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## CHAPTER 8

# The System of Military Justice in Ukraine in Wartime

### ABSTRACT

In Ukraine, there is no complete system of military justice. The development of the military justice system of Ukraine shows a gradual course towards demilitarization. This course has changed since 2014, however, the changes aren't deep and systematic. Therefore, a revival of the military justice system should be considered as a temporary measure. It is necessary to provide a possibility of its drawdown with the end of Russian-Ukrainian War.

The military justice system should be built based on the following concept: the body carrying out operational search activity and prejudicial investigation of war crimes—the body carrying out criminal prosecution on such crimes—the body considering actual cases on such crimes. This concept corresponds to the following system of military justice: military police—military prosecutor's office—military court.

The reform of the military justice system has to take place comprehensively. Reforms of the military police, the military prosecutor's office and the military court have to be harmonized in regard to their competence and interaction. To this end, a uniform concept of reforming the military justice system in Ukraine has to be developed. Scholars, representatives of various bodies of military justice and military management, public figures and foreign experts should take part in its creation.

There are gaps in the sphere of legislative regulation of the military justice system. At the same time, the legislative regulation of the bodies of military justice should be carried out in their entirety as they are closely linked. For this purpose, it is necessary to develop and accept a simultaneous package of laws pertaining to military courts, military prosecutor's office and military police and introduce corresponding changes into the Criminal Procedural Code, the Laws About Judicial System and the Status of Judges, About the Prosecutor's Office, and others.

The political will of the Ukrainian authorities, first of all of the President of Ukraine since these matters belong to his competence, is necessary for reforming the military justice system. Care should be taken that the issues of the creation of military courts or military

police do not become a subject of political struggles. The architecture of this reform has to be depoliticized and developed by independent experts. Support of foreign partners of Ukraine, who often spoke against the existence of military justice previously, is also expedient.

The role of public organizations and mass media in the reform of military justice is not satisfactory. To strengthen it, questions related to the reform have to be debated in public and published in the media properly.

**Keywords:** military justice, judicial reform, military court, military prosecutor's office, military police

## Introduction

Ukraine is of considerable interest among post-Soviet states as regards studying reform problems of the military justice system. This is due to the military action in the country as a result of external military aggression: the "hybrid war" since 2014 and occupation of a part of the Ukrainian territory. Thus, functioning of the military justice is important for Ukraine in the context of the opportunities it creates for the security of the state and countering military aggression.

Ukraine is as a striking example of a country forced to revive the institutes of military justice which were liquidated as a result of the demilitarization. The general course of the judicial and legal reform of the state over a period of over 20 years brought the total repudiation of militarization of court and law enforcement agencies. However, unforeseen events have changed this course radically. In this sense, the system of military justice of Ukraine is being formed in "field conditions." It lacks a firm theoretical base and objective expert assessment.

The system of military justice of Ukraine is at a stage of reform. It is characterized by contradictory tendencies: some agencies of military justice were liquidated and the question of their revival is being debated (for example, military courts and the military prosecutor's office); others demand modernization according to the current realities (for example, the Military Service of Law and Order).

Ukraine has rich historical experience of military justice agencies. However, this experience comes mainly from its time in the structure of the Soviet Union, which causes the denial of this experience and any ties with the military justice agencies as rudiments of the Soviet past. Hence, studying of the international experience and the best world practices of the functioning of military justice is important for Ukraine. Besides, Ukraine needs approval from foreign partners in the development of the military justice system and their practical support in the reform.

The reform of the military justice system of Ukraine proceeds under the acute economic crisis and continuous political debates. In the Ukrainian society and the

expert environment, there is no consensus concerning the tasks and competence of the military justice agencies. The reform of military justice isn't a priority for the Ukrainian authorities, therefore taking important political decisions in this sphere is constantly postponed, though they are periodically discussed. Thus, there is neither the complete concept of the reform of the military justice system, nor the program of its development, nor the united center responsible for these matters.

All the above-mentioned factors make the Ukrainian experience of reforming the military justice system unique among the states of the former Soviet Union. At the same time, this experience is valuable to other democratic states that consider the expediency of preservation or elimination of the military justice system.

### General Characteristic of the Military Justice System of Ukraine

The term the "system of military justice" refers to judicial and law enforcement agencies, united by subordinative and coordinative connections, whose competence concerns the legal relationship arising in reference to the organization and activity of the Armed Forces of Ukraine, paramilitary forces and persons having the status of the military personnel.

The characteristic features that allow to ascribe a given body to the system of military justice are:

- *Special area of competence.* This is the military sphere, concerning both paramilitary formations and security activities (military administration, military-industrial complex, military science and military education).
- *Features of the organization and activities.* The bodies of military justice are paramilitary bodies. Their structure is built according to the military-political, instead of the administrative-territorial, structure of the state. Their employees have the status of military personnel. Being part of the relevant judicial system or a particular law enforcement agency, these bodies operate with a significant degree of autonomy.
- *Communication with other bodies of military justice.* Military justice becomes a system precisely because of subordinate and coordinating ties with other bodies of military justice. These bodies are institutionally independent from each other, as they belong to different law enforcement systems or even branches of government. However, they carry out their functions in an interconnected manner, and at the same time, independently from other bodies that are not part of the military justice system.

Guided by these principles, the following agencies should be included within the military justice system of Ukraine:

- (1) *Military courts*. To date, they don't exist in Ukraine, which shall be discussed later. Military courts belong to the judicial branch of the power. They administer justice on military affairs and moreover, have judicial control of other military justice agencies.
- (2) *The military prosecutor's office*. So far, this agency is quasi-military, acting as a Specialized Prosecutor's Office in the Military and Defense Sphere. It is part of the Ukrainian prosecutor's office, which operates independently and does not belong to any of the branches of state power. The Specialized Prosecutor's Office in the Military and Defense Sphere implements the organization and procedural management of the pre-trial investigation of military crimes, supports the public prosecution in the court on these affairs, exercises the public prosecutor's supervision of the activity of law enforcement bodies in the military sphere.
- (3) *Military Service of Law and Order in the Armed Forces of Ukraine* works as a part of the Armed Forces of Ukraine and answers to the Minister of Defense of Ukraine. Its functions include ensuring the rule of law and the military discipline is obeyed among the military personnel of the Armed Forces of Ukraine. In the long run, military police will be created on this basis that will conduct pre-trial investigations of the crimes committed by the military personnel.

It should be noted that the need of creation of other military justice agencies is also under consideration. In particular, there were initiatives to create a National Bureau of Military Justice. However, there is a lack of the specificity of the competence of this structure and its place in the system of the military justice.

Various structures that implement material, organizational, scientific and educational security contribute to functioning of the military justice system of Ukraine, for example, Ministry of Defense of Ukraine, educational institutions. The organizational chart of the military justice system of Ukraine is presented in the Appendix 1.

## The Roots of the Military Justice System in Ukraine

The modern history of military justice of Ukraine can be divided into four periods: (1) the stage of the formation of military justice of independent Ukraine; (2) the maturity stage of military justice; (3) the stage of crisis of military justice; (4) the stage of revival of military justice. (Лапкін, 2020).

*The stage of the formation of military justice* covers 1991-96. It began with the moment of the declaration of independence of Ukraine in 1991. At that time,

Ukraine had the bodies of military justice inherited from the Soviet Union: military courts and the military prosecutor's office. During the Soviet period, these bodies had broad powers and acted autonomously from the "civilian" judicial and law enforcement system. In addition, they had their own rigidly centralized system, directly subordinated to the Supreme Court of the USSR. At that stage, Ukraine addressed the problems of removing bodies of military justice from Soviet Union's hierarchy and submitting their activity to the new state.

In the key document of this stage, *The Concept of Judicial and Legal Reform* of April 28, 1992 (Про Концепцію судово-правової реформи в Україні: Постанова Верховної Ради України № 2296-XII від 28.04.1992), it was noted that taking into account the specifics of military formations, military courts remain in the system of the general courts. They have to be significantly reformed and exempted from any dependence on military command. These courts can only hear cases of military crimes of the military personnel and cases of their social protection. Thus, the strategic decision on preservation of military justice and its partial reform was made. As a result, in February 1993, military tribunals were renamed by the Resolution of the Supreme Council of Ukraine "military courts." (Про перейменування військових трибуналів України у військові суди України і продовження повноважень їх суддів: Постанова Верховної Ради України № 2979-XII від 03.02.1993).

At this stage, the bodies of military justice received registration in Laws of Ukraine. So, for example, existence of military prosecutor's offices was enshrined in the Law "About the Prosecutor's Office" (Про прокуратуру: Закон України № 1697-VII від 14.10.2014) of November 15, 1991, its system was defined together with the requirements to its staff.

Military courts received a legislative regulation in 1994 when the previous Law "About the Judicial System of the Ukrainian SSR" of 1981 was supplemented with Chapter 3-1 "Military Courts." (Про судоустрій України: Закон України № 2022-X від 05.06.1981) The tasks, types and structure of military courts, their competence and other details of the organization and functioning of these courts were settled. In particular, it was determined that the activities of military courts were aimed at protecting the security of Ukraine from any infringement, the combat capability and combat readiness of its Armed Forces and other military formations, protecting the rights and freedoms of military personnel and other citizens, as well as the rights and legitimate interests of military units, institutions and organizations.

That stage could be considered complete with the adoption of the Constitution of Ukraine on June 28, 1996, which attributed the matters of military justice to regulation in laws, because this issue was not regulated in the Constitution itself.

The following *maturity stage of military justice* covers the period from 1996 to 2010. During this time, bodies of military justice were working at full capacity and with maximum efficiency.

Legal status of military courts was reformed with adoption of the new Law of Ukraine “About the Judicial System” of February 7, 2002 (Про судоустрій України: Закон України № 3018-III від 7.02.2002). Military courts were included in the general courts. Their competence was defined as implementation of justice in the Armed Forces of Ukraine and other military formations according to the law. According to the Code of Criminal Procedure of Ukraine of December 28, 1960 (Кримінально-процесуальний кодекс України № 1001-05 від 28.12.1960), military courts considered cases of crimes of the military personnel. The system of military courts consisted of three levels: military courts of the garrisons operating as courts of the first instance; military Courts of Appeal of regions and Court of Appeal of the Navies of Ukraine; the Military Judicial Board operating in the structure of the Supreme Court of Ukraine as court of cassation. However, in this Law, unlike the previous one, much less attention was paid to military courts. In particular, their competence, the procedure for logistics, equipment and other issues were not regulated. It demonstrates the diminishing interest of the Ukrainian legislator in military courts.

The military prosecutor’s office was working during this period according to the Law “About the Prosecutor’s Office” from 1991. Military prosecutor’s offices of regions and the military prosecutor’s office of the Navies of Ukraine (as regional) and military prosecutor’s offices of garrisons (as urban) answered to the bodies of the military prosecutor’s office. Its chief activity was supervision of compliance with the law in the Armed Forces of Ukraine, the Ministry of Defense of Ukraine, at the military enterprises and other military sphere objects. Also, the military prosecutor’s office carried out pre-trial investigation of military crimes and the prosecution of these cases in court. In addition, it represented the interests of military personnel in courts and supervised the application of restrictions on their personal freedom to military personnel. It should be noted that military prosecutors carried out their functions related to participation in court hearings precisely in military courts.

During this period in Ukraine, the Military Service of Law and Order in the Armed Forces of Ukraine was created according to the Law of March 7, 2002. (Про Військову службу правопорядку у Збройних Силах України: Закон України» № 3099-III 7.03.2002) This Service was assigned a wide range of law-enforcement functions in the military sphere, for example, providing law and order and military discipline among the military personnel of the Armed Forces of Ukraine, prevention of crimes among them, etc. In accordance with Art. 101 of the Criminal Procedure Code of Ukraine of 1960, employees of the Military Law Enforcement Service had the authority to initiate criminal cases and carry out investigations into crimes committed by servicemen of the Armed Forces of Ukraine.

At the same time, at the end of this period the tendency towards the elimination of military justice was seen. In *The Concept of Improvement of Legal Proceedings for*

*the Adoption of Fair Trial in Ukraine according to the European Standards of 2006* (Концепція вдосконалення судівництва для утвердження справедливого суду в Україні відповідно до європейських стандартів: затв. Указом Президента України № 361/2006 10.05.2006), it was noted that there should be no military courts in the judicial system of Ukraine. Special legal status of judges of military courts was pointed out as contradictory to the principle of the uniform status of court; since these judges are in military service, have military ranks, and receive additional payments, it is contrary to the principle of a single status of the court and doesn't conform to the European standards. This document became a program basis for the liquidation of military courts.

***The stage of crisis of military justice*** began in 2010 and coincided with coming to power of President Victor Yanukovych in Ukraine. However, its prerequisites go back to 2006 and Viktor Yushchenko's presidency, which was known for the pro-Western orientation. Despite difference in political views, Victor Yanukovych followed the course of his predecessor and finished the elimination of the military justice system.

In July 2010, the new Law of Ukraine "About the Judicial System and the Status of Judges" (Про судоустрій і статус суддів: Закон України № 2453-VI від 7.07.2010) was adopted which didn't provide the existence of military courts in the judicial system of Ukraine. The Decree of the President of Ukraine "About liquidation of military appeal courts and military local courts" was issued on its basis in September of this year. Accordingly, 15 military courts were liquidated: 2 appeal courts and 13 local courts, with the total number of about 75 working judges (Про ліквідацію військових апеляційних та військових місцевих судів: Указ Президента України № 900/2010 від 14.09.2010).

The liquidation of military courts was justified by the general course towards demilitarization. The existence of military courts didn't correspond to the principles of unity and specialization of the judicial system. The number of cases considered by military courts was so insignificant that their maintenance became economically inexpedient. A significant role was played by western experts who spoke against the preservation of military courts. According to some experts, military courts were liquidated intentionally as a part of collapse of the military justice system (Шульгина, Собко, 2015)

The military prosecutor's office was reformed in 2012. Due to the adoption of the new Criminal Procedural Code of Ukraine of April 13, 2012 (Кримінальний процесуальний кодекс України № 4651-VI від 13.04.2012), norms of military prosecutor's offices were excluded from the Law "About the Prosecutor's Office." (Про внесення змін до деяких законодавчих актів України у зв'язку з прийняттям Кримінального процесуального кодексу України: Закон України № 4652-VI від

13.04.2012). The property and finances intended for the maintenance of the military prosecutor's offices were transferred from the operational department of the Ministry of Defense to the discretion of the General Prosecutor's Office of Ukraine.

It should be noted that military prosecutor's offices weren't liquidated completely, and were reorganized into prosecutor's offices on supervision of compliance with the laws in the military sphere. These prosecutor's offices worked as specialized, based on the civil law. They lost ties with the Ministry of Defense, and their employees lost the status of military personnel. Existence of specialized prosecutor's offices wasn't provided in the draft of the new Law "About the Prosecutor's Office" (Про прокуратуру: Проект Закону України № 3541 від 5.11.2013) prepared in 2013. Thus, with its acceptance, the institute of military prosecutor's offices in Ukraine had to be liquidated completely.

The prerequisites for the reorganization of the military prosecutor's offices, as well as military courts, included both the course towards the demilitarization of the state and cost savings. A prerequisite for the liquidation of these prosecutor's offices was the reduction of the competence of the prosecutor's office, in particular, the sphere of supervision over the observance of laws. Thus, the military prosecutor's offices, which supervise the observance of the laws in the military sphere, were gradually left without work. The liquidation of the military courts also accelerated the process of their reorganization, although the military prosecutor's offices were not dependent on the military courts for their work.

***The stage of revival of military justice*** began after the aggravation of the military and political situation in Ukraine in 2014. After the beginning of military aggression of the Russian Federation against Ukraine, there was a need of renewal of various military institutes including military justice.

The first step was the recovery of military prosecutor's offices by amendments to the Law "About the Prosecutor's Office" of August 14, 2014. It is important to note that military prosecutor's offices weren't created from scratch, but were reorganized basing on prosecutor's offices on supervision of compliance with the laws in the military sphere, which had continued to work since 2012. The status of military prosecutor's offices as separate link of the prosecutor's office system was enshrined, their levels and also particularities of the status of staff of military prosecutor's offices were determined in the new Law of Ukraine "About Prosecutor's Office" adopted in October, 2014. However, due to the absence of military courts and the reduction of the functions of the prosecutor's office, the scope of its activities was rather narrow.

An extensive discussion about other institutes of military justice: military courts and military police, began after the recovery of military prosecutor's offices. These issues are considering by practitioners, scientists, social activists and parliamentarians and find support in various sectors of society. Some results of these discussions

have received registration in legislative initiatives, however, all of them have been removed from the agenda of parliament. Besides, in strategic documents in the sphere of judicial authority (Про Стратегію реформування судоустрою, судочинства та суміжних правових інститутів на 2015-2020 роки: Указ Президента України № 276/2015 від 20.05.2015) and national security (Про рішення Ради національної безпеки і оборони України від 6 травня 2015 року «Про Стратегію національної безпеки України»: Указ Президента України № 287/2015 від 26.05.2015), the military justice system isn't mentioned at all.

In 2019, after the election of Volodymyr Zelenskyy as President of Ukraine, pacifist sentiments prevailed in the political environment. As a result, military prosecutors were again turned into civilian specialized prosecutors in the military and defense sphere. The issue of the establishment of military courts and military police was also dropped.

Paradoxically, after the beginning of the full-scale military aggression of the Russian Federation against Ukraine in February 2022, the situation of the military system has not changed. Although due to the active phase of the war, Ukraine has significantly increased its armed forces and experienced a dramatic increase in military crimes, the issue of creating an effective military justice system is not a priority. Some initiatives in this area related to the restoration of military prosecutors or the creation of military police did not find support from the Ukrainian authorities. According to the Supreme Court Chairman, military courts will be created neither during the war, nor after it. There's no money to do that, and there's no procedures of appointing judges to these courts («Мало ймовірно, що в умовах...»).

Thus, for the last 8.5 years, the idea of creating a military justice system in Ukraine has continued to be actively discussed in the expert community and, together with other steps aimed at strengthening the military sphere of the state, has had the support of the population, as well. However, these ideas have not received legislative formalization so far.

## The Legal Basis of the Military Justice System in Ukraine

The legal basis of the military justice system covers the norms of various normative acts regulating the status of military justice bodies, their system and types, competence and status of their employees, as well as the scope of their activities.

Depending on the legal force of the relevant acts, they can be divided into the following groups: (1) the Constitution of Ukraine; (2) laws of Ukraine; (3) acts of the President, Supreme Council, and Cabinet of Ministers of Ukraine; (4) departmental acts.

Depending on their scope, these norms are divided into the following types: (a) general norms; (b) rules relating to military vessels; (c) rules relating to military prosecutors; (d) regulations relating to the military police and other bodies; (e) rules relating to other matters of military justice.

The act of the highest legal validity in Ukraine is the Constitution of 1996. (Конституція України від 28.06.1996 в редакції 30.09.2016) It provides the general legal basis for functioning of the military justice system, though it doesn't mention it directly. According to some researchers, military courts actually fall into the category of creation of extraordinary courts, which is directly forbidden by Art. 125 of the Constitution. Besides, the status of judges of military courts as the military personnel doesn't comply with the requirements to the judges formulated in the Constitution (Висоцька, 2015). In our opinion, this point of view is unreasonable as military courts functioned nearly 15 years in Ukraine under the current Constitution (from 1996 to 2010). During this time, the question of their discrepancy of the Constitution of Ukraine has never appeared. Thus, the absence of any reference in the Constitution to the bodies of military justice isn't an obstacle for their creation.

Functioning of the bodies of military justice requires an appropriate legislative base that isn't full in Ukraine. Among laws of *the general character*, which extend to all or most bodies of military justice, it is necessary to highlight:

- Criminal Code of Ukraine of April 5, 2001 (Кримінальний кодекс України № 2341-III від 5.04.2001). This act defines the list of crimes and punishments for their commitment. In particular, the Section XIX regulates crimes against an established order of rendering of military service (military crimes).
- Criminal Procedural Code of Ukraine of April 13, 2012 (Кримінальний процесуальний кодекс України № 4651-VI від 13.04.2012). This act regulates an order of pretrial investigation of criminal offenses and their judicial review. The creation of new bodies of military justice demands additions and changes in the CPC of Ukraine.
- Law of Ukraine “On operational-search activities” of March 18, 1992 (Про оперативно розшукову діяльність. Закон України № 2135-XII від 18.02.1992). This act regulates the procedure for conducting search, intelligence and counter-intelligence actions and establishes a list of bodies authorized to carry out these actions. Since the identification and investigation of military crimes implies the conduct of operational-search activities, this law can be attributed to acts of a general nature in the field of military justice.

*Acts of special character* concern separate bodies of military justice. At the same time, among all these bodies a separate law regulates Military Service of Law and Order (Про Військову службу правопорядку у Збройних Силах України: Закон України № 3099-III від 7.03.2002). The law defines its status, system, competence, the status of employees.

The norms devoted to the military prosecutor's office were previously contained in the Law of Ukraine "On the Prosecutor's Office" of October 14, 2014. The rules regarding it were provided for in various articles of this Law (articles 7, 8, 27, 81, and others). The reorganization of military prosecutors in 2019 was carried out by excluding these norms from the Law "On the Prosecutor's Office." Now the legal status of prosecutors in the military and defense sphere is determined by the general norm on the possibility of creating specialized prosecutors by the Prosecutor General (part 2 of art. 7 of the Law "On the Prosecutor's Office"). In accordance with it, by the decision of the Prosecutor General, if necessary, specialized prosecutors may be formed on the rights of: a structural unit of the Office of the Prosecutor General; regional prosecutors; a unit of the regional prosecutor's office; district prosecutors; or a unit of the district prosecutor's office. The list, formation, reorganization and liquidation of specialized prosecutor's offices, determination of their status, competence, structure and staffing are carried out by the Prosecutor General.

After February 24, 2022, there were several attempts to revive military prosecutors. On April 01, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amending Some Legislative Acts to Improve the Activities of the Prosecutor's Office in the Context of Armed Aggression against Ukraine," which, among other things, was intended to determine the features of the legal status of prosecutors who are military personnel (Про внесення змін до деяких законодавчих актів щодо удосконалення діяльності органів прокуратури в умовах збройної агресії проти України: Проект Закону України № 7058 від 16.02.2022). The President of Ukraine did not sign the said Law, pointing out that it did not take into account the tasks assigned by the Constitution of Ukraine to the Armed Forces of Ukraine, the nature and essence of military service.

The next step was the Draft Law "On Amendments to the Law of Ukraine 'On the Prosecutor's Office' to ensure the activities of specialized military prosecutors," submitted to the parliament by a group of people's deputies in July 2022 (Про внесення змін до Закону України «Про прокуратуру» щодо забезпечення діяльності спеціалізованих військових прокуратур: Проект Закону України № 7576 від 21.07.2022). It actually provides for the return to the model of military prosecutors, which operated in Ukraine until 2019. As of October 2022, this bill is under consideration by the Verkhovna Rada of Ukraine.

There is no mention of military courts in the Ukrainian legislation. Based on their previous regulation, it may be assumed that these norms have to be included in the Law of Ukraine "On The Judicial System and the Status of Judges" of June 2, 2016 (Про судоустрій і статус суддів: Закон України № 1402-VIII від 2.06.2016). It is expedient to provide a separate section or article devoted to military courts in this Law where their system, competence and requirements to judges of these courts should be regulated.

In recent years, several bills concerning introduction of military courts have been registered in the Verkhovna Rada of Ukraine. In 2015, these were among others: “About Introduction of Amendments to the Law of Ukraine, ‘About the Judicial System and the Status of Judges’ (concerning the renewal of military courts in the system of general jurisdiction)” (No. 1896 from 1/30/2015) (Про внесення змін до Закону України «Про судоустрій і статус суддів» (щодо відновлення в системі загальної юрисдикції військових судів)): Проект Закону України № 1896 від 30.01.2015) and “About Introduction of amendments to Some Acts of Ukraine (concerning the formation of military courts and single organizational issues)” (No. 2557 from 4/6/2015) (Про внесення змін до деяких законодавчих актів України (щодо утворення військових судів та окремих організаційних питань): Проект Закону України № 2557 від 6.04.2015). However, none of the specified bills has been considered by the parliament. The bill No. 1896 was rejected and withdrawn on September 15, 2015, and the bill No. 2557 was withdrawn on February 21, 2017.

At the end of 2017, the fastest possible introduction of the bill of creation of military courts by the President of Ukraine (**Законопроект про військові суди буде у Раді на початку 2018 року**. Українське право. 21.12.2017) was announced, however, to date, no legislative initiatives have been taken in this respect.

In 2018, the next attempt to introduce military courts took place. Two bills were registered in the Verkhovna Rada of Ukraine: No. 8392 of 22 May 2018 and No. 8392-1 of 01 June 2018 “On Amendments to the Law of Ukraine ‘On the Judicial System and the Status of Judges’ on Military Courts.” (У ВРУ зареєстровано законопроекти щодо...). Neither was considered and both bills were withdrawn by their initiators on 29 August 2019.

It is no different with the military police, which was supposed to be created on the basis of Military Service of Law and Order. At the beginning of 2015, the bill of military police (Про військову поліцію: Проект Закону України № 1805 від 21.01.2015) has been registered in the parliament; however, it wasn’t even included in the agenda. Further, the Ukrainian authorities repeatedly announced the creation of the military police (Жолобович, 2016) In December 2017, it was reported that the Ministry of Defense of Ukraine has prepared the bill of the military police (Пощенко, 2017), however, it hasn’t been introduced in the parliament. The next draft Law “On the Military Police” was submitted to parliament on February 15, 2022 and included in the Plan of Legislative Work of the Verkhovna Rada of Ukraine for 2022 (Про військову поліцію: Проект Закону України № 6569-1 від 15.02.2022). Due to the start of the Russian invasion, it was not considered as scheduled and as of October 2022, it is in an uncertain position. Nonetheless, the parliament can return to its consideration at any time and adopt it according to an accelerated procedure, should there be the political will to do so.

There were also alternative approaches to regulating the military justice system. For example, in 2018, there was a legislative initiative to create the State Bureau of Military Justice. In the Draft Law “On the State Bureau of Military Justice” № 8387 of 21 May 2018, this body was proposed to exercise control over all military formations of Ukraine (Про Державне бюро військової юстиції: Проект Закону України № 8387 від 21.05.2018). It was supposed to include military police officers, military investigators and military inspectors and combine the functions of the military police and the military prosecutor’s office. The alternative bill, № 8387-1 of 25 May 2018, proposed that the State Bureau of Military Justice be created only as a body for the prevention, detection and investigation of military and some other crimes (Ibid. № 8387-1 від 25.05.2018). However, neither of these bills was considered by the parliament and they were withdrawn by their initiators.

At the end of January 2022, a new Draft Law “On the State Bureau of Military Justice” was submitted to the parliament. It proposed to create a new body for the pre-trial investigation of military crimes and control over law and order in the Armed Forces of Ukraine (Ibid. № 6569 від 28.01.2022). In fact, this body was conceived as a counterpart of the military police. However, this bill has not yet been considered by the people’s deputies.

Except legislative acts, the organization and activity of bodies of military justice are regulated by subordinate and departmental acts. For example, the matters of the organization of activity of the specialized prosecutors in the military and defense sphere and their competence are regulated by orders of the Prosecutor General (Про особливості організації діяльності спеціалізованих прокуратур у військовій та оборонній сфері: Наказ Генерального прокурора № 370 от 22.11.2022). Internal matters of the organization and functioning of Military Service of Law and Order are regulated by numerous acts of the Ministry of Defense of Ukraine (Про затвердження Інструкції про організацію патрульно-постової служби Військовою службою правопорядку у Збройних Силах України: Наказ Міністерства оборони України № 515 від 10.10.2016).

Thus, there are gaps in the sphere of legislative regulation of the military justice system. So far, no decent options have been offered to fill them. At the same time, the legislative settlement of military justice bodies should be carried out comprehensively, since these bodies are closely related to each other. To do this, it is necessary to simultaneously develop and adopt a package of laws on military courts and military police as well as amendments to the Criminal Procedure Code, Laws on the Judicial System and the Status of Judges, On the Prosecutor’s Office, and others. On their basis, a by-law and departmental settlement of the military justice bodies will be built.

## Jurisdiction of Military Justice

The sphere of military justice is not defined by the legislation of Ukraine to date. Military crimes should be considered the main criterion of its definition. Their concept and list are defined in the Section XIX of the Criminal Code of Ukraine. Military crimes are the crimes provided by this section against the order of performing the military service as established by the legislation, and committed by military personnel or persons liable for military service and reservists during their performing of the military training. The military personnel of the Armed Forces of Ukraine, the Security Service of Ukraine, State Border Guard Service of Ukraine, National Guard of Ukraine, and other military formations as well as the Public Special Service of Transport, Public Service of Special Communication and Information Security of Ukraine can bear responsibility for these crimes.

Civilians can be criminalized for commitment of these crimes if they are accomplices of military crimes.

The feature of criminal liability for commitment of military crimes is that the person committing them can be exempted from criminal liability with application to him or to her of the measures provided by the Disciplinary Regulations for the Armed Forces of Ukraine. So, the criminal liability can be replaced by disciplinary punishment. It is an effective way to avoid criminal liability for insignificant military crimes.

It is necessary to remember that till 2010, the jurisdiction of military courts extended to all crimes committed by the military personnel. Such an approach brings a risk of a conflict between military and civil jurisdictions and makes the sphere of military justice overly broad. At the same time, the military personnel committing other crimes can face obstacles in consideration of their cases by bodies of civil justice, especially in wartime. Therefore, it is necessary to provide a possibility of spreading the jurisdiction of military justice to other crimes of the military personnel in exceptional cases provided by law, for example, if the civil justice authorities do not operate in the relevant territory or if there are hostilities there. This will more fully protect the rights of the military personnel (Лапкин, Авдеева, 2018).

Beyond criminal cases, the sphere of military justice can also extend to the appeal of decisions, actions or inactivity of various bodies of military management. To date, such cases are considered by specialized administrative courts. However, these cases demand specialized knowledge of the military sphere which military courts can provide.

Thus, in case of the revival of military courts and the military prosecutor's office or the creation of a military police, one of the most important issues is a clear definition of their competence.

## Transformation of the Military Justice System in Ukraine at the Present Stage

The necessary prerequisites of the reform of military justice in Ukraine can be divided into three groups: (1) factual; (2) ideological; (3) economic.

The main *factual prerequisites* that determine the need for a reform of military justice are:

- The conduct of hostilities on the territory of Ukraine and the annexation of part of its territory, which requires the restructuring of judicial and law enforcement agencies. In case when the territorial bodies of justice do not operate, there is a need for mobile structures that can flexibly adapt to the system of military bodies.
- An increase in the number of military crimes and other legal cases in the military sphere, and the spread of weapons among the civilian population require adequate attention from the justice authorities.
- The need to increase the effectiveness of the activities of the court, the prosecutor's office and the police in the military sphere. The civilian counterparts of these bodies do not take into account the specifics of the military sphere and do not correspond to its structure, therefore they are not equipped to resolve legal conflicts in this area.

*The ideological prerequisites* are the totality of ideas, theories, and concepts that are formed around the functioning of the military justice system. They can be positive, that is, justifying and supporting the existence of military justice, or negative, that is, denying its necessity. It can be concluded that since 2014, the ideology of military justice has been significantly transformed, with the vector turning from neutral or negative to positive. Until 2014, most scientists, experts and citizens either denied the need to preserve military justice in Ukraine or did not consider it significant. The priority during this period was the idea of global demilitarization of Ukraine. However, since 2014 the situation has changed. Faced with the factual circumstances outlined above, there are more and more proposals for the creation of military courts, military prosecutors and military police in Ukraine by scientists, government officials and military command, public activists and politicians. It can be argued that in today's Ukraine, there is a public demand for strengthening the defense capability of the state and its militarization. As a result, initiatives to create military justice bodies are supported by both military personnel and civilians.

*The economic prerequisites* relate to the availability of sufficient budget funds to finance the military justice system. It should be noted that economy was one of the decisive factors in the decision to liquidate military courts and military prosecutor's offices in 2010-12. Their maintenance seemed economically inexpedient in terms

of a small amount of work. In addition, the maintenance of military justice bodies is a priori more financially costly than territorial justice bodies, which is due to the peculiarities of their deployment, the need to ensure security, and increased guarantees for their employees as military personnel.

However, in recent years, defense financing in Ukraine has been a priority and is constantly growing, for example, in 2018, spending on the Ministry of Defense increased by UAH 16.6 billion, that is, by 24.3% compared to 2017, and amounted to UAH 86.6 billion (Офіційний сайт Міністерства оборони України). In 2021, this amount rose to about UAH 121.5 billion, and for the whole of 2022, it was planned to allocate UAH 133.5 billion for the needs of the Ministry of Defense (Ibid). However, in fact, after the start of Russian aggression, Ukraine spends more than UAH 100 billion per month on defense. Therefore, the budget for 2023 provides funding for the Ministry of Defense in the amount of UAH 850 billion, and more than UAH 1.1 trillion is planned to be spent on the military sphere (50% бюджету – на війну. За що житиме Україна у 2023 році? Українська правда. 15.09.2022).

In view of these figures, it can be assumed that the state is able to finance the creation of a military justice system, although specific calculations on the size of such costs have not been made.

Thus, at this stage in Ukraine, there are all the necessary prerequisites for reforming the military justice system.

## Subjects of the Reform of the Military Justice System in Ukraine

Among the subjects playing the defining role in reforming the military justice system of Ukraine, the following can be enumerated: President of Ukraine; parliament; individual departments; representatives of civil society and the media; academic institutes and certain scholars; foreign partners of Ukraine.

Traditionally, the crucial role as regards any military justice reform in Ukraine is played by *the President of Ukraine*. It follows from the Constitution of Ukraine, which states that the President is a guarantor of the state sovereignty and territorial integrity of Ukraine, the Supreme Commander, who manages national security and defense of the state. The President also defines strategic directions of reforming judicial authority and law enforcement agencies of Ukraine. He plays a key role in the creation of courts as he has the exclusive right to introduce the bill on these matters in the Supreme Council of Ukraine after consultations with the Supreme Court of Justice (part 2 of Art. 125 of the Constitution of Ukraine).

The President can implement policy in the field of military justice through various channels: by submitting his own legislative initiatives to the parliament; through the parliamentary faction of people's deputies under his control; through the National Security and Defense Council, which he chairs.

In 2014, the President possessed an initiative of the revival of military prosecutor's offices. In the spring of 2017, the President spoke in favor of the creation of military courts, which caused public discourse (*Порошенко пропонує створити військові суди в Україні. BBC. 28.03.2017*). In December 2017, the President's representative in the Verkhovna Rada of Ukraine announced that the President would shortly introduce the bill of military courts in the parliament (*Порошенко внесе в Раду законопроект про військовий суд. Українська правда. 18.12.2017*). Therefore, it is the President who is being expected to take decisive steps in the sphere of reforming the military justice system.

Any initiatives of the President in this sphere demand the approval from the **parliament**. According to the Constitution of Ukraine, the judicial system and the trial, the organization and activity of the prosecutor's office and the bodies of prejudicial investigation are only defined by laws of Ukraine adopted by the Verkhovna Rada of Ukraine. Besides, the creation, reorganization and liquidation of each court in Ukraine is defined by law.

Thus, the President is forced to interact with the parliament in matters of reforming military justice. It is the parliament that has the decisive word in matters of legislative formalization of military justice bodies.

These issues are considered by the parliament on the basis of a legislative initiative, which may come from the President, the government or individual people's deputies. The bills concerning military justice that have been under consideration by the Supreme Council of Ukraine in recent years came from individual people's deputies. For example, the draft law "On the Military Police" № 1805 was submitted by MPs M.P. Palamarchuk and V.M. Korol, who were representatives of the pro-presidential faction Petro Poroshenko's Bloc. Representatives of the leading parliamentary factions, I.Yu. Vinnik and S.V. Pashinsky, presented a draft law "On Amendments to Certain Legislative Acts of Ukraine (Regarding the Formation of Military Courts and Certain Organizational Issues)" № 2557. In 2022, representatives of the presidential faction Servant of the People submitted to the parliament the bills "On the Military Police" № 6569-1 and "On Amendments to the Law of Ukraine 'On the Prosecutor's Office' to Ensure the Activities of Specialized Military Prosecutor's Offices" № 7576. However, this did not ensure the support of these bills in this parliament.

In general, the Ukrainian politicians declare the support of the military justice system, which increases in view of the exacerbation of the war. For example, intro-

ducing bills to the parliament concerning bodies of military justice coincided with defeats of the Ukrainian forces at the front. The bill of renewal of military prosecutor's offices was adopted when the "Ilovaisk boiler" was becoming the most considerable defeat of the Ukrainian forces in 2014. Bills of military courts and the military police were introduced at the beginning of 2015, during the "Debaltseve boiler" which ended with the defeat of the Ukrainian military. The President of Ukraine Petro Poroshenko announced for the first time the renewal of military courts after the resonant verdict on the General Nazarov in March 2017 (Порошенко ініціював відновлення військових судів після вироку у справі щодо катастрофи ІЛ-76. ТЧН. 28.03.2017). The draft law "On the Military Police" № 6569-1 was submitted to the Parliament on February 15, 2022, and the draft law "On Amendments to Certain Legislative Acts to Improve the Activities of the Prosecutor's Office in Conditions of Armed Aggression against Ukraine" № 7058 on February 16, 2022, that is on the eve of the Russian invasion, which was expected in advance and the prospects of which were widely discussed in the media.

Thus, the activation of the reform of military justice bodies sometimes has situational character. It is an attempt of the authorities to show the public their activity in the military sphere. The problem is that these attempts are often publicity-oriented, because after the resonance of individual events decreases, politicians lose interest in the reform of military justice. At the same time, the Ukrainian authorities do not have a coherent vision of reforming the military justice system. Thus, the issue of creating bodies of military justice is politically motivated and does not have a proper theoretical study. Conceivably, this can explain why the final decision on the military justice system in Ukraine has still not been made.

It is also necessary to consider an important role of a *departmental factor* in initiating decisions in the sphere of reforming military justice. For example, the President of Ukraine made the decision of the need of revival of the military prosecutor's office in 2014 on the basis of the proposal from the Prosecutor General's Office of Ukraine (Капсамун, 2015). The project of military police is developed by the Ministry of Defense of Ukraine (Законопроект про Військову поліцію знаходиться на розгляді в Адміністрації Президента України. Офіційний сайт Міністерства оборони України. 15.12.2017). The interested departments often push the key subjects (the President and the parliament) to decision-making in the sphere of military justice reforming.

In the area of the judicial authority, an important role in the creation of military courts is played by the Supreme Council of Justice, which has to consult the President about the creation, reorganization or liquidation of courts, military ones included. However, up to now, the Supreme Council of Justice has not expressed its position about the revival of military courts in Ukraine. Earlier, in 2015, certain

judges of the Supreme Court spoke in favor of such plans (Верховний суд виступає за відновлення військових судів в Україні. День. 9.09.2015), however, this stance has not been confirmed after the reform of the Supreme Court in 2017.

Civil society and *the media*. An important role in reforming military justice is played by representatives of civil society and the media. However, it isn't decisive and generally comes down to discussion of the initiatives of the state leaders. Representatives of the public express their opinion on the revival of military courts within various conferences, briefings or media appearances. In turn, the media provide fairly strong information support to the questions pertaining to military justice and they influence formation of public views on those matters to a large extent.

However, when evaluating the role of the media, it should be taken into account that issues of military justice only rarely acquire visibility and are quickly lost in the flood of more dramatic news. The institutions of civil society in Ukraine do not have effective levers of influence on the authorities in matters of military justice. A number of public activists generally have a negative attitude towards the courts and law enforcement agencies, and they relay this attitude to military justice agencies, that is, what concerns the military aspect is perceived positively by them, and what concerns the sphere of justice is perceived negatively. In addition, the proposed legislative initiatives in this area have not undergone full-fledged public hearings, which may be considered their significant drawback.

Civil society exercises control over the system of military justice. Its forms are defined by the Law of Ukraine "About National Security" of June 21, 2018 № 2469-VIII (Про національну безпеку: Закон України № 2469-VIII від 21.06.2018). In accordance with par. 5 of part 1 of Art. 1 of this Law, democratic civilian control is a set of legal, organizational, informational, personnel and other measures carried out in accordance with the Constitution and laws of Ukraine to ensure the rule of law, legality, accountability, transparency of security and defense sector bodies and other bodies whose activities are related to with restriction in certain cases of human rights and freedoms, promotion of their effective activities and performance of their functions, strengthening the national security of Ukraine.

Citizens participate in control over the military organization and law enforcement agencies in the following forms: (1) by public organizations they belong to; (2) through deputies of representative authorities; (3) personally: by the address to the Representative of the Supreme Council of Ukraine or another public authority.

While controlling, public organizations have the right to request and obtain information of the activity of the Armed Forces of Ukraine, other military formations, law-enforcement activity, except for the data containing state secrets; to conduct academic research; to carry out public expertize of bills; to participate in public discussions; to get acquainted with the conditions of service and welfare of the military personnel.

The controlling role of the media is regulated, too. The media are entitled to request and obtain information; to disseminate it, except for state secrets; to publish official replies of public authorities and military management to the materials published earlier.

In order to inform the public systematically about the activities of the security and defense sector of Ukraine, to ensure the validity of decisions of state bodies on issues of national security and defense, on the status of implementation of measures for the development of the security and defense sector, periodically, but at least once every three years, security and defense sector bodies issue "White Papers" or other analytical documents (reviews, national reports, etc).

At present issues of military justice also attract the interest of *researchers*. In recent years in Ukraine, there are more and more academic publications devoted to this subject. With participation of scholars and experts, various scientific and practical conferences, seminars and round table meetings are held. The following meetings can be considered the most productive: a round table *Military Justice in Modern Conditions: The Prospects of Development and Reforming* held at the Institute of the Legislation of the Supreme Council of Ukraine on November 24, 2015 (Військова юстиція в сучасних умовах: перспективи розвитку та реформування. 24.11.2015); a round table *Military Justice in Ukraine: Current Problems of the Organization and Implementation* held in the State and Law Institute of V.M. Korietsky of National Academy of Sciences of Ukraine on June 6, 2017 («Відновлення військових судів – пріоритетний крок у реформуванні військової юстиції». 19.06.2017). Workshop of the Geneva Centre for the Democratic Control of Armed Forces (DCAF) *Legal Frame of the Security Sector Reform* held on October 5, 2017 in the National Legal University of Yaroslav the Wise (Legal Frame of the Security Sector Reform. 05.10.2017); the round table *The Military Justice of the Partner Countries Directed to Protection of the Military Personnel* held on January 17, 2018 in Command of Ground Forces of the Armed Forces of Ukraine, etc. (В Командуванні Сухопутних військ ЗС України відбувся круглий стіл за темою: «Військова юстиція країн-партнерів: спрямована на захист військовослужбовців. 17.01.2018).

Generally, the recommendations of these scholarly events have supported the renewal of the military justice system in Ukraine. These conclusions are published and sent to public authorities, but are rarely followed in practice.

Thus, any initiatives in the sphere of reforming of military justice have to be widely discussed in public. An important role in it is played by the media which should inform society objectively about the reform of military justice and form positive public opinion on these issues. It is necessary to involve scholars and experts in the solution of these problems in the sphere of military justice.

## The Role of an External Factor in Reforming Military Justice of Ukraine

In reforming processes of the military justice system, some role is played by an **external factor**. As regards the reform of the judicial and law-enforcement system, Ukraine listens to the recommendations of the Venetian Commission “For Democracy through Law,” US Agency for International Development (USAID) (within the program of New Justice) and other organizations. Besides, Ukraine is dependent on foreign financial aid, which is often combined with demands for legal reforms.

However, in this context, the role of the foreign factor can be estimated as rather negative. For the entire period of the independence, the foreign bodies have demanded of Ukraine consistent demilitarization, including the liquidation of bodies of military justice. For example, the important role in making decision on liquidation of military courts was played by a principled stand of the Venetian Commission “For Democracy through Law.” In 2000-2001 and 2010 it provided opinions concerning Laws of Ukraine “About judicial system” and was against existence of this institute in Ukraine, considering it an atavism of the former Soviet judicial system (Заключення Венеціанської комісії стосовно Закону України о судоустроєвстві і статусе судей, 25 октябрія 2010 года). The Ukrainian legislator decided to follow the opinion of the authoritative European expert organization, especially as it coincided with the internal political climate in the country.

Similar remarks were also made by the Venetian Commission about military prosecutor’s offices. In 2012, it approved the liquidation of military prosecutor’s offices, considering it a necessary step towards the simplification of the prosecutor’s office system. Moreover, the Venetian Commission criticized provisions of the draft of the new Law “About the Prosecutor’s Office” regarding the renewal of military prosecutor’s offices and the status of military prosecutors, though in general it acknowledged the possibility of their existence provided they conformed to European standards and practice (Коментарі Генерального директорату з прав людини і верховенства права (Директорату з прав людини) Ради Європи щодо Закону України «Про прокуратуру» від 14 жовтня 2014 року).

Now the approval and support of the relevant initiatives by foreign partners is essential for decision-making at the national level. Therefore, the efforts to examine military justice problems in Ukraine and to develop relevant proposals in this sphere are very important. Results of this activity seem to be able to stimulate the Ukrainian legislator to take more active steps in reforming the military justice system.

## The Prospects of the Renewal of Military Courts in Ukraine

Today, there are no military courts in Ukraine, although many experts and politicians speak out in favor of creating them. Public opinion can also be considered favorable for their implementation. Functioning of military justice of Ukraine in the format of the military prosecutor's office and the Military Service of Law and Order is of demonstrable low efficiency without the military court (Ляпкін, 2017). A coordinated system of the following elements should function in the state: military police—military prosecutor's office—military court.

The following are arguments in favour of military courts in Ukraine:

- **Availability of justice.** In those territories where the judicial system of Ukraine temporarily doesn't work, protection of military laws and civilians is necessary. Best of all, this task is performed by the military courts being very close to the areas of military operations or territories beyond the Ukrainian control.
- **Mobility.** As military courts aren't tied to specific administrative and territorial units, they can easily move in connection with the redeployment of military formations or a military operational and tactical situation. Besides, they can dispense justice for the civilian population in the places where the system of territorial courts doesn't work (for example, in territories beyond the Ukrainian control).
- **Efficiency.** Due to the big load of territorial courts, they consider the cases with considerable excess of procedural time limits. Military courts are capable of providing a speedy consideration of such cases because of their mobility and the professionalism of the judges.
- **Specialization.** The special subject field of the activity of military courts is constituted by the following: (1) objects are military crimes; (2) subjects are members of the military personnel; (3) the standard regulation are special norms of military law. The specificity of this sphere demands specialization of judicial system.
- **Competence and professionalism.** The specificity of the military sphere demands the appropriate level of competence of judges considering such cases. They must have profound knowledge of the system of military law, practical experience of the military service and also military security clearance (Оверчук, 2015). Some experts point out that ordinary judges can successfully solve military cases by means of conclusions of subject-matter experts (Луценко, 2017). However, the order at which the cases of the military personnel are considered by military judges demands not only higher quality of their decisions, but also an disciplinary effect.
- **Traditions and experience.** Ukraine has a long history of functioning of military courts. The system of these courts has been liquidated relatively recently. In

this regard, there is an opportunity to engage the judges who worked in military courts till 2010 (Сидоров, 2015). Besides, Ukraine has a well-organized system of preparation and training of military lawyers.

The renewal of military courts in Ukraine requires addressing a number of key issues:

- **The status of military courts.** Military courts have to be a part of judicial system, which is united in Ukraine. Within the existing judicial system, these courts can be considered as specialized. All features of their organization and activity have to be justified by the specificity of the military sphere and none may contradict the general principles of judicial authority enshrined in the Constitution and laws of Ukraine.

As creation of military courts in Ukraine is a necessity caused by a military-political situation, it is expedient to provide the temporary status of these courts. They have to be liquidated after the end of the military operations and the establishment of sovereignty of Ukraine upon its whole territory. After that, military courts have to merge with the general judicial system. In view of that, there shouldn't be essential differences from the other judicial system of Ukraine in the organization of military courts and the status of military judges.

- **The system of military courts.** Possible versions of the military courts system are the following:

(1) Three-level system of military courts. This was the system that worked till 2010. It provided military courts of garrisons as courts of the first instance; military courts of regions as appellate courts; Military Judicial Board at the level of the Supreme Court as the cassation instance. The bill № 1896 suggested returning to this option (Про внесення змін до Закону України «Про судоустрій і статус суддів» (щодо відновлення в системі загальної юрисдикції військових судів): Проект Закону України № 1896 від 30.01.2015). A similar project was supported by the Ministry of Defense of Ukraine, which disclosed that the bill of military courts provided creating 12-14 garrison courts, the Military Court of Appeal, and the Military Chamber (Законопроект щодо відновлення військових судів передбачає створення близько 12-14 гарнізонних судів і Військову палату. Інтерфакс-Україна. 11.08.2017). Such a system of military courts would correspond to the system of the military prosecutor's office, which is three-tiered. This is important as these organs work closely together. In this version, the system of military courts would be the fullest and the most autonomous. However, it would also be closed, which creates the threat of lacking external control and breaks the principle of unity of the judicial authority.

(2) Two levels of military courts: the first instance and the appeal instance. In that case, the cassation of their decisions would be exercised by the Supreme Court

in the general order. A similar model was provided by the bill № 2557, which suggested instituting local military courts of garrisons and appeal military courts (Про внесення змін до деяких законодавчих актів України (щодо утворення військових судів та окремих організаційних питань)»: Закон України № 2557 від 6.04.2015). Likewise, the bill No. 8392-1 of 01 June 2018 “On Amendments to the Law of Ukraine ‘On the Judicial System and Status of Judges’ on Military Courts” proposed creating military local courts and military courts of appeal (У ВРУ зареєстровано законопроекти щодо...).

(3) The creation of military courts only at the first instance level. In that case, the appeal of their decisions would be exercised in territorial Courts of Appeal. This makes for a closer connection of military courts with the general judicial system and is also the simplest and cheapest option. The specificity of military justice would be lost at the level of the court of appeal, however, the most important is that military courts function in the first instance, anyway.

The actual number of military judges and courts has to be determined on the basis of the requirements of hearing military cases. At the time of their liquidation in 2010, 2 appeal and 13 local military courts with 75 active judges were operating in Ukraine. Since that time, the number of crimes committed by military personnel has grown significantly. In 2017, there were registered 4577 military crimes in Ukraine, from which 2596 criminal cases were directed to court with an indictment. Besides, 1210 similar cases registered in former years were directed to court (Єдиний звіт про кримінальні правопорушення за січень-грудень 2017 р). For 8 months of 2022, 6,998 military crimes were registered, out of which 1,086 criminal proceedings were sent to court with an indictment (Ibid. за січень-серпень 2017 р). Thus, the potential workload of military courts reaches about 3000 criminal cases a year, which is comparable to the performance indicators of 10-15 general local courts with total of 100-150 judges. Accordingly, it is possible to predict the approximate number of 12-15 courts of garrisons and about 150 military judges.

- **The competence of military courts.** Till 2010, the competence of military courts was defined as hearing of cases concerning crimes of the military personnel. The jurisdiction of cases between the military courts of the garrisons and the military courts of the regions was distributed depending on the military rank of the defendants, their position or the severity of the crimes. Thus, the military courts of the garrisons, as courts of first instance, had jurisdiction over cases of crimes of persons with military ranks up to lieutenant colonel, captain of the second rank. As courts of first instance, the military courts of the regions and of the Naval Forces of Ukraine had jurisdiction over: 1) cases of crimes of persons with the military rank of colonel, captain of the 1st rank and above; 2) cases of crimes of persons holding positions from the regiment commander or ship commander

of the 1st rank and above, as well as persons equal to them in official position; 3) cases of all crimes for which, in peacetime, the possibility of imposing a sentence of life imprisonment is provided (Article 36 of the Code of Criminal Procedure of Ukraine of 1960). As a rule, if one person or a group of persons were accused of several crimes and the military court had competence at least over one of the cases, then the case was considered by the military court (article 40 of the CPC of Ukraine, 1960).

At the present stage, the competence of military courts can be considered in two ways: (1) hearing of cases about military crimes; (2) hearing of cases about the crimes committed by the military personnel. The first criterion is subject, and the second one is personal, however, both substantially coincide since, according to the Criminal Code of Ukraine, military personnel are the subjects of military crimes. Besides, it is necessary to give military courts the authority of judicial control over the actions of the military police, over the military prosecutor's office and over the application of coercive measures or criminal penalties (confinement on a guardroom or in the disciplinary battalion) to the military personnel. They can also receive powers of consideration of appeals of the military personnel and civilians against the decisions, actions or inactivity of the bodies of military management that violate human rights.

Besides, in territories where the judicial system of Ukraine doesn't work, administration of justice for the civilian population also has to be assigned to military courts. This applies to the temporarily occupied territories of Donetsk, Zaporozhye, Lugansk and Kherson regions, and also the Crimea.

- **The requirements to judges of military courts.** Judges of military courts have to comply with the general requirements to the judges established by part 1 of the article 69 of the Law "On The Judicial System and the Status of Judges." He or she must be a citizen of Ukraine, be at least 30 years of age but not older than 60, have higher legal education and at least 5 years of professional experience in law. Moreover, they have to be competent, respectable and to speak the state language. These requirements are basic and can't be reduced. Besides, the specifics of justice on the military cases provide for additional requirements to judges of military courts. They must have an officer rank and be either on active military service or in the reserves. These requirements are additional to those made to civil judges.

Candidates for military judgeship need to be provided the corresponding training related to the specificity of the military sphere. The current program of the special training, which all candidates for judgeship in Ukraine pass, doesn't provide specialization. Also the qualification examination taken by candidates for judgeship is uniform. Therefore, the special knowledge in the military sphere must be provided

to judges by their personal practical experience of the military service and special training programs or training in studying of military law.

- ***The appointment procedure of judges of military courts.*** Taking into account the abovementioned requirements, it follows that the main reservoir for military courts are: (1) sitting judges who worked in military courts before their elimination in 2010; (2) sitting judges having officer ranks and staying in the reserves or having experience of the military service in the past; (3) former staff of military prosecutor's offices; (4) other persons complying with the mentioned requirements.

The increased requirements to judges of military courts need to be observed when staffing these courts. On the other hand, the creation of military courts will demand staffing them as fast as possible. Therefore, the balance between speed and ensuring professionalism has to be observed while staffing military courts (Лапкін, 2018).

According to the legislation of Ukraine, judges can get to court in two ways: by appointment and by transfer. In both cases, a public competition for a judge post is carried out and the applicant wins who ranks the highest in rating. The rating is based on the results of a qualification examination (for candidates for the judge post) or a qualification estimation (for sitting judges). However, the operating order doesn't consider special requirements to judges of military courts.

The existing order of appointment to the judge post regulated by the Law of Ukraine "On The Judicial System and the Status of Judges" is difficult and takes considerable time. It includes 15 stages and takes on average 1,5 till 2 years. Thus, it is impossible to provide fast appointments of judges of military courts from the former military prosecutors or other military lawyers. It is possible to stuff military courts with currently sitting judges only and/or those candidates for the judge post who stay in the reserve at the time of their creation and comply with the specified requirements.

Another option is to transfer judges from other courts to military courts. As noted above, many judges who used to serve in military courts before these were liquidated in 2010 continue to serve in general courts. Some of them may want to return to the re-established military courts. In addition, there are persons with military service experience among the current judges. They could also be used in completing military vessels. In accordance with Article 82 of the Law of Ukraine "On the judiciary and the status of judges," the transfer of judges is also carried out based on the results of the relevant competition. That is, when appointed to a vacant position, current judges compete with candidates, although they have an advantage over them if they get the same position in the rating.

Thus, the current procedure for obtaining the position of a judge cannot ensure rapid staffing of military courts with specialized high-level professionals. Even if the abovementioned requirements for judges of military courts are legislated, the selection procedure will not take into account the level of their special knowledge in the military sphere.

Also for applicants for judge posts of military courts, it is necessary to provide an additional qualification examination in military law whose results would be defining.

- ***The material and social support of military courts and their judges.*** During the previous period, military courts had a special order of material support from the Ministry of Defense of Ukraine. To date, the material support of all courts is carried out by State Judicial Administration. Therefore, it is necessary to resolve the issues of interaction of this body with the Ministry of Defense concerning providing military courts. The bill № 2557 states that in respect of logistics of military courts, providing them with transport, means of communication and the military equipment and also in respect of mobilization issues, the public judicial administration interacts with the Ministry of Defense of Ukraine (Про внесення змін до деяких законодавчих актів України (щодо утворення військових судів та окремих організаційних питань): Проект Закону України № 2557 від 6.04.2015).

An increased material support of military courts can positively resolve the issue of their staffing. To employ sitting judges in military courts, it is necessary to make the position in military courts more prestigious than in the general courts. The additional material support from the Ministry of Defense can play a certain role in it, as well as the surcharge for a military rank and special working conditions in military courts (for example, obtaining the status of the combatant).

- ***Ensuring independence, impartiality and justice of the military court.*** The establishment of any features of the organization and activity of military courts creates some risks to their independence and impartiality, which should be minimized. The threat of the dependence of military courts on the military command is especially significant. For its elimination, it is necessary to exclude any participation of the bodies of military management in appointment to positions of military judges, as well as the transfer or dismissal from these positions and also bringing of military judges to justice. Thus, all personnel procedures concerning military judges have to be carried out in the same order as in the case of general courts judges. This purpose is served by such independent bodies as the High Council of Justice and the High Judicial Selection Commission in Ukraine. Powers of these bodies concerning military judges must not be limited.

The Ministry of Defense of Ukraine can participate in material support of military courts. However, it must not do so individually, but in conjunction with Public Judicial Administration of Ukraine, which is controlled by the High Council of Justice of Ukraine. Any direct contacts between the Ministry of Defense and military courts have to be minimized and take place with the participation of a self-government body of the judiciary.

The main guarantee of impartial and fair justice in military courts is that their consideration of legal cases will be carried out according to the general legal procedure provided by the procedural legislation of Ukraine. Special simplified procedures not provided for other courts must not be applied in military courts. The principles of publicity, competitiveness and ensuring of the right of defense, observance of procedural terms, and others have to be fully guaranteed. Thus, no exceptional procedural features, except jurisdiction, can be provided for these courts.

An important guarantee of their impartiality is the possibility of the appeal of solutions of military courts in the general courts. To this end, it is necessary to provide that solutions of military courts of the first instance are revised by the General Courts of Appeal of the respective areas or by the Supreme Court.

## The Military Prosecutor's Office

At the present stage, there is no military prosecutor's office in Ukraine. Instead, since 2019, there has been a civilian specialized prosecutor's office in the military and defense sphere. It is part of the unified system of the prosecutor's office of Ukraine, but enjoys some autonomy. However, after the 2019 reform, this prosecutor's office retained the structure and competence of the military prosecutor's office. Its main differences were demilitarization, which meant the loss of the status of military personnel by prosecutors and the lack of formal ties with the Ministry of Defense.

**Legal regulation.** The organization and activities of The Specialized Prosecutor's Office in the Defense Sphere are regulated by the Law of Ukraine "On the Prosecutor's Office" (Articles 7, 9), which provides for the authority of the Prosecutor General to create specialized prosecutor's offices (Про прокуратуру: Закон України № 1697-VII від 14.10.2014). At the departmental level, the issues of military prosecutors are regulated by the order "On the peculiarities of the organization of the activities of specialized prosecutors' offices in the defense sphere" № 130, dated May 17, 2023 (Про особливості організації діяльності спеціалізованих прокуратур у сфері оборони: Наказ Генерального прокурора № 130 від 17.05.2023). It establishes the priorities of the specialized prosecutor's offices in the military and

defense sphere and the objects of their activities, specifies their system, and regulates other issues.

***The system of specialized prosecutor's offices in the military and defense sphere*** consists of three levels:

(1) The Specialized Prosecutor's Office in the Defense Sphere, acting as a department of the Prosecutor General's Office. Its status is defined by the Regulations on the Specialized Prosecutor's Office in the Defense Sphere (as a Department) of the Prosecutor General's Office (Положення про Спеціалізовану прокуратуру у сфері оборони (на правах Департаменту) Офісу Генерального прокурора: затверджене Наказом Генерального прокурора № 144 від 30.05.2023). It is an independent structural subdivision of the Office of the Prosecutor General, subordinate to the Deputy Prosecutor General in accordance with the distribution of duties. It is headed by a leader who is appointed by the Prosecutor General. The Specialized Prosecutor's Office includes 3 departments: the first department as part of three sections of procedural management of pre-trial investigation and maintenance of public prosecution; the second department consists of: the section for the organization of procedural management of pre-trial investigations in the prosecutor's offices of the regions; the section for maintaining public accusations in court and supervising the observance of laws in the execution of court decisions in criminal cases; the section of supervision of compliance with laws in the conduct of operational-investigative activities; the third department consists of: the section for representing the interests of the state in court; the section of the organization of the prosecutor's activities in proceedings in cases of administrative offenses.

(2) The Specialized Prosecutor's Office in the Defense Sphere of the regions. They act on the rights of regional prosecutor's offices. Order of the Prosecutor General № 130 provides four such offices: the Specialized Prosecutor's Office in the Defense Sphere of the Central Region of Ukraine (its jurisdiction extends to military installations in the regions of Zhytomyr, Kyiv, Poltava, Sumy, Cherkasy, Chernihiv and the city of Kyiv); Specialized Prosecutor's Office in the Defense Sphere of the Southern Region (covers the regions of Vinnytsia, Kirovohrad, Mykolaiv, Odesa and Kherson, the Autonomous Republic of Crimea and the city of Sevastopol, as well as in the Black Sea naval zone, which includes the waters of the territorial sea and internal waters of Ukraine in the Black Sea); Specialized Prosecutor's Office in the Defense Sphere of the Western Region (the regions of Volyn, Zakarpattia, Ivano-Frankivsk, Lviv, Rivne, Ternopil, Khmelnytskyi and Chernivtsi); Specialized Prosecutor's Office in the Defense Sphere of the Eastern Region (the regions of Dnipropetrovsk, Donetsk, Zaporizhia, Luhansk and Kharkiv, as well as in the Azov naval zone, which includes the internal waters of Ukraine in the Sea of Azov and the Kerch Strait). Specialized Prosecutor's Offices in the Defense Sphere of the regions coordinate and

control the activities of the garrison prosecutor's offices subordinate to them. The heads of regional prosecutor's offices are appointed and dismissed by the Prosecutor General on the recommendation of the Council of Prosecutors of Ukraine.

(3) Specialized prosecutor's offices in the defense sphere of garrisons. They act on the level of district prosecutor's offices. There are 30 specialized prosecutor's offices in the defense sphere of garrisons. These offices implement the functions of the prosecutor's office within the corresponding military formations. Their heads are appointed and dismissed by the Prosecutor General on the recommendation of the Council of Prosecutors of Ukraine.

Thus, the specialized prosecutor's offices in the defense sphere has its own structure that functions independently from other bodies of the prosecutor's office, though it belongs to the general system of the prosecutor's office (Шандула, 2016). This allows for respecting the specificity of the military sphere and also guarantees independence and mobility of the offices.

The problem identified by law of the system of specialized prosecutor's offices in the defense sphere is that it doesn't correspond to the military administrative division of Ukraine with four military land zones: "North," "South," "West," and "East." (Про затвердження військово-адміністративного поділу території України: Указ Президента України № 39 від 5.02.2016). Therefore, the system of specialized prosecutor's offices in the military and defense sphere needs to be brought in line with this division.

***The status of staff members of specialized prosecutor's offices in the defense sphere*** is not affected by their functioning in the military sphere and does not differ from the status of other prosecutors. This is determined by the rule that prosecutors in Ukraine have a single status, regardless of the place of their office in the prosecutor's office of Ukraine or the administrative position that the prosecutor occupies in the prosecutor's office (Part 2, Article 15 of the Law of Ukraine "On the Prosecutor's Office").

Until 2019, military prosecutors were appointed from among officers performing military service or being in reserve. In some cases, by order of the General Prosecutor, persons who were not military personnel could be appointed to the position of prosecutors and investigators of the military prosecutor's office. Military personnel of the military prosecutor's office did military service according to the Law "The military service obligation and military service" (Про військовий обов'язок і військову службу: Закон України № 2232-XII від 25.03.1992) and other laws establishing legal and social guarantees, pension, medical and other types of provision for officers of the Armed Forces of Ukraine. In this regard, researchers note the dual-use nature of legislative regulation of service in the military prosecutor's office: Law "About the Prosecutor's Office" and the military service law (Шандула, 2017).

The draft law “On Amendments to the Law of Ukraine ‘On the Prosecutor’s Office’ to ensure the activities of specialized military prosecutors’ offices” № 7576 proposed to provide that specialized military prosecutors’ offices be staffed by servicemen: officers of the Armed Forces of Ukraine who undergo military service under a contract or who are called up for military service during mobilization or for a special period by sending them to the Prosecutor General’s Office to carry out their duties with military service. The delegation is carried out in accordance with the legislation on military duty and military service. To fill the vacant positions of the specialized military prosecutors, the Prosecutor General or the Deputy Prosecutor General for Military Affairs sends a written request to the Ministry of Defense of Ukraine with a request to send military personnel who meet the requirements of candidates for the position of prosecutor. Seconded servicemen are appointed to the positions of prosecutors and administrative positions in specialized military prosecutor’s offices.

However, this approach would mean the militarization of the prosecutor’s office and a return to the model that existed before 2019. Most likely, these initiatives will not be supported by Ukraine’s international partners.

*The competence of specialized prosecutor’s offices in the defense sphere* isn’t regulated by law. In general, it can be deemed as the implementation of functions of the prosecutor’s office in the military sphere. It is the organization and the procedural control in prejudicial investigation of military crimes, maintenance of public prosecution for these cases in the court, supervision of investigative and search efforts of law enforcement bodies in the military sphere, and also representation of the interests of the state in court in exceptional cases provided by law.

Besides, prejudicial investigation and coordination of law enforcement agencies for crime counteraction in the military sphere were conducted. In 2016, investigators of the military prosecutor’s office investigated more than 15 thousand criminal cases, 3641 indictments were sent to court, and by means of representative powers, the state obtained compensation for more than 790 million hryvnias (Мариос відзвітував про результати роботи Військової прокуратури за 2016 рік. Цензор. 17.12.16). In 2014-19 the pre-judicial investigation of military crimes and some other categories of crimes was the main activity of military prosecutor’s offices. On these cases, the military prosecutor’s office investigated, exercised prosecutor’s supervision and maintenance of public prosecution in court, so it had monopoly for criminal prosecution for military crimes.

According to the Constitution and the Code of Criminal Procedure of Ukraine, the prosecutor’s office lost function of prejudicial investigation with the beginning of functioning of the State Bureau of Investigation, whose competence included military crimes. Formally, the State and Intelligence Investigations Bureau was created

on March 1, 2016 (Про Державне бюро розслідувань: Закон України № 794-VIII від 12.11.2015). With it, military prosecutor's offices actually lost their main function of military crimes investigation (Лапкін, 2018).

The specialized prosecutor's offices in the defense sphere exercises the procedural control in these investigations. In accordance with the Order of the Prosecutor General № 130, these prosecutor's offices carry out procedural management of the pre-trial investigation of the following: crimes against the established procedure for performing military service (military criminal offenses); crimes committed during the performance of duties of military service by military personnel, persons liable for military service (including reservists, volunteers of the Territorial Defense Forces of the Armed Forces of Ukraine and volunteer formations of the territorial community) during military service and training, as well as during the performance of official duties by employees of military units, enterprises, institutions and organizations belonging to the sphere of administration of the Ministry of Defense of Ukraine, the Armed Forces of Ukraine, other military formations and public authorities which are staffed by military personnel; crimes committed in the performance of official duties by employees of the military-industrial complex of Ukraine on the territory of deployment of military units, institutions, organizations, other objects of permanent and temporary deployment of the defense forces, the military-industrial complex of Ukraine and the State Space Agency of Ukraine; crimes in the sphere of official activity and against property, whose object of encroachment is military property and/or funds for the needs of defense; other criminal offenses in the manner determined by the Code of Criminal Procedure of Ukraine, if at least one of the accomplices of the criminal offense is an above-mentioned subject or at least one offense in criminal proceedings meets the above criteria. Also, the specialized prosecutor's office in the military and defense sphere supports public prosecution in court in these criminal cases.

However, the carrying out of these functions can be problematic as the State Bureau of Investigation has a territorial structure that is incompatible with the specialized prosecutor's offices in the military and defense. It is composed of 7 Territorial Departments in Lvov, Khmelnytskyi, Nikolaev, Melitopol, Poltava, Kramatorsk, and Kiev. Thus, the creation of the Bureau leads to the need of making changes in the system of specialized prosecutor's offices in the military and defense sphere.

Specialized prosecutor's offices in the defense sphere supervise the observance of laws in the conduct of operational investigative activities by operational subdivisions: operational subdivisions of the Foreign Intelligence Service of Ukraine; management of state security of Ukraine; Main Intelligence Office of the Ministry of Defense of Ukraine; special police of the National Police of Ukraine; The Main Office of Internal Security of the Security Service of Ukraine (except operational

and investigative cases on organized and transnational crime) and the Department of Military Counterintelligence of the Security Service of Ukraine; subdivisions of the State Border Service of Ukraine; divisions of the State Bureau of Investigation.

Besides, the specialized prosecutor's office in the defense sphere represents the interests of the state in court regarding legal relations related to the activities of: the Ministry of Defense of Ukraine, the Armed Forces of Ukraine, the Ivan Chernyakhovsky National Defense University of Ukraine, the State Border Guard Service of Ukraine, the Foreign Intelligence Service of Ukraine, the Security Service of Ukraine, the State Security Department of Ukraine, the State Special Transport Service, the State Service for Special Communications and Information Protection of Ukraine, the National Guard of Ukraine, the Ministry of Strategic Industries of Ukraine, the State Export Control Service of Ukraine, the State Space Agency of Ukraine and enterprises, institutions and organizations that are subordinate to it; the State Concern Ukroboronprom and enterprises that are subordinate to it and in respect of which the corporate rights of the state are managed; the joint civil-military air traffic management system of Ukraine and the state enterprise Ukraerorukh; State Agency of the Reserve of Ukraine (on the issues of the state mobilization reserve); state customers in the field of defense and executors, co-executors (subcontractors) of the state contract (agreement) for defense procurement; other central and local law enforcement bodies of executive power, bodies for local self-government, enterprises, institutions and organizations that accumulate and store material assets of the state mobilization reserve; civil-military administrations.

Another function of specialized prosecutor's offices in the defense sphere is to supervise the observance of laws in the execution of court decisions in criminal cases, the application of other coercive measures related to the restriction of the personal freedom of citizens, as well as the organization of conveying of persons detained, taken into custody and sentenced to the deprivation of freedom: in military units, regarding service restrictions for servicemen, deprivation of a military special title, rank, rank or qualification class, deprivation of the right to occupy certain positions or engage in certain activities; exemption from serving a sentence with probation, in respect of persons exempted from criminal liability due to the transfer of bail to the collectives of military units, as well as in military units of the National Guard of Ukraine for the organization of conveying of detainees, taken into custody and sentenced to imprisonment; in rooms (cells) for temporarily detained persons of the Military Law and Order Service in the Armed Forces of Ukraine, in special wards of the Health Care Institution of the Armed Forces of Ukraine for detained servicemen, as well as in guardhouses for punishment in the form of arrest and detention; upon execution of the punishment in the form of detention of servicemen in the disciplinary battalion.

The absence of military courts negatively affects functioning of the specialized prosecutor's offices in the defense sphere. Thus, in the absence of other elements of the military justice system, there are doubts as to the expediency of preservation of the specialized prosecutor's offices in the military and defense sphere. Even with its maximum load, some experts doubt the efficiency of this body (Маркевич, 2015). Consequently, it is necessary either to develop other institutes of military justice, or to liquidate the specialized prosecutor's offices in the military and defense sphere.

### Military Service of Law and Order

The Military service of law and order in the Armed Forces of Ukraine is a special law-enforcement formation as part of the Armed Forces of Ukraine responsible for strengthening the legality, law and order and military discipline in the Armed Forces of Ukraine and also ensuring constitutional rights of the military personnel. It has acted in Ukraine since 2002. The inclusion of this body in the military justice system is debatable as it doesn't conduct prejudicial investigation. However, this body is the only specialized body responsible for providing law and order in the Armed Forces of Ukraine and therefore it is considered in this review.

**Legal regulation.** The organization and activity of the Military Service of Law and Order is regulated by law of Ukraine "About Military Service of Law and Order in the Armed Forces of Ukraine" of March 7, 2002 (Про Військову службу правопорядку у Збройних Силах України: Закон України № 3099-III від 7.03.2002). The details of its functioning are regulated by orders of the Ministry of Defense of Ukraine (Про затвердження Інструкції про організацію патрульно-постової служби Військовою службою правопорядку у Збройних Силах України: Наказ Міністерства оборони України № 515 від 10.10.2016).

**Competence.** Under the purview of Military Service of Law and Order fall: 1) providing law and order and military discipline among the military personnel of the Armed Forces of Ukraine; 2) prevention of crimes and other offences in the Armed Forces of Ukraine and their cessation; 3) protection of life, health, rights and legitimate interests of the military personnel, persons liable for military duty during military training, employees of the Armed Forces of Ukraine; 4) protection of property of the Armed Forces of Ukraine against theft and other unlawful infringements; 5) fighting subversion and acts of terrorism on military facilities. This body performs a wide range of tasks which include: execution of decisions on the maintenance of servicemen on guard duty; execution of a criminal sentence in the form of detention of servicemen in a disciplinary battalion; assistance to bodies car-

rying out operative investigative activities and pre-trial investigation, etc. According to researchers, the specialization of Military Service of Law and Order consists in distribution of its competence on the Armed Forces of Ukraine and their structural elements (Котляренко, 2013).

The Military Service of Law and Order has the right to apply physical force, special means and firearms while implementing its functions.

**System.** The Military Service of Law and Order consists of: (1) governing bodies, including the Head Department of the Military Service of Law and Order of the Armed Forces of Ukraine; Central Management in the City of Kiev and Kiev Region and Territorial Departments (Western, Southern, and Eastern); zone departments (that can be created in garrisons, military units etc); (2) divisions: protection of military facilities; uniformed police; traffic safety; special forces; (3) Training Center of the Military Service of Law and Order. Thus, the system of the Service corresponds to the structure of Armed Forces.

The general management of the Military Service of Law and Order is performed by the Minister of Defense of Ukraine through the Chief of the General Staff of Ukraine. The Minister of Defense makes decisions on the creation of divisions of the Service and defines their areas of operation. He also appoints chiefs of the Head Department of the Service, its Central and Territorial Departments, their deputies for representation of the chief of the General Staff. Other heads of structural divisions of the Military Service of Law and Order are appointed by the chief of the General Staff on the recommendation of the chief of the Head Department of the Service.

The size of the personnel of the Military Service of Law and Order is defined by the Minister of Defense of Ukraine, proceeding from dislocation of troops. The maximum size of the Service must not exceed 1,5% of the total number of the Armed Forces of Ukraine. As this number is determined by the relevant Law for 261,000 people (Про чисельність Збройних Сил України: Закон України № 235-VIII від 05.03.2015), the maximum size of the Military Service of Law and Order is 3915 employees.

**Reform.** It is planned to create military police on the basis of the Military Service of Law and Order. It is provided by the *Strategic Defensive Bulletin of Ukraine* of 2016 (Про рішення Ради національної безпеки і оборони України від 20 травня 2016 р. «Про Стратегічний оборонний бюлетень України»: Указ Президента України № 240/2016 від 6.06.2016) and of 2021 (Про рішення Ради національної безпеки і оборони України від 20 серпня 2021 р. «Про Стратегічний оборонний бюлетень України»: Указ Президента України № 473/2021 від 17.09.2021). In accordance to it, the military police must be able to perform the tasks of maintaining law and order in the system of the Ministry of Defense of Ukraine. At the same time, it is planned to develop the capabilities of investigative units and operational-search

units of the military police, and develop the capabilities of its governing bodies to ensure law and order and anti-terrorist support of potentially dangerous objects in the system of the Ministry of Defense of Ukraine. It is also expected to achieve compatibility of the military police with the relevant structures of NATO member states.

The bill of military police № 1805 was presented to parliament in 2015, however, it wasn't included in the agenda (Про військову поліцію: Проект Закону України № 1805 від 21.01.2015). Further on, the Ministry of Defense of Ukraine developed the bill of military police (Рощенко, 2017), but it did not present the results. At the beginning of 2022, new legislative initiatives in this area appeared, related to the bills "On the State Bureau of Military Justice" № 6569 (Про Державне бюро військової юстиції: Проект Закону України № 6569 від 28.01.2022) and "On the Military Police" № 6589-1 (Про Військову поліцію: Проект Закону України № 6569-1 від 15.02.2022). They are in the parliament, but have remained without consideration so far.

The main difference between military police and the existing Military Service of Law and Order is the expansion of its competence for crime investigation committed by the military personnel and/or military crimes (Лапкін, 2018). For example, the bill № 1805 provided the military police would investigate military crimes and also crimes committed by employees of the Ministry of Defense and of the Armed Forces of Ukraine during their official duties or in the territory of military facilities. *The Strategic Defensive Bulletin* suggested allotting military police with prejudicial investigation functions and carrying out operational search activity. These functions had to be implemented in the military crimes committed by the military personnel of the Armed Forces of Ukraine.

It is necessary to consider that allotting military police with such functions will be in conflict with the competence of the State Bureau of Investigation, to which investigation of military crimes is entrusted by part 4 of article 216 of the Criminal Procedure Code of Ukraine. It is supposed that investigation of such crimes by military police will be more effective because its structure corresponds to the system of the Armed Forces of Ukraine more. For example, in justifying the creation of military police, the authors of draft law № 6569-1 pointed out that the Military Law Enforcement Service in the Armed Forces of Ukraine does not have any authority to carry out operational-search measures, pre-trial investigation of military criminal offenses and bring perpetrators to criminal responsibility. In 2021, about 12,000 servicemen who left their places of service without official leave were put on the wanted list. At the same time, the bodies of the National Police of Ukraine did not conduct a proper search for these persons in the framework of their operational-search cases. The leadership of the National Police initiated the involvement of servicemen of the operational units of the State Bureau of Investigation in the search. However, during

2021, the State Bureau of Investigation opened only one operational-search case to search for a serviceman who left the place of service without official leave, and does not respond to suggestions about the need to intensify this work (Пояснювальна записка до проекту Закону «Про Військову поліцію» № 6569-1 від 15.02.2022).

However, corporate solidarity can be a problem because both the military police and objects of its activity belong to the sphere of management of the Ministry of Defense. From this point of view, the State Bureau of Investigation is more an independent, objective and impartial body. So, it is necessary to create additional guarantees of the independence of military police from the military command.

The definition of the system and structure of the military police is another important issue. In accordance with draft law No. 6569-1, the activities of the military police are managed by the chairman and his deputies. The military police will consist of the following units: 1) the central office; 2) main zonal administrations and local administrations; 3) special units; 4) guardhouse; 5) disciplinary battalions; 6) training centers.

The personnel of the military police consists of military personnel, civil servants, and other employees. The personnel will be formed, first of all, on the basis of the servicemen of the Military Law Enforcement Service in the Armed Forces of Ukraine.

The basis of the military police will be: 1) military policemen, who will perform the main functions of ensuring military discipline, preventing the commission of crimes among military personnel, adequate and prompt response both to the facts of administrative offenses and criminal acts committed by military personnel; 2) investigators who will carry out pre-trial investigation of crimes, and interrogators who will investigate criminal offenses; 3) inspectors who will carry out special prevention in the form of inspections of compliance with the legal requirements in the Armed Forces of Ukraine, other military formations, the Ministry of Defense of Ukraine, territorial defense authorities, state customers in the field of defense, and executors of the state contract (agreement) for defense procurement; 4) officers on special assignments who will assist prosecutors in representing the interests of the state in the field of defense and national security of Ukraine in courts, represent the interests of the military police in courts, as well as exercise other powers in the cases specified by law.

## Education and Preparation

Effective work of the military justice system requires a high level of training of its personnel considering specificity of the military sphere. The staff of these bodies must have a sufficient level of the general legal knowledge and also special knowledge in the sphere of military law. Such knowledge includes the basics of the tactics and methods of combat operations, departmental acts of the Ministry of Defense, disciplinary charters for military personnel, and more.

Today, studying of military law in Ukraine is provided by the training program of two higher educational institutions only: the Military Institute of the Kiev National University of Taras Shevchenko and Military Law Faculty of the National Legal University of Yaroslav the Wise.

For example, a military advocate faculty functions within the structure of the National Legal University of Yaroslav the Wise. It conducts now training of lawyers for the Ministry of Defense of Ukraine, Military Service of Law and Order, National Guard of Ukraine, Public Service of Ukraine on Emergency Situations, State Protected Service of Ukraine, and the Public Special Service of Transport. During their training at the faculty, students and cadets study about 20 special disciplines, such as history of wars and military art, tactics, Charters of the Armed Forces of Ukraine, legal work in the Armed Forces of Ukraine, the basics of military management, etc. Thus, training of graduates of the faculty provides optimum connection of fundamental legal knowledge with special skills of the military personnel (Official site of Military Law Faculty).

The training of military lawyers at the Military Faculty of Finance and Law of the Military Institute of the Kiev National University of Taras Shevchenko has a similar program. Future military lawyers are taught in two majors there: (1) "Legal support of activity of troops" for legal service of the Ministry of Defense of Ukraine; (2) "Law-enforcement activity in the Armed Forces of Ukraine" for the Military Service of Law and Order (Official site of Military Institute of Taras Shevchenko National University of Kiev).

As needed, the tasks of training military courts and military police personnel can be added to the existing majors at these universities. The problem is a small number of students. Their number is defined by the provisional order from the Ministry of Defense and other structures. The duration of the studies is 5,5 years. Thus, it is impossible to teach quickly a large number of staff for the bodies of military justice.

Another problem is that the fixed order of selection of judges and prosecutors provides an open competition for all interested in these positions. Therefore, there are no guarantees the position of the military prosecutor or the military judge will

be taken by the person having special knowledge in the military sphere. The acquisition of this knowledge is possible after appointment to the post, for example, by means of a refresher training for military prosecutors or military judges. For this purpose, it is necessary to develop appropriate programs in special educational institutions: Training Center for Prosecutors of Ukraine and National School of Judges of Ukraine. It is also possible to create their specialized units on the basis of the higher educational institutions training staff for military justice.

## Conclusions

1. There is no complete system of military justice in Ukraine. The only body functioning fully in this area is the Specialized Prosecutor's Office in the Military and Defense Sphere, which is not a military body. Separate powers belong to Military Service of Law and Order. However, their activity isn't coordinated. The necessary element of the military justice system, namely military courts, is absent.

The military justice system should be built based on the following concept: the body carrying out operational search activity and prejudicial investigation of military crimes—the body carrying out criminal prosecution on such crimes—the body considering actual cases on such crimes. This concept corresponds to the following system of military justice: military police—military prosecutor's office—military court. For this purpose, Ukraine needs to reform Military Service of Law and Order into military police and to create military courts.

2. The history of the military justice system of Ukraine shows a gradual course towards demilitarization. This course has changed since 2014, however, the changes aren't deep and systematic. Therefore, a revival of the military justice system should be considered as a temporary measure. It is necessary to provide a possibility of its drawdown with the end of the war between Ukraine and the Russian Federation and the restorative transition period after that.
3. The subject sphere of military justice demands clarification. The main criterion for its definition are the military crimes committed by the military personnel. Civilians can be subject to jurisdiction of military justice only in case of complicity in military crimes. At the same time, it is necessary to provide a possibility of distribution of jurisdiction of military justice for other than military crimes of the military personnel in exceptional cases, for example, in the absence of bodies of civil justice or in combat situations. Also, it is necessary to include issues of the appeal of decisions, actions or inactivity of the bodies of military command in the jurisdictional competence of military justice.

4. The political will of the Ukrainian authorities, first of all of the President of Ukraine since these matters belong to his competence, is necessary for reforming the military justice system. Care should be taken that the issues of the creation of military courts or military police do not become a subject of political struggles. The architecture of this reform has to be depoliticized and developed by independent experts. Support of foreign partners of Ukraine, who often spoke against the existence of military justice previously, is also expedient.
5. The reform of the military justice system has to be made comprehensively. The reforms of the military police, the military prosecutor's office and the military court have to be harmonized as regards their competence and interaction. The uniform concept of reforming of the military justice system in Ukraine has to be developed for this purpose. Researchers, representatives of bodies of military justice and military management, public figures and foreign experts have to be included in its creation.
6. The sphere of legislative regulation of the military justice system has gaps in it. At the same time, the legislative regulation of the bodies of military justice should be carried out in their entirety as they are closely linked. For this purpose, it is necessary to develop and accept a simultaneous package of laws pertaining to military courts and military police and introduce corresponding changes into the Criminal Procedural Code, the Laws About Judicial System and the Status of Judges, About the Prosecutor's Office, and others. The draft of the Military Code may be proposed which would settle the questions of the organization and activity of various bodies of military justice. The efforts of certain developers of bills (Presidential Office, the Prosecutor General's Office, the Ministry of Defense) should be coordinated from a uniform center.
7. Military courts need to be revived as part of judicial system. Their jurisdiction has to extend to military crimes, judicial control of investigation of these crimes and application to the military personnel of coercive measures, administrative cases of military command. In some cases, military courts must be given jurisdiction in consideration of all crimes committed by the military personnel and also replace civil courts in territories where the system of the general courts doesn't work.

Ukraine needs approximately 12-15 military courts with a total number of 150 judges. The creation of military courts is necessary at the level of the first instance. Military courts should not form a closed system, therefore, it is necessary to provide a possibility of the appeal of their decisions in the general Courts of Appeal or in the Supreme Court.

Judges of military courts must have special knowledge in the military sphere. Accordingly, it is necessary to provide additional requirements for the candidates: they must have officer ranks and be on military service or in reserve.

It is important that military courts have no extraordinary or special status that is forbidden by the Constitution. Therefore, all matters of their creation, the appointment of judges and the implementation of legal proceedings have to be carried out by the general rules of the judicial system of Ukraine.

8. The specialized prosecutor's offices in the defense sphere are the important element of the military justice system exercising supervision of activity of law enforcement bodies in the military sphere, the organization and the procedural control in investigation of military crimes, maintenance of public charge for these cases, and representation of the interests of the state in court. However, the existence of this prosecutor's office loses expediency due to the functioning of the State Bureau of Investigation. Therefore, it is necessary to specify its competence. It is also necessary to improve the system of this prosecutor's office so that it corresponds to the military-political structure of Ukraine.
9. The Military Service of Law and Order is the body carrying out police and disciplinary functions in the Armed Forces of Ukraine. It has to be reformed into military police, which needs to have the functions of carrying out operational search activity and prejudicial investigation in military crimes and other crimes of the military personnel. Therefore, military crimes should be excluded from the jurisdiction of the State Bureau of Investigation. Military police needs to guarantee its independence from the bodies of military management and to communicate with the military prosecutor's office and the military court in matters of functional competence.
10. The role of public organizations and the mass media in the reform of military justice is not satisfactory. To strengthen it, questions related to the reform have to be debated in public and published in the media properly.

## REFERENCES

- 50% бюджету – на війну. За що житиме Україна у 2023 році? *Українська правда*. 15.09.2022. Retrieved from: <https://www.epravda.com.ua/publications/2022/09/15/691490/>.
- В Командуванні Сухопутних військ ЗС України відбувся круглий стіл за темою: «Військова юстиція країн-партнерів: спрямована на захист військовослужбовців». 17.01.2018. Retrieved from: <http://www.mil.gov.ua/news/2018/01/17/v-ko-manduvanni-suhoputnih-vijsk-zs-ukraini-vidbuvsya-kruglij-stil-za-temoyu-vijskova-yusticiya-krain-partneriv-spryamovana-na-zahist-vijskovosluzhbovcziv/>.
- Верховний суд виступає за відновлення військових судів в Україні. *День*. 09.09.2015. Retrieved from: <https://day.kyiv.ua/uk/news/090915-verhovyy-sud-vystupaye-za-vidnovlennya-viyskovyh-sudiv-v-ukrayini>.

- Висоцька, Г. (2015). Відновленню військових судів в Україні чинить опір сама... Конституція? *Закон і Бізнес*, 37. Retrieved from: [http://zib.com.ua/ua/118588-vidnovlennyu\\_vijskovih\\_sudiv\\_v\\_ukraini\\_chinit\\_opir\\_konstituc.html](http://zib.com.ua/ua/118588-vidnovlennyu_vijskovih_sudiv_v_ukraini_chinit_opir_konstituc.html).
- Відновлення військових судів – пріоритетний крок у реформуванні військової юстиції». 19.06.2017. Retrieved from: <http://www.ukrainepravo.com/scientific-thought/pravova-pozytsiya/vidnovlennya-viyskovikh-sudiv-prioritetniy-krok-u-reformuvanni-viyskovoi-yustitsii/>.
- Військова юстиція в сучасних умовах: перспективи розвитку та реформування. 24.11.2015. Retrieved from: <http://kubg.edu.ua/struktura/pidrozdili/yurydychna-klinika-astreya/zakhody/3620-viiskova-iustytisia-v-suchasnykh-umovakh-perspektyvy-rozvytku-ta-reformuvannia-kruhlyi-stil-shcho-vidbuvsia-v-instituti-zakono-davstva-verkhovnoi-rady-ukrainy-24-lystopada-2015-r-za-uchasti-yuk-astreya.html>.
- Єдиний звіт про кримінальні правопорушення за січень-грудень 2017 р. Retrieved from: <http://www.gp.gov.ua/ua/stat.html>.
- Жолобович, И. (2016). Военная полиция: что это такое и чем она будет заниматься. *24 канал*. 10.06.2016. Retrieved from: [http://24tv.ua/ru/voennaja-policiya\\_chno\\_jeto\\_takoe\\_i\\_chem\\_ona\\_budet\\_zanimatsja\\_n694611](http://24tv.ua/ru/voennaja-policiya_chno_jeto_takoe_i_chem_ona_budet_zanimatsja_n694611).
- Заключение Венецианской комиссии относительно Закона Украины о судостроительстве и статусе судей, 25 октября 2010 года. Retrieved from: <http://pravo.ua/news.php?id=0023556>.
- Законопроект про військові суди буде у Раді на початку 2018 року. *Українське право*. 21.12.2017. Retrieved from: <http://ukrainepravo.com/news/ukraine/zakonoproekt-pro-viyskovi-sudi-prezident-vnese-u-radu-na-posatku-2018-roku/>.
- Законопроект про Військову поліцію знаходиться на розгляді в Адміністрації Президента України. Офіційний сайт Міністерства оборони України. 15.12.2017. Retrieved from: <http://www.mil.gov.ua/news/2017/12/15/zakonoproekt-pro-vijsko-vu-policiyu-znahoditsya-na-rozglyadi-v-administraczii-prezidenta/>.
- Законопроект щодо відновлення військових судів передбачає створення близько 12-14 гарнізонних судів і Військову палату. Інтерфакс-Україна. 11.08.2017. Retrieved from: <http://ua.interfax.com.ua/news/general/441875.html>.
- Капсамун, І. (2015). Час Військової прокуратури. День. 24.04.2015. Retrieved from: <https://day.kyiv.ua/uk/article/podrobyci/chas-viyskovoyi-prokuratury>.
- Коментарі Генерального директорату з прав людини і верховенства права (Директорату з прав людини) Ради Європи щодо Закону України «Про прокуратуру» від 14 жовтня 2014 року. Retrieved from: [http://www.coe.int/t/dgi/hr-natimplement/Source/echr/CoE%20review%20of%20the%20Law%20of%20Ukraine%20on%20the%20PPS\\_Final%20Ukr%20\(2\).pdf](http://www.coe.int/t/dgi/hr-natimplement/Source/echr/CoE%20review%20of%20the%20Law%20of%20Ukraine%20on%20the%20PPS_Final%20Ukr%20(2).pdf).
- Конституція України від 28.06.1996 в редакції 30.09.2016. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/print1509640862582854>.
- Концепція вдосконалення судівництва для утвердження справедливого суду в Україні відповідно до європейських стандартів: затв. Указом Президента України № 361/2006 10.05.2006. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/361/2006>.

- Котляренко, О.П. (2013). Роль примусу в правоохоронній діяльності військової служби правопорядку. *Бюлетень Міністерства юстиції України*, 6, с. 109-117. Retrieved from: [http://nbuv.gov.ua/UJRN/bmju\\_2013\\_6\\_17](http://nbuv.gov.ua/UJRN/bmju_2013_6_17).
- Кримінальний кодекс України № 2341-III від 05.04.2001. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/2341-14/>.
- Кримінальний процесуальний кодекс України № 4651-VI від 13.04.2012. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/4651-17/>.
- Кримінально-процесуальний кодекс України № 1001-05 від 28.12.1960. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/1001-05>.
- Лапкин, А.В., Авдеева, М.А. (2018). Проблемы формирования военных судов в Украине. *Юрист України*, 1(36), с. 62-71. Retrieved from: <https://dspace.nlu.edu.ua/handle/123456789/15691>.
- Лапкін, А. (2017). Відновлення військових судів в Україні: проблеми і перспективи. Сучасні виклики та актуальні проблеми судової реформи в Україні: Матеріали Міжнародної наукової конференції (Чернівці, 26-27 жовтня 2017 р). *Чернівці: Технодрук*, с. 28-31. Retrieved from: <https://drive.google.com/file/d/0Byy76vLtzkfneWEtR1VNMml5ckE/view?ts=5a1aa3ee>.
- Лапкін, А.В. (2018a). *Проблеми визначення підслідності військових злочинів. Роль та місце правоохоронних органів у розбудові демократичної правової держави: матеріали X міжнар. наук.-практ. інтернет-конф., м. Одеса, 30 березня 2018 р.* Одесса. Retrieved from: <https://dspace.nlu.edu.ua/handle/123456789/14848>.
- Лапкін, А.В. (2018b). Проблеми збереження військових прокуратур в Україні. *Вісник Південного регіонального центру Національної академії правових наук України*, 15, с. 185-191. Retrieved from: <https://dspace.nlu.edu.ua/handle/123456789/15688>.
- Лапкін, А.В. (2018с). *Створення військових судів як фактор забезпечення доступу особи до правосуддя в умовах проведення Операції Об'єднаних сил. Доступ до правосуддя у контексті судової реформи: матер. Загальнонац. юрид. форуму (м. Сєверодонецьк, 25 травн. 2018 р).* К.: Baite. Retrieved from: <https://dspace.nlu.edu.ua/handle/123456789/15692>.
- Лапкін, А.В. (2020). *Генезис системи військової юстиції в Україні. Українське військо: сучасність та історична ретроспектива: Збірник матеріалів I Міжнародної науково-практичної конференції 27 листопада 2020 р.* К.: НУОУ. Retrieved from: [https://dspace.nlu.edu.ua/browse?type=author&sort\\_by=1&order=ASC&rpp=20&etal=-1&value=%D0%9B%D0%B0%D0%BF%D0%BA%D1%96%D0%BD%2C+%D0%90.%D0%92.&offset=0](https://dspace.nlu.edu.ua/browse?type=author&sort_by=1&order=ASC&rpp=20&etal=-1&value=%D0%9B%D0%B0%D0%BF%D0%BA%D1%96%D0%BD%2C+%D0%90.%D0%92.&offset=0).
- Луценко, І. (2017). Військові суди в Україні та європейська практика. *Главком*. 21.12.2017. Retrieved from: <https://glavcom.ua/columns/ilucenko/viyskovi-sudi-v-ukrajini-ta-jevropeyska-praktika-460822.html>.
- «Мало ймовірно, що в умовах воєнного часу ми створимо військові суди» — Голова ВС Всеволод Князєв. *Юридична практика*. 8.04.2022. Retrieved from: <https://pravo.ua/malo-ymovirno-shcho-v-umovakh-voiennoho-chasu-my-stvorymo-viiskovi-sudy-holova-vs-vsevolod-kniaziev/>.

- Маркевич, А. (2015). Військова прокуратура. Чи цього чекала громадськість? *Обозреватель*. 6.12.2015. Retrieved from: <https://www.obozrevatel.com/my/life/92046-vijskova-prokuratura--chi-tsogo-chekala-gromadskist.htm>.
- Матіос відзвітував про результати роботи Військової прокуратури за 2016 рік. *Цензор*. 17.12.16. Retrieved from: [https://ua.censor.net.ua/photo\\_news/419820/matios\\_vidzvutuvav\\_pro\\_rezultaty\\_roboty\\_viyiskovoyi\\_prokuratury\\_za\\_2016\\_rik\\_info\\_grafika](https://ua.censor.net.ua/photo_news/419820/matios_vidzvutuvav_pro_rezultaty_roboty_viyiskovoyi_prokuratury_za_2016_rik_info_grafika).
- Оверчук, С. (2015). Військові суди – необхідна складова військової юстиції в Україні, Часопис Національного університету «Острозька академія». *Серія «Право»*, с. 1-20. Retrieved from: <http://lj.oa.edu.ua/articles/2015/n1/15osvyvu.pdf>.
- Офіційний сайт Міністерства оборони України. Retrieved from: <http://www.mil.gov.ua/news/2017/12/22/derzhavnim-byudzhetom-na-2018-rik-vidatki-dlya-oboronного-vidomstva-zbilsheno-na-24-3-vidsotki/>.
- Офіційний сайт Міністерства оборони України. Retrieved from: <https://www.mil.gov.ua/special/news.html?article=65426>.
- Порошенко внесе в Раді законопроект про військовий суд. Українська правда. 18.12.2017. Retrieved from: <https://www.pravda.com.ua/news/2017/12/18/7165905/>.
- Порошенко ініціював відновлення військових судів після вироку у справі щодо катастрофи ІЛ-76. ТСН. 28.03.2017. Retrieved from: <https://tsn.ua/politika/poroshenko-iniciyuvav-viyskovyi-sudi-pislya-viroku-u-spravi-schodo-katastrofi-il-76-904100.html>.
- Порошенко пропонує створити військові суди в Україні. BBC. 28.03.2017. Retrieved from: <http://www.bbc.com/ukrainian/news-39425235>.
- Пояснювальна записка до проекту Закону «Про Військову поліцію» № 6569-1 від 15.02.2022. Retrieved from: <https://itd.rada.gov.ua/billInfo/Bills/Card/39001?fbclid=IwAR31Q00l3MXZCgaEi9AIhN-rZurPIjHU02dJNLy9jbbZjXQDEE2eIOSK3IE>.
- Про військовий обов'язок і військову службу: Закон України № 2232-ХІІ від 25.03.1992. Retrieved from: <http://zakon3.rada.gov.ua/laws/show/2232-12>.
- Про військову поліцію: Проект Закону України № 1805 від 21.01.2015. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53648).
- Про Військову поліцію: Проект Закону України № 6569-1 від 15.02.2022. Retrieved from: <https://itd.rada.gov.ua/billInfo/Bills/Card/39001?fbclid=IwAR31Q00l3MXZCgaEi9AIhN-rZurPIjHU02dJNLy9jbbZjXQDEE2eIOSK3IE>.
- Про Військову службу правопорядку у Збройних Силах України: Закон України № 3099-ІІІ від 07.03.2002. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/3099-14>.
- Про внесення змін до деяких законодавчих актів України (щодо утворення військових судів та окремих організаційних питань): Проект Закону України № 2557 від 6.04.2015. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54668](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54668).
- Про внесення змін до деяких законодавчих актів України у зв'язку з прийняттям Кримінального процесуального кодексу України: Закон України № 4652-VІ від 13.04.2012. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/4652-17>.

- Про внесення змін до деяких законодавчих актів щодо удосконалення діяльності органів прокуратури в умовах збройної агресії проти України: Проект Закону України № 7058 від 16.02.2022. Retrieved from: <https://itd.rada.gov.ua/billInfo/Bills/Card/39003>.
- Про внесення змін до Закону України «Про прокуратуру» щодо забезпечення діяльності спеціалізованих військових прокуратур: Проект Закону України № 7576 від 21.07.2022. Retrieved from: <https://itd.rada.gov.ua/billInfo/Bills/Card/40074>.
- Про внесення змін до Закону України «Про судоустрій і статус суддів» (щодо відновлення в системі загальної юрисдикції військових судів): Проект Закону України № 1896 від 30.01.2015. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53765](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53765).
- Про Державне бюро військової юстиції: Проект Закону України № 6569 від 28.01.2022. Retrieved from: <https://itd.rada.gov.ua/billInfo/Bills/Card/38892>.
- Про Державне бюро військової юстиції: Проект Закону України № 8387-1 від 25.05.2018. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64103](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64103).
- Про Державне бюро військової юстиції: Проект Закону України № 8387 від 21.05.2018. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64055](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64055).
- Про Державне бюро розслідувань: Закон України № 794-VIII від 12.11.2015. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/794-19>.
- Про затвердження військово-адміністративного поділу території України: Указ Президента України № 39 від 05.02.2016. Retrieved from: <http://zakon3.rada.gov.ua/laws/show/39/2016>.
- Про затвердження Інструкції про організацію патрульно-постової служби Військовою службою правопорядку у Збройних Силах України: Наказ Міністерства оборони України № 515 від 10.10.2016. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/z1429-16>.
- Про Концепцію судово-правової реформи в Україні: Постанова Верховної Ради України № 2296-XII від 28.04.1992. Retrieved from: <http://zakon3.rada.gov.ua/laws/show/2296-12>.
- Про ліквідацію військових апеляційних та військових місцевих судів: Указ Президента України № 900/2010 від 14.09.2010. Retrieved from: <http://zakon3.rada.gov.ua/laws/show/900/2010>.
- Про національну безпеку: Закон України № 2469-VIII від 21.06.2018. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.
- Про оперативно розшукову діяльність. Закон України № 2135-XII від 18.02.1992. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/2135-12>.
- Про особливості організації діяльності спеціалізованих прокуратур у сфері оборони: Наказ Генерального прокурора № 130 від 17.05.2023. Retrieved from: <https://gp.gov.ua/ua/posts/nakazi-generalnogo-prokurora-z-osnovnih-napryamiv-prokurorskoyi-diyalnosti>.
- Про затвердження Положення про Спеціалізовану прокуратуру у сфері оборони (на правах Департаменту) Офісу Генерального прокурора: Наказ Генерального прокурора № 144 від 30.05.2023. Retrieved from: <https://gp.gov.ua/ua/posts/polozhennya-pro-samostijni-strukturni-pidrozdili>.

- Про перейменування військових трибуналів України у військові суди України і продовження повноважень їх суддів: Постанова Верховної Ради України № 2979-XII від 03.02.1993. Retrieved from: <http://zakon3.rada.gov.ua/laws/show/2979-12>.
- Про прокуратуру: Закон України № 1697-VII від 14.10.2014. Retrieved from: <http://zakon4.rada.gov.ua/laws/show/1697-18>.
- Про прокуратуру: Проект Закону України № 3541 від 05.11.2013. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=48935](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48935).
- Про рішення Ради національної безпеки і оборони України від 20 травня 2016 р. «Про Стратегічний оборонний бюлетень України»: Указ Президента України № 240/2016 від 06.06.2016. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/240/2016>.
- Про рішення Ради національної безпеки і оборони України від 6 травня 2015 року «Про Стратегію національної безпеки України»: Указ Президента України № 287/2015 від 26.05.2015. Retrieved from: <http://zakon3.rada.gov.ua/laws/show/287/2015>.
- Про рішення Ради національної безпеки та оборони України від 20 серпня 2021 р. «Про Стратегічний оборонний бюлетень України»: Указ Президента України № 473/2021 від 17.09.2021. Retrieved from: <https://zakon.rada.gov.ua/laws/show/n0063525-21#Text>.
- Про розподіл Зон діяльності органів управління та підрозділів Військової служби правопорядку у Збройних Силах України: Наказ Міністерства оборони України № 253 від 12.05.2016. Retrieved from: <https://www.zakon-i-normativ.info/index.php/component/lica/?href=0&view=text&base=1&id=1641734&menu=1>.
- Про Стратегію реформування судоустрою, судочинства та суміжних правових інститутів на 2015-2020 роки: Указ Президента України № 276/2015 від 20.05.2015. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/276/2015>.
- Про судоустрій і статус суддів: Закон України № 1402-VIII від 2.06.2016. Retrieved from: <http://zakon4.rada.gov.ua/laws/show/1402-19>.
- Про судоустрій і статус суддів: Закон України № 2453-VI від 7.07.2010. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/2453-17>.
- Про судоустрій України: Закон України № 2022-X від 5.06.1981. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/2022-10/>.
- Про судоустрій України: Закон України № 3018-III від 7.02.2002. Retrieved from: <http://zakon4.rada.gov.ua/laws/show/3018-14/ed20020207/>.
- Про чисельність Збройних Сил України: Закон України № 235-VIII від 5.03.2015. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/235-19>.
- Рощенко, О. (2017). Міноборони пропонує створити військову поліцію. Українська правда. 15.12.2017. Retrieved from: <https://www.pravda.com.ua/news/2017/12/15/7165624/>.
- Сидоров, Є. (2015). Військові суди: назад до строю. Українська правда. 19.05.2015. Retrieved from: <https://www.pravda.com.ua/columns/2015/05/19/7068292/>.
- У ВРУ зареєстровано законопроекти щодо утворення військових судів. Юридична газета. 05 червня 2018. Retrieved from: <https://yur-gazeta.com/golovna/u-vru-zareestrovano-zakonoproekti-shchodo-utvorenniya-viyskovih-sudiv.html>.

- Шандула, О. (2016). Щодо визначення статусу військових прокуратур на сучасному етапі. *Юрист України*, 1-2, с. 47-52. Retrieved from: [http://nbuv.gov.ua/UJRN/uy\\_2016\\_1-2\\_10](http://nbuv.gov.ua/UJRN/uy_2016_1-2_10).
- Шандула, О. (2017). Особливості правового статусу прокурорів військових прокуратур. *Вісник Національної академії правових наук України*, 1, с. 173-181. Retrieved from: [http://nbuv.gov.ua/UJRN/vapny\\_2017\\_1\\_18](http://nbuv.gov.ua/UJRN/vapny_2017_1_18).
- Шульгина, А., Собко, Я. (2015). По закону военного времени. *Судебно-юридическая газета*, 33-34, с. 6. Retrieved from: <http://sud.ua/newspaper/2015/09/21/81144-po-zakony-voennogo-vremeni/print>.
- Legal Frame of the Security Sector Reform. 5.10.2017. Retrieved from: <http://legalforum.nlu.edu.ua/en/events/workshop-of-the-geneva-centre-for-the-democratic-control-of-armed-forces-dcaf-legal-frame-of-the-security-sector-reform-october-5th/>.
- Military Institute of Taras Shevchenko National University of Kiev. Official site. Retrieved from: <http://mil.univ.kiev.ua/>.
- Military Law Faculty. Official site. Retrieved from: <http://nlu.edu.ua/>.