

COALITION FOR THE INTERNATIONAL CRIMINAL COURT

This questionnaire has been developed by civil society to complement the assessment process conducted by the Advisory Committee on Nominations of Judges (ACN) for candidates seeking election as judges of the International Criminal Court (ICC) in 2026.

The questionnaire seeks to provide additional information on candidates' professional experience, judicial philosophy, approach to independence and integrity, understanding of victims' rights, leadership and workplace culture, and broader vision for the Court.

Name of Candidate: Lev Kyshakevych

Date: 21.07.2026

Motivation:

1. What motivates you to seek election as a judge of the International Criminal Court at this particular moment in the Court's development?

- I believe that my extensive judicial experience, combined with my dedication to fairness and integrity, impartiality, and judicial independence, would allow me to make a significant contribution to the further development of international criminal law, international justice, and the jurisprudence of the International Criminal Court, while sharing Ukraine's unique experience.

2. In your view, what are the ICC's greatest institutional and legal challenges over the next decade, and how could judges contribute to addressing them?

- The ICC's greatest institutional and legal challenges are:
 - 1) the excessive length of proceedings;
 - 2) the challenges in enforcing ICC decisions, including interim measures and arrest warrants, which frequently lead to their non-execution;

3) the limited possibilities for holding a state accountable for non-execution of ICC decisions or taking other measures to influence the decisions of responsible persons of the state for such non-execution;

4) improvement of work environment.

To avoid excessive length of trials, it is possible to introduce certain elements of in absentia trials while ensuring guarantees of respect for the rights of the accused persons.

In order to ensure the implementation of the ICC's judgment by all states, it is possible to create an effective response mechanism that would provide for the forced execution of the judgment by the Court, direct holding of the offending state accountable by imposing fines or sanctions.

It is also necessary to create conditions where everybody will fulfill their duties according to established moral, ethical, and professional rules. The workplace culture can be improved, first of all, through personal conduct and example: respect, fairness, clear communication, responsibility for decisions, and zero tolerance of harassment.

3. How would your professional background, expertise, and personal experience contribute to the effectiveness, legitimacy, and diversity of the Court?

- I have over 31 years of progressive professional experience in criminal justice.

I began my career in the prosecution service (1995–2004), where I gained substantial experience in criminal investigations and prosecution.

From 2004 to 2017, I served as a judge, including in the capacity of Chief Judge of a court of first instance, where I adjudicated criminal cases and ensured the proper organisation of the court's operations.

In 2017, after winning in the highly competitive selection process among the wide range of deserving candidates from all over the Ukraine I was appointed as a judge of the Criminal Cassation Court of the Supreme Court, where I served until 2023. In this role, I reviewed complex criminal cases, including the most serious categories of crimes, ensured the uniform application of law, and contributed to the development of judicial practice.

Since 2023, I have served as a judge of the Grand Chamber of the Supreme Court from the Criminal Cassation Court, adjudicating the most complex cases that involve exceptional legal issues and providing authoritative guidance for the national judiciary.

Simultaneously, since 2021, I have been serving as Chair of the Ethics Council, collaborating with international and national experts to assess candidates for the High Council of Justice based on professional ethics and integrity.

Additionally to that, I am ready to share Ukraine's unique experience in administration of justice under martial law.

Relevant experience as a criminal law practitioner (List A) or international law expert (List B)

Please respond to the questions below depending on your relevant experience and background.

List A — Criminal Law Practitioners

4. Please describe your experience as a judge, prosecutor, defence counsel, or other criminal law practitioner in domestic and/or international criminal proceedings.

Please include:

- the types and complexity of cases handled;
 - your specific responsibilities;
 - experience managing lengthy or complex proceedings; and
 - examples of difficult legal substantive or procedural challenges you encountered and how you addressed them.
- I have extensive experience dealing with complex criminal cases at all levels of the judiciary.

My experience in administration of justice has involved adjudicating serious crimes, including war crimes, as well as cases requiring the direct application of international legal standards.

At the cassation level and within the Grand Chamber, I have administered justice in 4 493 criminal proceedings. The majority of these were complex criminal cases concerning serious crimes, which involved significant volumes of evidence, complex legal issues, and the need for ensuring consistency in the application of the law. Adjudicating all these cases required an in-depth analysis of criminal legislation.

I have also reviewed complex criminal cases following judgements by international judicial bodies finding that Ukraine had violated its international obligations, including in matters related to war crimes.

Before becoming a judge, I served in the prosecution service from 1995 to 2004. In that capacity, I represented the public prosecution in criminal proceedings and acquired practical experience in the presentation of evidence, examination of witnesses, procedural motions and courtroom advocacy

5. Please describe any experience you have applying:

- the Rome Statute;
- international criminal law;
- international humanitarian law;
- domestic legislation incorporating international crimes;
- the jurisprudence of the ICC or ad hoc tribunals; or
- universal jurisdiction.

- In 2024, I authored a landmark Grand Chamber decision concerning Article 437 of the Criminal Code of Ukraine (planning, preparation, unleashing, and waging an aggressive war). This decision defined the specific criteria for the subject of the crime under Article 437, establishing an important precedent in cases concerning crimes against peace and international legal order. Drafting this high-profile judicial decision required thorough knowledge not only of national legislation but also of international criminal law.

“None of the victims took part in hostilities or offered armed resistance to the occupying forces. Accordingly, they were protected under international humanitarian law as civilians pursuant to Article 4 of the Fourth Geneva Convention and Article 50 of Additional Protocol 1”. (paragraph 67 of that judgment)

“Acts committed in the context of an armed conflict that fall within the prohibitions established by international humanitarian law and constitute serious violations thereof shall be qualified exclusively under Article 438 of the Criminal Code and require no additional qualification under any other provisions of that Code”. (paragraph 127 of that judgment)

6. Please identify any judicial decisions, legal opinions, or pleadings you authored or contributed to that are particularly relevant.

- Grand Chamber decision concerning Article 437 of the Criminal Code of Ukraine (planning, preparation, unleashing, and waging an aggressive war) has defined the specific criteria for the subject of the crime under the article 437, establishing an important precedent in cases concerning crimes against peace and international legal order.

List B — International Law Experts

7. Please describe your experience in public international law, international humanitarian law, international human rights law, and/or international criminal law, including:

- litigation;
- legal advisory work;
- investigations;
- treaty interpretation; or
- institutional practice.

8. Please identify publications, legal opinions, submissions, or other professional work you authored or co-authored that are particularly relevant to the work of the ICC.

Victims' Rights

Victim participation is a defining feature of the Rome Statute system and central to the legitimacy of the International Criminal Court. However, civil society and victims' representatives have raised concerns regarding increasingly restrictive approaches to participation, inconsistent jurisprudence, and procedural barriers that undermine meaningful engagement.

9. What, in your view, are the principal obstacles to meaningful victim participation and reparations before the ICC, and how should judges address them in practice?

- First of all, it is important to ensure that the trial is conducted within a reasonable time, as excessively long proceedings can create additional psychological burden for victims and increase the risk of re-traumatization.

Besides, where necessary, safe conditions must be provided for victims to give evidence, including remote questioning or other security measures, to minimize the risk of re-victimization.

At the same time, all such measures should simultaneously ensure the rights of the accused and the fairness of the proceedings. Judges should apply Articles 68(3) and 75 of the Rome Statute consistently and predictably.

10. How can judges ensure that proceedings and trials remain accessible and meaningful for affected communities while respecting the rights of the accused?

- Judges can ensure that proceedings and trials remain transparent and meaningful through clear and accessible public decisions, realistic procedural calendars, appropriate interpretation and translation, and respectful treatment of participants.

Accessibility must remain compatible with the presumption of innocence, equality of arms, disclosure obligations and the right of the accused to challenge evidence. Victim participation should not become a substitute for the prosecution or introduce undisclosed evidentiary material.

11. Please provide examples of how you have incorporated victim-centered or trauma-informed approaches in your professional work.

- As a judge of first instance, I was the first one in Ukrainian judiciary who has introduced and used a child-friendly interview room for questioning children outside the courtroom to prevent re-victimization of minor victims and women in criminal proceedings concerning crimes related to violence, sexual assault.

Demonstrating my expertise in this sphere, I am also one of the authors of the Handbook for Judges of Ukraine “Specifics of Conducting Criminal Proceedings Involving Minors” (2016).

This experience required sensitivity to the position of vulnerable victims and witnesses, careful assessment of testimony and other evidence, and strict observance of the procedural rights of all participants in the proceedings.

Defence Rights

12. Please describe your experience safeguarding fair trial rights, including:

- **equality of arms;**
- **disclosure obligations;**
- **presumption of innocence;**
- **granting interim release;**
- **protection against undue delay; and**
- **the rights of detained persons.**

- Safeguarding fair trial rights by balancing the rights of the accused and the victims requires a combination of several principles: the right to a defence for the accused, the right to respect for the interests of victims, and the overall fairness of the proceedings

for both the accused and the victims. This balance must be determined in each specific case through the proper application of the provisions of the criminal and criminal procedure laws. In particular, under Article 7 of the CPC (General Principles of Criminal Proceedings), the substance and form of criminal proceedings shall comply with these general principles of criminal proceedings.

High Moral Character, Independence, and Impartiality

13. Article 36 of the Rome Statute requires judges to be persons of “high moral character, impartiality and integrity.” What do these qualities mean in practice, and how have you demonstrated them throughout your career?

- I serve as a Judge of the Supreme Court, the highest judicial instance in Ukraine. Moreover, I am a member and Chair of the Ethics Council –an independent body with international participation tasked with assessing candidates for the High Council of Justice for compliance with the highest standards of ethics and integrity. This role reflects my unwavering commitment to high ethical standards and professional integrity.

14. Have you ever been subject to (whether professionally or personally):

- disciplinary proceedings;
- allegations of misconduct;
- allegations of harassment, bullying, discrimination, abuse of authority, or sexual misconduct;
- investigations concerning professional ethics; or
- allegations of fraud

- No

If yes, please explain the circumstances and outcome.

15. Have you ever taken a leave of absence or been suspended from a position following allegations or concerns relating to professional conduct or workplace behavior? If yes, please explain.

- No.

16. Please describe a situation in which you faced political, institutional, or personal pressure that could have affected your professional independence. How did you respond?

- No.

Management and Workplace Culture

17. The ICC has faced sustained concerns regarding workplace culture, including allegations of bullying, harassment, discrimination, retaliation, and abuse of authority. What role should ICC judges play in addressing these issues?

- Improving the working environment begins, first and foremost, with personal conduct and leading by example. This entails treating others with respect and fairness, communicating clearly, taking responsibility for decisions, and maintaining zero tolerance for harassment.

Conditions must be established and strictly upheld to ensure that everyone performs their duties in accordance with applicable ethical and professional standards.

This requires impartial leadership, profound respect for diverse institutional and professional cultures, an empathetic approach to communication, the ability to build consensus, and an unwavering commitment to judicial independence, integrity, and the rule of law.

18. Please describe your experience managing teams or institutions, including:

- **promoting respectful workplaces;**
- **responding to misconduct allegations;**
- **supporting diversity, equity, and inclusion;**
- **addressing power imbalances within institutions; and**
- **improving workplace culture or staff wellbeing.**

- As the Chief Judge of the Ivano-Frankivsk City Court, I was responsible not only for the administration of justice, but also for organizing the court's operations and communicating with state authorities, local government bodies, civil society representatives and international partners.

Since 2021, I have been serving as Chair of the Ethics Council. Comprising both Ukrainian and international members, the Council reaches collective decisions on sensitive matters of professional ethics and integrity. In this role, I organise its work, facilitate deliberations, ensure that different views are heard, and maintain constructive communication with public institutions and civil society while safeguarding the Council's independence.

My management approach is based on clear rules, equal respect, transparent allocation of responsibility, reasoned collective decisions and personal accountability. Diversity improves decision-making when people are able to participate on equal terms, in conditions, where everybody fulfills their duties according to established moral, ethical, and professional rules.

Thematic and Intersectional Expertise

19. What do you consider to be the most important developments in ICC jurisprudence concerning:

- **sexual and gender-based crimes;**
- **crimes against children; and**
- **gender-competent and intersectional approaches to investigations and adjudication?**

- An important stage in the development of ICC practice concerning these categories of crimes was the adoption of relevant policy documents (Policies: Policy on the Crime of Gender Persecution 2022, Policy on Gender-based Crimes 2023 and Policy on Children 2023), which set out contemporary approaches to the investigation and adjudication of cases involving children, cases with gender-related dimensions, and cases in which gender-competent and intersectional approaches are applied.

One of the most significant developments in the Court's jurisprudence and the investigative approaches of the Office of the Prosecutor involves the treatment of the deportation or unlawful transfer of children. This practice is now treated as a distinct war crime, rather than merely as an element of the broader war crime of civilian deportation. This shift is exemplified by the arrest warrants issued for Vladimir Putin and Maria Lvova-Belova in connection with the alleged unlawful deportation and unlawful transfer of children from the occupied territories of Ukraine to the Russian Federation.

20. What challenges continue to impede accountability for these crimes before international courts?

- The challenges impeding accountability for these crimes include, in particular: evidentiary challenges; difficulties in the timely and proper documentation and preservation of evidence, particularly medical evidence.

Difficulty of establishing the responsibility of commanders and other superiors for crimes of these categories committed by their subordinates.

Institutional challenges, including limited resources and the difficulties of conducting investigations in conflict-affected areas.

The excessive length of proceedings.

The challenges in enforcing ICC decisions, including interim measures and arrest warrants, which frequently lead to their non-execution.

21. Crimes are rarely experienced along a single axis of identity. How would you approach a case where victims were targeted on the basis of intersecting identities – such as gender, age, disability, ethnicity or sexual orientation – and how would you use the legal tools offered within the Rome Statute to capture that complexity?

- The Rome Statute provides relevant tools: persecution under Article 7(1)(h), the enumerated sexual and gender-based crimes in Articles 7 and 8, modes of individual and command responsibility under Articles 25 and 28, the non-discrimination requirement in Article 21(3), protective and participatory measures under Article 68, and reparations under Article 75.

Therefore, a victim-centred and individualized approach, coupled with a careful assessment of the specific circumstances of each case, should serve as a guiding principle throughout.

22. What is your understanding of and views about outreach at the ICC, including during preliminary examinations? What role should the judiciary play in ICC outreach?

- Outreach is important for the Court's legitimacy and for ensuring meaningful access to justice. It should begin early, even during preliminary examinations, so that affected communities receive accurate information about the Court's mandate, jurisdiction, complementarity, and the distinction between submitting information and participating as a victim. It should also cover available protection measures, as well as the limits and likely duration of proceedings. Such work could be done by the ICC itself, including through media engagement and the organization of study visits, as well as through cooperation with States.