Part of this Code shall be amended to include the following Note after the title:

“*Note.* Articles 437 to 438-5 and 442 of this Code shall be interpreted by the court with reference to the provisions of international treaties accepted as binding by the Verkhovna Rada of Ukraine or the case law of international criminal courts (tribunals) and customary international law.”

28) Article 437 shall be amended to read as follows:

“**Article 437. Aggression**

1. Planning, preparation, initiation or execution by a person able to exercise effective control

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over or to direct the political or military action of a state of acts of aggression which, by nature, gravity and scale, constitutes a grave violation of the UN Charter, -

shall be punishable with imprisonment for a term of ten to fifteen years or life imprisonment.

Note. For the purposes of this Article, “act of aggression” shall mean the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the UN Charter. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

1) the invasion or attack by the armed forces of a state of the territory of another state, or any military occupation resulting from such invasion or attack, or any annexation by the use of force of the territory of another state or part thereof;

2) bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state;

3) the blockade of the ports or coasts of a state by the armed forces of another state;

4) an attack by the armed forces of a state on the land, sea or air forces, or marine and air fleets of another state;

5) the use of armed forces of one state which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

6) the action of a state in allowing its territory, which it has placed at the disposal of another state, to be used by that other state for perpetrating an act of aggression against a third state;

7) the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein.”

29) new Article 437-1 shall be added and read as follows:

“Article 437-1. Crimes against Humanity

1. The following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1) enslavement or human trafficking;

2) deportation or forcible transfer of population;

3) any severe deprivation of physical liberty in violation of fundamental rules of international law;

4) torture;

5) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;

6) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised as impermissible under international law;

7) enforced disappearance of persons;

8) the crime of apartheid;

9) other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health, -

shall be punishable with imprisonment for a term of seven to twelve years.

2. The following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1) murder;

2) extermination, i.e. deprivation of life of several persons, including through deprivation of access to food and medicine, committed as part of a plan to bring about the destruction of part of a population -

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shall be punishable with imprisonment for a term of ten to fifteen years or life imprisonment.

Note. 1. For the purposes of this Article and Article 438 of this Code, “forced pregnancy” shall mean the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

2. For the purposes of this Article, “torture” shall mean the intentional infliction of severe pain or suffering, whether physical or mental, upon a victim in the custody or under the control of the person.

3. For the purposes of this Article and Article 438 of this Code, “rape” shall mean sexual intercourse or satisfaction of sexual desire in an unnatural manner, if such activity involved physical violence, threat of such violence, the use of helplessness, subordination and financial dependence of the victim.”

30) Article 438 shall be amended to read as follows:

“Article 438. War crimes against persons

1. The following acts when committed in relation to an international armed conflict:

1) compelling one or more persons referred to in Sub-Clause 1 of Clause 1 of the Note to this Article to serve in the armed forces of a hostile party;

2) compelling the nationals of the hostile party to take part in the military operations directed against their own country, even if they were in the belligerent's service before the commencement of the armed conflict;

3) unlawful imprisonment or unreasonable delay in the repatriation of one or more persons referred to in Sub-Clause 1 of Clause 1 of the Note to this Article;

4) transfer by the occupying power of part of its own civilian population into the territory it occupies, -

shall be punishable with imprisonment for a term of five to ten years.

2. In relation to an international or non-international armed conflict, exposing a person protected under international humanitarian law to the risk of death or serious danger to health as follows:

1) subjecting the victim to experiments of any kind that are neither justified by the medical necessity nor carried out in his or her interest, and without prior express consent of such person;

2) taking body tissue or organs from such a person for transplantation purposes, except to the extent of taking blood or skin for therapeutic purposes in conformity with generally recognised medical standards and availability of the person's prior express consent;

3) applying treatment methods that are neither medically recognised nor required due to the health condition of a person concerned, and without prior express consent of the victim, -

shall be punishable with imprisonment for a term of five to ten years.

3. In relation to an international or non-international armed conflict, committing the following acts in respect of one or more persons protected under international humanitarian law:

1) intentional infliction of serious harm to their health, mutilation or great suffering;

2) torture or cruel treatment;

3) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence constituting a serious violation of the Geneva Conventions;

4) taking or holding the above person(s) hostage;

5) deportation or forcible transfer of the above person(s) lawfully present in, within or outside the territory of an armed conflict;

6) conscripting or enlisting children into armed forces or groups, or using them to participate in hostilities, -

shall be punishable with imprisonment for a term of ten to fifteen years.

4. In relation to an international or non-international armed conflict, wounding the enemy

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who has surrendered unconditionally or is otherwise placed *hors de combat*, -
shall be punishable with imprisonment for a term of ten to fifteen years.

5. In relation to an international or non-international armed conflict, killing one or more persons protected under international humanitarian law, -
shall be punishable with imprisonment for a term of ten to fifteen years or life imprisonment.

Note. 1. For the purposes of Articles 438 to 438-5 of this Code, “person(s) protected under international humanitarian law” shall mean:

1) in the context of an international armed conflict: any person protected under the Geneva Conventions for the Protection of War Victims of 12 August 1949 and Protocol Additional to the Geneva Conventions, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, in particular the sick, wounded, shipwrecked, prisoners of war, and civilians;

2) in the context of a non-international armed conflict: any protected person under Article 3 common to the Geneva Conventions of 12 August 1949 and Protocol Additional to the Geneva Conventions, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977 (the sick, wounded, shipwrecked, and persons who do not take direct part in hostilities and are in the power of the hostile party);

3) in the context of an international or non-international armed conflict: members of the armed forces and combatants of the adverse party who have laid down their arms or otherwise no longer have means of defence and are not in the power of the hostile party.

2. For the purposes of Articles 438 to 438-5 of the Code, “armed conflict not of an international character” shall not apply to such situations of internal disturbances as riots, sporadic acts of violence, and other acts of a similar nature.

3. For the purposes of this Article, “torture” shall mean the intentional infliction of severe pain or suffering, whether physical or mental, upon a victim for such purposes as obtaining from him or her information or a confession, punishing, intimidating, coercing him or her, or for any reason based on discrimination of any kind.”;

31) new Articles 438-1 to 438-5 shall be added and read as follows:

“Article 438-1. War crimes against the administration of justice

1. Passing or enforcing the sentence without prior trial by regularly constituted court affording all the judicial guarantees recognised as indispensable by international law if such acts are committed against persons protected under international humanitarian law in relation to an international armed conflict, -

shall be punishable with imprisonment for a term of two to five years.

2. Wilfully depriving a person protected under international humanitarian law of the rights to fair and regular trial, if such act is committed in relation to an international armed conflict, -

shall be punishable with imprisonment for a term of five to seven years.

3. Declaring abolished, suspended, or inadmissible in a court of law the rights and actions of one or more nationals of the hostile party in relation to an international armed conflict, -

shall be punishable with imprisonment for a term of two to five years.

4. Acts referred to in Parts 1 or 2 of this Article, if they led to sentencing a person to imprisonment of a certain term, -

shall be punishable with imprisonment for a term of seven to ten years.

5. Acts referred to in Parts 1 or 2 of this Article, if they led to sentencing a person to life imprisonment or death, -

shall be punishable with imprisonment for a term of seven to twelve years.

Article 438-2. War crimes against property

1. Where committed in relation to an international or non-international armed conflict,

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appropriation, seizure or destruction of a considerable amount of property of the hostile party (including privately owned property) placed under the authority of the other party to the conflict if such acts constitute violation of rules of international law and are not justified by military necessity, -

shall be punishable with imprisonment for a term of five to ten years and confiscation of property.

2. Pillaging a populated locality, including that taken by assault, where committed in relation to an international or non-international armed conflict, -

shall be punishable with imprisonment for a term of seven to twelve years and confiscation of property.

Article 438-3. War crimes against humanitarian operations and emblems

1. In relation to an international or non-international armed conflict, committing the following acts:

1) strikes against personnel, installations, materials, units or transports involved in a humanitarian assistance or peacekeeping mission in accordance with the UN Charter, as long as they are entitled to the protection given to civilians or civilian objects under the international humanitarian law;

2) strikes against buildings, material, medical institutions or transport or personnel using the distinctive emblems of the Geneva Conventions of 12 August 1949 in conformity with international humanitarian law, -

shall be punishable with ~~unlawful~~ imprisonment for a term of five to ten years.

2. Unlawful use of distinctive emblems of the Geneva Conventions of 12 August 1949, a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the UN as a protective device amid an international or non-international armed conflict involving the intentional infliction of bodily harm or death of the victim, -

shall be punishable with imprisonment for a term of ten to fifteen years or life imprisonment.

Article 438-4. War crimes consisting in the use of prohibited methods of warfare

1. In relation to an international or non-international armed conflict, committing the following acts:

1) using a person protected under international humanitarian law for protecting certain points, areas and armed forces from the enemy's hostilities;

2) using starvation against civilians as a method of warfare by depriving them of objects indispensable to their survival or wilfully impeding relief supplies in violation of international humanitarian law;

3) declaring that no quarter will be given, if it has been made by the commanding officer;

4) acts employing methods of warfare that, under international humanitarian law, are deemed to be of a nature to cause unnecessary physical suffering, -

shall be punishable with imprisonment for a term of five to ten years.

2. In relation to an international or non-international armed conflict, committing the following acts:

1) attacks against the civilian population or against individual civilians not taking direct part in hostilities;

2) strikes against civilian objects, as long as they are protected under the rules of international humanitarian law, in particular buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected or those unprotected and that are not military objectives, populated localities, dwellings or buildings;

3) attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural

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environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated, -

shall be punishable with imprisonment for a term of seven to fifteen twelve years.

3. Killing or wounding treacherously the enemy, where committed in relation to an international or non-international armed conflict, -

shall be punishable with imprisonment for a term of ten to fifteen years or life imprisonment.

Article 438-5. War crimes consisting in the use of prohibited means of warfare

1. In relation to an international or non-international armed conflict, using the following means:

1) poison or poisoned weapons;

2) asphyxiating, poisonous or other gases and any analogous liquids, materials or agents (including, biological or chemical weapons);

3) weapons, ammunition, and materials if, under international humanitarian law, they are deemed to be of a nature to cause unnecessary suffering;

4) bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions, -

shall be punishable with imprisonment for a term of seven to twelve years.

32) Part 1 of Article 439 shall be amended by adding the words “where there are no elements of the crime referred to in Article 438-5 of this Code” after the words “by the Verkhovna Rada of Ukraine,”;

33) Article 442 shall be amended to read as follows:

“Article 442. Genocide

1. Genocide, i.e. acts committed with intent to destroy, in whole or in part, any national, ethnical, racial or religious group by depriving its members of life or causing serious bodily or mental harm to them; inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group, -

shall be punishable with imprisonment for a term of ten to fifteen years or life imprisonment.

2. Direct and public incitement to commit genocide, -

shall be punishable with arrest for a term of up to six months or imprisonment for up to five years.”;

34) Article 445 shall be removed;

35) Paragraph 1 of Part 1 of Article 446 shall be amended to read as follows:

“1. Piracy, i.e. the use of an aircraft or sea (or river) vessel, whether armed or not, for the purpose of pecuniary compensation or any other personal benefits, detaining another aircraft or sea (or river) vessel, violence, robbery or any other hostile acts against people or property on board such aircraft or vessel, if such acts were committed either on the high seas or in any other place outside the jurisdiction of any state, -”

II. The Code of Criminal Procedure of Ukraine (Vidomosti Verkhovnoi Rady Ukrainy [Data of the Verkhovna Rada of Ukraine], 2013, Vol. 9 – 13, Art. 88, as subsequently amended) shall be amended as follows:

1) the first sentence of Part 8 of Article 214 shall be amended to read as follows:

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“8. Data on the legal entity in relation to which criminal law measures may be taken shall be entered into the Unified Register of Pre-Trial Investigations by the investigator or prosecutor immediately after the person has been served a notice of suspicion of committing, for and on behalf of such legal entity, any of the crimes referred to in Articles 109, 110, 113, 146, 146-1, 147, 160, 209, 260, 262, 306, Parts 1 and 2 of Article 368-3, Parts 1 and 2 of Article 368-4, Articles 369, 369-2, 436, 437 to 438-5, 442, 444, 446, and 447 of the Criminal Code of Ukraine; or any of the crimes referred to in Articles 258 to 258-5 of the Criminal Code of Ukraine, on behalf of such legal entity. The investigator or prosecutor shall provide the legal entity with a written notice of such entry no later than the following working day. Proceedings in the case concerning the legal entity shall proceed concurrently with the criminal proceedings in relation to which the person has been notified of being under suspicion.”;

2) the reference to “, 436, 437, 438, 439, 440, 441, 442, 443, 444, 446, 447” shall be removed from Part 2 of Article 216

3) Part 4 of Article 216 shall be amended by adding Clause 4 reading as follows:

“4) referred to in Articles 127, 146-2, 436 to 444, 446, and 447”

4) the first sentence of Part 2 of Article 297-1 shall be amended to read as follows:

“2. A special pre-trial investigation shall be carried out based on the ruling of the investigating judge in the criminal proceedings for crimes referred to in Articles 109, 110, 110-2, 111, 112, 113, 114, 114-1, 115, 116, 118, 127, 146-1, Parts 2 to 5 of Article 191 (for abuse of office by an official), Articles 209, 258, 258-1, 258-2, 258-3, 258-4, 258-5, 348, 364, 364-1, 365, 365-2, 368, 368-2, 368-3, 368-4, 369, 369-2, 370, 379, 400, 436, 436-1, 437, 437-1, 438, 438-1, 438-2, 438-3, 438-4, 438-5, 439, 440, 441, 442, 443, 444, 445, 446, and 447 of the Criminal Code of Ukraine in relation to a suspect, except for a minor who went into hiding from the investigation agencies and the court to evade criminal responsibility and is on the interstate and/or international wanted list. The special pre-trial investigation may not be carried out in relation other crimes, except to the extent that the crimes are committed by persons who went into hiding from the investigation agencies and the court to evade criminal responsibility or are on the interstate and/or international wanted list and investigation into them is held as part of the criminal proceedings for crimes referred to in this Part, and singling out such case files may adversely affect the integrity of the pre-trial investigation and the trial.”

5) Part 1 of Article 537 shall be amended by adding new clauses reading as follows:

“2-1) on conditional release from serving a sentence of life imprisonment;”;

“8-1) on extension of the parole granted to a person sentenced to life imprisonment, or on his or her transfer for further serving the sentence;”;

“9-1) on final release from serving a sentence of life imprisonment;”;

6)

in Clause 2 of Part 2 of Article 539, the reference to “8, 9” shall be replaced with “8 to 9-1”;

7) Part 6 of Article 539 shall be amended by adding the words “, conditional release from serving a sentence of life imprisonment” after the reference to “parole”, and the words “or life imprisonment” after the words “imprisonment for a term of no less than five years”;

8) Paragraph 2 of Clause 20-1 of the Transitional Provisions shall be amended as follows:

reference to “127, 146-2,” shall be added after the reference to “115,”;

reference to “438-1, 438-2, 438-3, 438-4, and 438-5” shall be added after the reference to “438,”;

reference to “437-1” shall be added after the reference to “437,”.

III. The Law of Ukraine “On Amnesty in Ukraine” (Vidomosti Verkhovnoi Rady Ukrainy (VVR) [Data of the Verkhovna Rada of Ukraine], 1996, Vol. 48, Art. 263) shall be amended as follows:

1) Part 2 of the Article 4 shall be amended to read as follows:

“Also, amnesty shall not also apply to persons convicted of:

a) wilful killings; forced donation; unlawful deprivation of liberty or kidnapping, if they involved inflicting death or causing grievous bodily harm which resulted in death;

b) torture (Parts 1 to 3 of Article 127), enslavement (Article 146-1), aggression (Article 437), crimes against humanity (Article 437-1), war crimes (Articles 438 to 438-5), genocide (Article 442) or piracy (Article 446).”.

IV. The Criminal Executive Code of Ukraine (Vidomosti Verkhovnoi Rady Ukrainy (VVR) [Data of the Verkhovna Rada of Ukraine], 2004, Vol. 3-4, Art. 21) shall be amended as follows:

1) the first sentence of Part 3 of Article 154 shall be amended to read as follows:

“3. As regards convicted persons who, in accordance with Articles 81, 81-1, and 82 of the Criminal Code of Ukraine, may be released on parole, conditionally released from serving a sentence of life imprisonment or where the unserved part of the sentence imposed on the person may be replaced with a softer one, the penitentiary authority or institution shall, within a month, send the request to the court as outlined in the criminal procedure laws.”.

V. The Law of Ukraine “On Probation” (Vidomosti Verkhovnoi Rady Ukrainy (VVR) [Data of the Verkhovna Rada of Ukraine], 2015, Vol. 13, Art. 93) shall be amended as follows:

1) Part 1 of Article 6 shall be amended to include the following new paragraph:

“pre-release preparation of persons serving a sentence of life imprisonment for being potentially released on parole”;

2) Part 1 of Article 11 shall be amended by adding the words “, as well as pre-release preparation of persons serving a sentence of life imprisonment for being potentially released on parole” after the words “place of residence”;

3) Part 2 of Article 11 shall be amended to include the following new paragraph:

“Should persons sentenced to life imprisonment wish so, they may be placed on supervisory probation through taking such courses as correction to behaviour, adaptation to living out of prison, remote professional development courses related to their previous occupation, or training for a new elementary occupation.”.

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1. This Law shall come into force on the date following that of its publication, except for Clauses 15 and 16 of Section I.

2. Clause 15 of Section I of the Law shall come into force six months after the entry into force of the Procedures for the Interaction between the Probation Service and Public Authorities during the Implementation of Penitentiary Probation Measures.

3. Clause 16 of Section I of the Law shall come into force one month after the entry into force of the law of Ukraine that outlines the list of terminal incurable diseases.

2. The Cabinet of Ministers of Ukraine, within three months of the entry into force of this Law, shall:

prepare and submit to the Verkhovna Rada of Ukraine proposals for amending the legislative instruments of Ukraine stemming from this Law;

take steps to bring secondary legislation in line with this Law having ensured that they enter into force simultaneously with the enactment of this Law;

bring its regulations in line with this Law;

adopt regulations set forth in this Law;

ensure the ministries and other central executive authorities revise and adopt their respective regulations set forth in this Law;

take other steps to implement this Law.