

Note from the Field

Access to Justice Amid War in Ukraine Gateway

MILITARY JUSTICE IN UKRAINE: RENAISSANCE DURING WARTIME

Oksana Kaplina¹, Serhii Kravtsov² and Olena Leyba³

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- 1 Dr. Sc. (Law), Professor, Head of the Department of Criminal Procedure, Yaroslav the Wise National Law University, Kharkiv, Ukraine o-kaplina@ukr.net o.v.kaplina@nlu.edu.ua
Corresponding author, responsible for research methodology, writing and supervising. **Competing interests:** No competing interests were announced. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations, including the Supreme Court, despite the fact that she is serving as a Member of the Consultative Board of the Supreme Court.
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Cand. of Science of Law (*Equiv. Ph.D.*), Associate Professor, Associate Professor of the Department of Civil Procedure, Yaroslav the Wise National Law University, Kharkiv, Ukraine kravtsov_serg@ukr.net <https://orcid.org/0000-0002-8270-193X>
Co-author, responsible for data collection and writing (Use Credit taxonomy).
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- 3 Cand. of Science of Law (*Equiv. Ph.D.*), Assistant of the Department of Criminal Procedure, Yaroslav the Wise National Law University, Kharkiv, Ukraine elena008888@gmail.com <https://orcid.org/0000-0001-9416-9357> **Co-author**, responsible for data collection and writing. **Competing interests:** No competing interests were announced by the author. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

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ABSTRACT

In the article, the authors raise issues that are relevant for the modern legal system of Ukraine, related to the need to revive the military justice system and, in particular, military courts. The authors emphasize that during the peaceful existence of Ukraine, a dangerous illusion was formed in the society regarding the unnecessary functioning of military justice in the state, however, unforeseen realities fundamentally changed the liberal ideas of peacetime. After the beginning of the armed aggression of the Russian Federation against Ukraine, the work of many courts was completely paralyzed, the judges did not have an algorithm of actions in war conditions, they urgently left for safe cities, including outside the territory of Ukraine, leaving proceedings, documentation, unfinished cases. The study allowed the authors to come to the conclusion that in a situation of continuing armed aggression, the presence of powerful Armed Forces in the state, and when the country is forced to fight for its independence, it is the military courts that are able to ensure legality and exercise justice and judicial control in accordance with their subject jurisdiction. In order to determine the optimal model of military justice, the authors examined the genesis of approaches that existed in society and characterized its attitude to the system of military justice. They analyzed the precedent practice of the European Court of Human Rights, in the context of alleged violations of Art. 6 of the Criminal Code during the administration of justice by military courts, as well as systematized key approaches developed by the Court, which are proposed to be taken into account when restoring the system of military courts in Ukraine. In addition, the authors systematized the existing models of military justice in the world, identified correlations that, apparently, led to the rejection of military justice by some countries, provided detailed arguments about the need to restore it in Ukraine, and indicated promising directions for further scientific research in this area.

1 INTRODUCTION

During the peaceful existence of Ukraine, a dangerous illusion was formed in society regarding the uselessness of functioning of the military justice, the military infrastructure, and later – of the existence of powerful armed forces altogether. The need to refuse military justice was reduced to the fact that:

- 1) the functioning of the military courts is not consistent with Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁴ (hereinafter referred to as the ECHR) and the case-law of the European Court of Human Rights (hereinafter referred to as the ECtHR);
- 2) the existence of military courts contradicts part 6 Art. 125 of the Constitution of Ukraine⁵, which prohibits the creation of extraordinary and special courts;
- 3) 'the military in the mantle' (that is, judges who have officer ranks) consider cases against the established procedure for military service (military offenses), and hence cannot be objective;
- 4) a judge of a military court cannot be completely impartial, since he/she is subordinate to the command. Close communication of military courts with the military sphere can lead to

4 The Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 25 June 2022.

5 Constitution of Ukraine: Law of Ukraine of 28 June No. 27-IX of 1996 <<https://zakon.rada.gov.ua/laws/show/254/k/96-vr#Text>> accessed 28 June 2022.

interference in the justice process by commanders of military units or officials of the Ministry of Defense of Ukraine. Financing of military courts at the expense of the Ministry of Defense of Ukraine poses a threat of material pressure on these courts;

- 5) cases considered in military courts do not have features significant enough to establish the need of a system of the military courts;
- 6) military courts do not have their own separate sphere of jurisdiction, and only deal with a narrow subject area – cases of war crimes, so conflicts of jurisdictions of military and local courts may arise;
- 7) the peculiarities of the system of military courts, which does not correspond to the administrative-territorial structure of Ukraine, according to which all other courts in the state are built, creates problems with the definition of courts where decisions of military courts can be reviewed. First of all, this concerns the appeal, which must be ensured in all cases;
- 8) there is a problem with financing, namely, with the creation of military courts, the need is for significant financial resources, which are lacking in the context of reform processes and the economic crisis;
- 9) the reduction of the sphere of military justice is a steady trend around the world.

However, unforeseen realities radically changed the liberal ideas of peacetime regarding the uselessness of military justice. In 2014, an anti-terrorist operation (operation of the joint forces) and, in fact, a war began in Ukraine, which renewed the discussion about the functioning of military justice in Ukraine in general and military courts in particular. However, in eight years of political discussion, the system of military justice was never created. The reforms sometimes became the subject of political speculations, populist slogans, contradictory judgments, promises, but, unfortunately, not a priority direction of state policy, the focus of political will, which caused periodical emergence and fading of interest in the problems of creating a system of military justice in Ukraine.

The beginning of the full-scale armed aggression of the Russian Federation against Ukraine revealed the truth of the well-known proverb ‘if you want peace - prepare for war.’

In the first days of the armed aggression of the Russian Federation against Ukraine, the work of some courts was completely paralyzed. In addition, in case of threat to the life, health and safety of the participants of the court proceedings and court visitors, the judges decided to suspend the implementation of the proceedings until the circumstances that had led to the termination of the proceedings were eliminated. And such a suspension in many cases lasts until now.

During the hostilities in the first months of the war, six court premises were destroyed or significantly damaged, including four appellate courts. Rocket fire destroyed the historic building of the Kharkiv Court of Appeal, the Economic Court of Mykolaiv region, damaged buildings of the Chernihiv Court of Appeal and the Economic Court of Chernihiv region.

The system of Ukrainian procedural legislation was also unprepared to ensure the proper functioning of legal institutions because procedural codes were adopted in peacetime and have been designed for peacetime. This led to the urgent development and issuing by the Supreme Court of the letters of explanation ‘On Certain Issues of Criminal Proceedings under Martial Law’. In addition, on 6 March 2022, due to the inability of courts to administer justice, the President of the Supreme Court by his order changed the territorial jurisdiction of court cases of 48 Ukrainian courts.⁶

6 Letter from the Supreme Court No 1/0/2/22 ‘On Certain Issues of Criminal Proceedings in The Condition Of Martial Law’ of 3 March 2022 <https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Inform_lyst_2022_03_03.pdf> accessed 21 June 2022.

However, despite the difficult situation, law enforcement agencies continued to function and demonstrated not only resistance to the enemy, but also carried out pre-trial investigation of the crimes committed. This necessitated the consideration by investigating judges of petitions for selection of preventive measures, measures to ensure criminal proceedings, conduct of investigative (search) and secret investigative (search) actions. In addition, as of 1 July 2022, information was entered into the Unified Register of Pre-Trial Investigations (URPI) and pre-trial investigations were initiated regarding 20,699 crimes of aggression and war crimes; 10,268 crimes against national security. The pre-trial investigation of the so-called 'main' case of the Russian aggression against Ukraine is being carried out, and 623 persons-representatives of the military-political leadership of the aggressor country were notified of suspicion in absentia.⁷ These statistics reflect only the war crimes committed after 24 February 2022, however, investigators and prosecutors faced the problem of obtaining rulings for investigative and secret investigative actions, election of preventive measures against detainees, obtaining rulings on the application of measures to ensure criminal proceedings, etc., because the usual system of territorial jurisdiction was destroyed.

All of the above gives grounds not only to raise the question of the expediency of creating and functioning of the military justice system in the state, which, even in conditions of war, would allow not to stop the execution by the courts of the constitutional function of administering justice and judicial control, but also to substantiate the expediency of its existence in the state.

2 EVOLUTION OF VIEWS ON MILITARY JUSTICE IN UKRAINE

The system of military justice of Ukraine for a long time was characterized by contradictory tendencies: some military justice bodies (for example, the Specialized Prosecutor's Office in the military and defense sphere) have been restored and are working effectively; others have been eliminated but there are disputes about their revival (for example, the resumption of the work of military courts). There is also a proposal to create a State Military Bureau of Investigation.

The rich experience of the functioning of military justice bodies in Ukraine was gained mainly during the time when Ukraine was a part of the Soviet Union. This fact may have led to an intuitive denial of such experience and attitude to the military justice bodies as vestiges of the Soviet past and the desire for a gradual rejection of them.

At the time of Ukraine's declaration of independence on 24 August 1991, there were military justice bodies functioning in the state, namely, in the military tribunals and in the military prosecutor's office. Taking into account the specifics of the activities of military formations, military courts should be retained in the system of general courts, which are significantly reformed and exempt from any dependence on the military command. The highest instance of military justice shall be the military Collegium of the Supreme Court as an appellate instance in cases considered by district military courts of the first instance, except for cases considered by judges with an expanded panel of judicial assessors and as a cassation instance in all cases considered by military courts of garrisons, districts, in including cases considered with the participation of judicial assessors.

Thus, at the initial stage of judicial and legal reform in Ukraine after the proclamation of independence, a strategic decision was made to preserve military justice with its partial

⁷ See 'Crimes Committed during a Full-scale Invasion of the Russian Federation' (*Official website of the Office of the Prosecutor General: official web portal*) <<https://www.gp.gov.ua>> accessed 21 June 2022.

reform, which was made in February 1993. By the resolution of the Verkhovna Rada of Ukraine military tribunals were renamed into military courts.

On 15 November 1991, the Law 'On the Prosecutor's Office'⁸ enshrined the creation of military prosecutor's offices, defined their system, and established requirements for their employees.

In 1994, the law of Ukraine 'On the Judiciary of the Ukrainian USSR'⁹ of 1981 was supplemented by Chapter 3-1 'Military Courts', which regulated the issues of their organization and functioning. Military courts functioned until 2010.

In 2002, the Military Law Enforcement Service was established in Ukraine¹⁰, which, as we can see, completed the formation of a system of military justice.

Gradually, at the end of the first decade of the new century, the idea of liquidating military courts was actively discussed, which led to the beginning of the stage of the military justice crisis. The concept of improving the judiciary to establish a fair trial in Ukraine in accordance with the European standards was approved¹¹, which did not provide for military courts in the judicial system of Ukraine. In particular, the Decree of the President of Ukraine Viktor Yushchenko of 10 May 2006 approved the 'Concept of Improving the Judiciary to Establish a Fair Trial in Ukraine in Accordance with European Standards', which did not provide for military courts in the judicial system of Ukraine. Implementing the provisions of this program document, the President of Ukraine, Viktor Yanukovich, who was known for his views aimed at the demilitarization of Ukraine, in September 2010 issued a Decree by which he liquidated 15 military courts, including 2 appellate and 13 local ones, where 75 military judges worked.

Among other things, the liquidation of the system of military courts was justified by the fact that the number of cases considered by them is so insignificant that their maintenance is economically impractical. The western experts expressed their position on the inefficiency of the functioning of military courts, and therefore the inexpediency of their existence.¹² It was also envisaged to completely liquidate the specialized prosecutor's office, which was entrusted with the authority to supervise compliance with laws in the military sphere. By the way, it was also planned to reduce the number of the Armed Forces of Ukraine to 70 thousand people.

Attitude to the military justice system has changed significantly after the aggravation of the military-political situation in Ukraine in 2014. The Law of Ukraine 'On the Prosecutor's Office' in August 2014 was amended to create a military prosecutor's office, which in fact did not interrupt its work, and since 2012 has been reorganized into the prosecutor's office to monitor compliance with laws in the military sphere. Subsequently, the new Law 'On the

8 The Law of Ukraine 'On the Prosecutor's Office' № 1789-XII of 05 November 1991 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<http://zakon5.rada.gov.ua/laws/show/1789-12>> accessed 25 June 2022.

9 The Law of Ukraine 'On the Judiciary of Ukraine' № 2022-X of 05 June 1981 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/2022-10#Text>> accessed 25 June 2022.

10 The Law of Ukraine 'On the Military Law Enforcement Service in the Armed Forces of Ukraine' № 3099-III of 07 March 2002 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/3099-14#Text>> accessed 25 June 2022.

11 Decree of the President of Ukraine 'The Concept of Improving the Judiciary to Establish a Fair Trial in Ukraine in Accordance with European Standards' № 361/2006 of 10 May 2006 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/361/2006#Text>> accessed 25 June 2022.

12 S Overchuk, 'Military Courts Are a Necessary Component of Military Justice in Ukraine' (2015) 1 (11) *Journal of the National University of Ostroh Academy. Series 'Law'*.

Prosecutor's Office'¹³ enshrined the status of military prosecutor's offices as a separate part of the prosecutor's office system.

It is inconsequential that it is the system of military justice bodies that can ensure the effectiveness of functioning, since only the completed system is able to work smoothly and perform the function that the state relies on it.

If we talk about the system in military justice, we can consider it in a broad and narrow sense. In the narrow sense, military justice means only military courts. In a broad sense, in our opinion, the concept of military justice covers interconnected judicial and law enforcement bodies, the competence of which extends to legal relations concerning the organization and activities of the Armed Forces of Ukraine and other paramilitary formations, as well as persons who are in their composition and have the status of a military serviceman.

Based on this understanding, the following bodies can be attributed to the system of military justice:

I) Military Law Enforcement Service in the Armed Forces of Ukraine is a special law enforcement formation within the Armed Forces of Ukraine, designed to ensure law and order and military discipline among servicemen of the Armed Forces of Ukraine in places of deployment of military units, in military educational institutions, institutions and organizations, military towns, on the streets and in public places; to fight with and prevent criminal and other offenses in the Armed Forces of Ukraine; to protect the life, health, rights and legitimate interests of servicemen, conscripts during the trainings, employees of the Armed Forces of Ukraine, as well as to protect the property of the Armed Forces of Ukraine from theft and other unlawful encroachments, and to participate in countering sabotage manifestations and terrorist acts at military facilities.

The military law enforcement service in Ukraine, as noted above, was established in 2002, and operates on the basis of the Law of Ukraine.¹⁴

Among the tasks of the Military Law Enforcement Service in the Armed Forces of Ukraine, there are, in particular: a) identifying the causes, prerequisites and circumstances of criminal and other offenses committed in military units and military facilities; search for persons who voluntarily left military units (places of service); b) prevention of commission and termination of criminal and other offenses in the Armed Forces of Ukraine; c) participation in the protection of military facilities and ensuring public order and military discipline among military personnel in places of deployment of military units, military towns, on the streets and in public places; d) execution in cases stipulated by law of decisions on the detention of military personnel in the guard watch; e) ensuring the execution of criminal penalties against military personnel who, according to the court verdict, are sentenced to be detained in a disciplinary battalion; f) participation in countering sabotage manifestations and terrorist acts at military facilities, etc.

When deciding on the introduction of a martial law or state of emergency regime in Ukraine or in some of its territories, the Law Enforcement Service is additionally tasked with: a) participation in the fight against hostile sabotage and reconnaissance groups on the territory of Ukraine; b) organization of collection, escort and protection of prisoners of war from the places (localities) where they are held after their capture, to the camps for prisoners of war; c)

13 See: Official website of the Verkhovna Rada of Ukraine: official web portal <<https://zakon.rada.gov.ua/laws/show/1697-18#Text>> accessed 25 June 2022.

14 The Law of Ukraine 'On the Military Law Enforcement Service in the Armed Forces of Ukraine' of 7 March 2002 No 3099-III (as amended on 1 April 2022) (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/3099-14#Text>> accessed 25 June 2022.

ensuring compliance with the curfew in garrisons; d) protection of military facilities, military towns and their population, assistance in its evacuation; e) restoration and maintenance of order and discipline in military units; f) control over the movement of vehicles and transportation of goods of the Armed Forces of Ukraine (Art. 3 of the Law of Ukraine).

As you can see, the Military Law Enforcement Service in the Armed Forces of Ukraine is not empowered to carry out pre-trial investigation of military criminal offenses, although for a long time a proposal was discussed to create military police on its basis, which would have these powers.

However, there are certain vulnerabilities associated with doctrinal ideas regarding ensuring the impartiality of the exercise of their powers by such a pre-trial investigation body. However, among the principles of formation and functioning of the pre-trial investigation body there are: 1) out-of-departmental status; 2) independence from any public authorities, local self-government bodies, public associations and organizations; 3) full institutional independence of the investigative function performed. It is in such synergy that the objectivity and impartiality of the investigation should be ensured. This was also indicated by the Constitutional Court of Ukraine, in the Decision of 24 April 2018 in the case on the constitutional submission of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights regarding the compliance (constitutionality) of part six of Art. 216 of the CPC of Ukraine. In its legal position, the body of constitutional jurisdiction noted that

the independence of the investigation of violations of human rights to life and respect for human dignity... means, in particular, that from the point of view of an impartial observer there should not be any doubts about the institutional (hierarchical) independence of the state body (its officials), authorized to carry out an official investigation... In this aspect, the independence of the investigation cannot be achieved if the competent public authority (its officials) is institutionally dependent on the body (its officials) to which the system is subordinated.¹⁵

Therefore, the hierarchical subordination of the law enforcement service in the Armed Forces of Ukraine to the Ministry of Defense of Ukraine cannot ensure the independence of the pre-trial investigation of criminal offenses committed by military personnel, and thus - the fulfillment of the state's positive obligations to ensure a quick, complete, and most importantly, impartial investigation so that everyone who has committed a criminal offense is brought to justice to the extent of his/her guilt, and no innocent person was accused or convicted, which stem from Art. 8 of the ECHR and Art. 2 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CrimPC of Ukraine).¹⁶¹⁷

(ii) Military Prosecutor's Office.

It should be noted that the Specialized Prosecutor's Office in the military and defense sphere has been introduced and operates in Ukraine at the moment. It is the only body of military justice that fully functions and, even in conditions of imposed martial law and armed aggression, performs the functions assigned to it by Art. 131-1 of the Constitution of Ukraine and the Law of Ukraine 'On the Prosecutor's Office': organizes and procedurally

15 Decision of the Constitutional Court of Ukraine of 24 April 2018 No.3-p/2018 in the case No 1-22/2018 (762/17) by the constitutional submission of the Verkhovna Rada Commissioner for Human Rights on the conformity (constitutionality) of part six of Art. 216 of the CrimPC of Ukraine (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/v003p710-18#Text>> accessed 25 June 2022.

16 The Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 25 June 2022.

17 Criminal Procedure Code of Ukraine of 13 April 2012 No. 4651-VI (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/4651-17#Text>> accessed 25 June 2022.

manages pre-trial investigation of war and war crimes, supports public prosecution in courts in these cases, carries out¹⁸¹⁹ supervision of secret and other investigative actions of law enforcement agencies.

(iii) Military courts.

Ukraine has not created a system of military courts, the expediency of which is the subject of this study.

3. FOREIGN EXPERIENCE AND PRACTICE OF THE ECtHR IN RELATION TO MILITARY COURTS

3.1 Experience of states in creation of military courts

Analysis of the military justice system of about 60 states gives grounds to point out that there are 3 main models of building a system of military courts in the world.²⁰ *The first model* exists in states in which military courts operate on a permanent basis, both in peacetime and during hostilities, both on the territory of the state and outside its territory, for example, in military bases outside the country. It is this model that exists in the UK, Spain, Italy, Ireland, Canada, the People's Republic of China, Latin American countries (Argentina, Brazil, Venezuela, Colombia, Peru, Chile), Slovakia, the USA, Turkey, Switzerland, the countries of the former Soviet Union: the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan, the Republic of Uzbekistan.

The second model is applied in those states where there is a 'mixed jurisdiction', that is, military 'courts' operate on a permanent basis in general civil courts. Moreover, this is not a full-fledged link of the judicial system, but only chambers, departments, council offices, etc., formed from officers who have a legal education. Such courts may also have a mixed composition of civilian and military judges. This model operates in Belgium, Bulgaria, the Netherlands, Norway, Croatia, France, Finland, and Hungary.

The third model is introduced in those states where military courts begin to exercise their powers during war or exercise them if the state has military bases abroad. In other instances, cases against military personnel are considered by civil courts of general jurisdiction. These models of military justice are created in Austria, Denmark, Georgia, the Czech Republic, Germany.²¹

According to our estimates, military courts operate in more than 40 countries of the world, including 12 European countries. In fact, every fifth state that has its own army, has military courts.

18 Constitution of Ukraine of 28 June 1996 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) < https://zakon.rada.gov.ua/laws/show/254_k/96-vr#Text > accessed 25 June 2022.

19 The Law of Ukraine 'On the Prosecutor's Office' No 1697-VIII of 14 October 2014 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) < <https://zakon.rada.gov.ua/laws/show/1697-18#Text> > accessed 25 June 2022.

20 See: Comité Directeur pour les Droits de l'Homme. Contribution à l'exercice de 'monitoring' du Comité des Ministres. Procédures Judiciaires devant les Tribunaux Militaires. CDDH (2003)015 addendum III. Strasbourg, le 16 juin 2003 <<https://rm.coe.int/09000016804600ef>> accessed 25 June 2022.

21 See in more detail: F Andreu-Guzmán, *Fuero militar y derecho internacional : Los tribunales militares y las graves violaciones a los derechos humanos* (Comisión Colombiana de Juristas 2003) 137-149 (366); Kyle BJ, Reiter AG, *Military Courts, Civil-Military Relations, and the Legal Battle for Democracy: The Politics of Military Justice* (Routledge 2021).

Studying the experience of reforming the military justice system in the countries of the former Soviet Union after its collapse, we saw the following pattern.^{22 23}

The Republic of Estonia has a population of 1,331,796 as of 2022²⁴, and the armed forces account for about 5,500 troops²⁵.

The population of the Republic of Latvia as of 2022 is 1,875,757²⁶. Latvia's National Armed Forces consist of 6,700 professional servicemen and 9,300 National Guardsmen (a total of 16,000 people)²⁷.

The Republic of Moldova, which has a population of 2,604,000 as of 2022²⁸, has an armed force of about 6,000 persons²⁹.

Georgia has a population of 3,688,600³⁰ and has armed forces of 37,000 people.³¹

The logic of justifying the decision to transfer the committed war crimes to the jurisdiction of ordinary local courts of these states is clear, since the costs of maintaining military courts are not proportional to the number of war crimes that can hypothetically be committed.

There is another example: Israel. The population of this country is 9,449,000 people³². The total number of regular armed forces of the IDF is 173,000 soldiers.³³

Such parallels can be drawn regarding the construction of military justice in Ukraine.

As of 2022, the population of Ukraine is 41,167,300 people³⁴. In accordance with Art. 1 of the Law of Ukraine 'On the Number of Armed Forces of Ukraine'³⁵ as of 1 January 2022, the

22 The population as of 2022 according to the Portal of official statistics <<https://osp.stat.gov.lt/lietuvos-gyventojai-2020/salies-gyventojai/gyventoju-skaicius-ir-sudetis>> accessed 25 June 2022.

23 The number of personnel of the national defense system who are undergoing professional military service. According to the Ministry of National Defense of the Republic of Lithuania. <<https://kam.lt/personalas/>> accessed 25 June 2022.

24 Population as of 2022 according to the Estonia Statistics Website <<https://www.stat.ee/et/avasta-statistikat/valdkonnad/rahvastik/rahvaarv>> accessed 25 June 2022.

25 The Estonian Defense Forces are peaceful as of 2022, according to the Defense Resources Council. <<https://elukutse.ee/kaitsevae-uksudet/>> accessed 25 June 2022.

26 The population as of 2022 according to the Official Statistics Portal. <https://data.stat.gov.lv/pvweb/lv/OSP_PUB/START__POP__IR__IRS/IRS010/table/tableViewLayout1/> accessed 25 June 2022.

27 The National Armed Forces include the following military formations: Regular Forces – 6,700 troops, National Guard – 9,300 and reserves – 6,000 reserve soldiers as of 2022, according to the website of the National Armed Forces <<https://www.mil.lv/lv/par-mums>> accessed 25 June 2022.

28 The population as of 2022 according to the National Bureau of Statistics. <<https://statistica.gov.md/category.php?l=ro&idc=103&>> accessed 25 June 2022.

29 As of 2022, according to the website Global Firepower (GFP) <<https://www.globalfirepower.com/active-military-manpower.php>> accessed 25 June 2022.

30 The population as of 2022 according to the National Statistics Office of Georgia <<https://www.geostat.ge/ka/modules/categories/316/mosakhleoba-da-demografia>> accessed 25 June 2022.

31 The number of the Georgian Defense Forces (staff of military personnel) as of 2022 amounted to no more than 37,000 people according to the Legislative Bulletin of Georgia <<https://matsne.gov.ge/ka/document/view/5062018?publication=0>> accessed 25 June 2022.

32 According to the data of the Central Bureau of Statistics as of 31 December 2021 <<https://www.cbs.gov.il/en/mediarelease/Pages/2021/Population-of-Israel-on-the-Eve-of-2022.aspx>> accessed 25 June 2022.

33 As of 2022, according to the website Global Firepower (GFP) <https://www.globalfirepower.com/country-military-strength-detail.php?country_id=israel> accessed 25 June 2022.

34 According to the State Statistics Service of Ukraine, excluding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol <<https://ukrstat.gov.ua/>> accessed 25 June 2022.

35 The Law of Ukraine 'On the Number of Armed Forces of Ukraine' of 05 March 2015 No 235-VIII (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/235-19#n5>> accessed 25 June 2022.

number of armed forces in the amount of 261,000 people was approved, including 215,000 servicemen.

In May 2022, the President of Ukraine Volodymyr Zelenskyy said that currently the Armed Forces of Ukraine consist of 700,000 servicemen.³⁶ The military command iterates that there is the need to increase this number to 1 million.

3.2 The ECtHR case law related to the military courts

The ECtHR has repeatedly appealed to consider issues regarding the functioning of military courts in states. They were mainly raised in the context of alleged violations of Art. 6 of the ECHR. In its precedents, the ECtHR has developed key approaches that should be taken into account when creating and operating military courts.

The first approach is that

the Convention applies in principle to military personnel, not just civilians. Arts. 1 and 14 state that 'every person under jurisdiction of the Contracting States shall enjoy 'without discrimination' the rights and freedoms set forth in Section I. However, during the interpretation and application of the Convention ... The Court shall bear in mind the peculiarities of military life and its impact on the situation of individual servicemen (para. 54).³⁷

This means that each serviceman, having suffered a violation of the rights provided for by the ECHR, can also apply for their protection.

The second approach is due to the fact that, in principle, the ECtHR does not regard the existence of military courts negatively. 'The consideration by military tribunals of criminal charges against military³⁸ personnel in principle does not contradict the provisions of Art. 6 of the Convention.'³⁹

The third approach is that there is no reason to consider judges of military courts less professional than their colleagues from the general courts, since they have undergone the same professional training as their 'civilian' colleagues.

The fourth and, in our opinion, the most important approach is that the Convention allows the functioning of military courts only as long as there are sufficient guarantees that ensure their independence and impartiality.⁴⁰ As noted in the case of *Bryan v. the United Kingdom* judgment:

In order to establish whether a tribunal can be considered as 'independent', regard must be had, inter alia, to the manner of appointment of its members and their term of office, the court of guarantees against outside pressures and the question w the body shows of independence⁴¹.

36 V Orlova, 'Today Ukraine is Protected by about 700,000 Soldiers - the President' (*Information agency 'UNIAN'*, 21 May 2022) <<https://www.unian.ua/war/ukrajynu-sogodni-zahishchaye-blizko-700-tisyach-viyskovih-prezident-novini-vtorgnennya-rosiji-v-ukrajynu-11835498.html>> accessed 25 June 2022.

37 *Engel and others v the Netherlands* App no 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (ECtHR, 8 June 1976) para 54 <<https://hudoc.echr.coe.int/eng?i=001-57479>> accessed 08 July 2022.

38 *Morris v the UK* App no 38784/97 (ECtHR, 26 February 2002) para 59 <<https://hudoc.echr.coe.int/eng?i=001-60170>> accessed 08 July 2022.

39 *Cooper v the UK* App no 48843/99 (ECtHR, 16 December 2003) para 110 <<https://hudoc.echr.coe.int/eng?i=001-61549>> accessed 08 July 2022.

40 *Morris v the UK* (para 59).

41 *Bryan v the UK* App no 19178/91 (ECtHR, 22 November 1995) para 37 <<https://hudoc.echr.coe.int/eng?i=001-57954>> accessed 08 July 2022.

In *Findlay v. the United Kingdom*, the ECtHR affirmed the above approach that when stating the independence of a military court, the method of appointing a panel of judges, the term of their powers, the existence of guarantees against external influence and internal independence should be taken into account. Moreover, the independence and objective impartiality are closely related, so the court considers them together.⁴²

As for the issue of ‘impartiality’, this requirement has two aspects. First, the court must be subjectively free from personal bias. Secondly, it must also be impartial from an objective point of view, that is, sufficient guarantees should be created to exclude any legitimate doubts in this regard.⁴³

The concern regarding the functioning of military courts is repeatedly expressed in the decisions of the ECtHR in this context, since in some legal systems such independence and impartiality are not ensured, which jeopardizes the fairness of the court decision that they make.

For example, in *Findlay v. The United Kingdom*, the ECtHR stated that Mr. Findlay’s concerns about the independence and impartiality of the military tribunal to which he faced various charges were objectively justified. The Court’s concern centered on the multiple roles played in the trial by the convening officer. This officer played a key indictment role, but at the same time appointed the members of the military tribunal, who were subordinated to him by rank and fell under his chain of subordination. He also had the power to dissolve the military tribunal before or during the trial and acted as an ‘affirming official’, resulting in the military tribunal’s decision on the verdict and sentence not entering into force until he ratified it. The Court held that these fundamental deficiencies had not been corrected by the presence of safeguards, such as the participation of a lawyer who was not himself a member of the military tribunal and whose recommendations had not been made public to him.⁴⁴

In *Inkal v. Turkey*, as regarded the criminal trial of a civilian in the Court of National Security, the ECtHR established certain guarantees of independence and impartiality that existed in relation to the military court. In particular, the court noted that: 1) the relevant military judges received the same professional training as their civil colleagues; 2) in the court session they used constitutional guarantees identical to the guarantees of civil judges; 3) that, according to the Turkish Constitution, they should be independent and free from the instructions and influence of state authorities. ECtHR identified other aspects that compromised the impartiality of judges. In particular, the judges were servicemen who belonged to the army, subordinated to military discipline and attestation reports.⁴⁵

Direct subordination to the command, in the opinion of the authors, is one of the most frequent violations which affects impartiality in the administration of justice by military courts.

Thus, in another ‘Turkish’ case, the ECtHR stated the absence of the independence of the military court, since ‘it reports in the hierarchy to the commander of the troops of martial law and / or the commander of the relevant army corps.’⁴⁶ In considering the already

42 *Findlay v the UK* App no 22107/93 (ECtHR, 25 February 1997) para 73 <<https://hudoc.echr.coe.int/eng?i=001-58016>> accessed 08 July 2022.

43 *Pullar v the UK* App no 22399/93 (ECtHR, 10 June 1996) para 30 <<https://hudoc.echr.coe.int/eng?i=001-57995>> accessed 08 July 2022.

44 *Findlay v the UK* (para 60, 74-78).

45 *Incal v Turkey* App no 22678/93 (ECtHR, 9 June 1998) para 67, 68 <<https://hudoc.echr.coe.int/eng?i=001-58197>> accessed 08 July 2022.

46 *Şahiner v Turkey* App no 29279/95 (ECtHR, 25 September 2001) para 41 <<https://hudoc.echr.coe.int/eng?i=001-59666>> accessed 08 July 2022. See also *İbrahim Gürkan v. Turkey* App no10987/10 (ECtHR, 3 July 2012) para 13-20 <<https://hudoc.echr.coe.int/eng?i=001-111840>> accessed 08 July 2022.

mentioned case *Morris v. the United Kingdom*, the ECtHR also pointed out the vulnerability of the position on the independence of military judges who served as officers in the Royal Army, were 'appointed solely ad hoc with the knowledge that they will return to their normal military duties at the end of the proceedings.' Nevertheless, the ECtHR did not consider that 'the special nature of their appointment was in itself sufficient to make the composition of the military tribunal incompatible with the independence requirements of Art. 6 para. 1 of the Convention', but 'it has made the necessary presence of protection against external pressure all the more important in this case'⁴⁷.

If the tribunal includes a person who is in a subordinate position from the point of view of his/her duties and the organization of service in relation to one of the parties, the parties may have legitimate doubts about the independence of this person. This situation seriously undermines the trust that courts should inspire in a democratic society, in connection with which, in particular, in the case the court found a violation of Art. 6 (1) of the Convention.⁴⁸

It should also be noted that it is quite difficult in the context of the question of jurisdiction to determine the legitimacy of the consideration of a case against a civilian by a military court.

For example, in *Inkal v. Turkey*, the ECtHR noted that the court's review of civilian cases, consisting partly of military personnel, could raise legitimate concerns that the court may allow biased considerations to be unlawfully influenced.⁴⁹ Even if a military judge participated only in an interim decision in a case against a civilian who continues to be valid, the entire proceedings are deprived of the appearance of an independent and impartial court.⁵⁰

Situations in which a military court has jurisdiction to try civilians for actions against the armed forces may raise reasonable doubts about the objective impartiality of such a court. A judicial system in which a military court is authorized to try a person who is not a soldier can easily be perceived as nullifying the distance that should exist between the court and the parties to the criminal proceedings, even if there are sufficient guarantees of the independence of this court.⁵¹

Considering complaints against criminal charges against civilians by military courts, the ECtHR generally quite categorically noted that it could be found to be compatible with Art. 6 only in very exceptional circumstances.⁵²

Therefore, based on the approaches of the ECtHR regarding the requirements for military courts in the context of Art. 6 of the ECHR, we can formulate our own vision of the system of military courts in Ukraine.

47 *Morris v the UK* (para 70)

48 *Sramek v Austria* App no 8790/79 (ECtHR, 22 October 1984) para 42 <<https://hudoc.echr.coe.int/eng?i=001-57581>> accessed 08 July 2022.

49 *Incal v Turkey* (para 72). See also *İbrahim Ülger v. Turkey* App no 57250/00 (ECtHR, 29 July 2004) para 26 <<https://hudoc.echr.coe.int/eng?i=001-66522>> accessed 08 July 2022.

50 *Öcalan v Turkey* App no 46221/99 (ECtHR, 12 May 2005) para 115 <<https://hudoc.echr.coe.int/eng?i=001-69022>> accessed 08 July 2022.

51 *Ergin v Turkey* (no. 6) App no 47533/99 (ECtHR, 4 May 2006) para 49 <<https://hudoc.echr.coe.int/eng?i=001-75327>> accessed 08 July 2022.

52 *Martin v the UK* App no 40426/98 (ECtHR, 24 October 2006) para 44 <<https://hudoc.echr.coe.int/eng?i=001-77661>> accessed 08 July 2022. See also *Mustafa v Bulgaria* App no 1230/17 (ECtHR, 28 November 2019) para 28-37 <<https://hudoc.echr.coe.int/eng?i=001-198691>> accessed 08 July 2022.

4 DETERMINANTS OF THE REVIVAL OF MILITARY COURTS IN UKRAINE

By unleashing aggression against Ukraine, Russia has demonstrated its strategic intention to restore full geopolitical control over post-Soviet countries, including those in the Black Sea basin. This determines Ukraine's presence in the conditions of constant struggle for independence, liberation of the occupied territory and restoration of state borders. Thus, Ukraine has an extremely difficult and important goal, the achievement of which is possible, among other things, with the help of the Armed Forces. Therefore, the issue of ensuring and improving the defense capability of the latter should be the focus of constant attention of the state authorities.

There is no doubt that the Armed Forces of any state can successfully perform their function only if they support the law-based and strict military discipline, if they are cleansed of persons who commit crimes, thus ensuring the strength of their ranks, as well as when personal rights and interests of military personnel and their families are protected by law. Thus, it is possible to draw an unequivocal positive conclusion, answering the question about the need to revive the system of military justice in Ukraine.

Almost half a year of experience in repelling armed aggression against Ukraine makes it possible to conclude that the unconditional advantage of creating military courts that will be endowed with the function of administering justice and judicial control is that their functioning will ensure *access to justice*. Namely, in those territories where the work of courts is temporarily blocked, the military and the court will be able to fulfill their functional purpose, including in combat conditions. It is military courts, and not prosecutors, as is currently done in Ukraine, that can be entrusted with the authority to exercise the function of not only administering justice, but also judicial control. That is, in the territories that are in the combat zone, close to the combat zone, are under threat of missile strikes or artillery shelling, the function of administering justice and judicial control can be fully transferred to military courts.

Second, military courts must ensure the *availability of justice*. When creating them, one should not proceed from the concept of their binding to a specific administrative-territorial unit, which will ensure mobility, change of location along with a change in the deployment of military formations or a change in the operational and tactical situation.

This model can ensure *the efficiency* of justice and judicial control, which a priori, in accordance with the Criminal Code of Ukraine⁵³, should be operational, ensure compliance with procedural deadlines for pre-trial investigation and application and measures to ensure criminal proceedings, which will have a positive impact not only on the implementation of pre-trial investigation, but also, above all, will contribute to ensuring the rights and legitimate interests of persons involved in criminal proceedings.

It should also be noted that on the territory of warfare, not only war crimes provided for by the Criminal Code of Ukraine are committed⁵⁴, but also war crimes related to the violation of the Geneva Convention of 1949⁵⁵, as well as stipulated in Art. 8 of the Rome Statute of the International Criminal Court⁵⁶. The subjects of these crimes may be: 1) combatants, that

53 Criminal Procedure Code of Ukraine of 13 April 2012 No 4651-VI (Official website of the Verkhovna Rada of Ukraine: official web portal) <<https://zakon.rada.gov.ua/laws/show/4651-17#Text>> accessed 25 June 2022.

54 Criminal Code of Ukraine of 5 April 2001 No 2341-III (Official website of the Verkhovna Rada of Ukraine: official web portal) <<https://zakon.rada.gov.ua/laws/show/2341-14#Text>> accessed 25 June 2022.

55 Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III), 12 August 1949 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/375?OpenDocument>> accessed 25 June 2022.

56 Rome Statute of the International Criminal Court, 17 July 1998, in force since 1 July 2002, United Nations, Treaty Series, vol 2187, No 38544 <<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>> accessed 25 June 2022.

is, participants of an armed conflict of an international nature (personnel and composition of the armed forces, militia personnel and volunteer units that are or are not part of the armed forces; personnel of organized resistance movements and guerrilla formations, if they meet certain conditions, in particular, have at the head a person responsible for their subordinates, have a certain and clearly visible from afar distinctive sign; openly carrying weapons; observe in their actions the laws and customs of war); 2) non-combatants, that is, persons who are part of the armed forces of the belligerent, assist it in achieving military success, but do not directly participate in hostilities (medical and spiritual personnel, intellectuals, war correspondents, lawyers, etc.); 3) civilians who commit crimes in the territory where the armed conflict continues, that is, persons who are not participants in the armed conflict, however, under certain conditions found themselves in the territory where the conflict continues; 4) prisoners of war (combatants and legitimate participants of the armed conflict after their capture by the enemy); 4) mercenaries, persons involved in the armed conflict for the purpose of obtaining material benefits, who are not part of the armed forces of the belligerent state or other legitimate structures. As you know, the mercenary does not have the status of a combatant, and, accordingly, a prisoner of war. Thus, the third argument in support of the point of view on the need to create military courts is the specificity of the subject area in which military judges will work.

From the previous one follows the fourth argument in favour of the creation of military justice, which is determined by the requirements of *competence and professionalism*.

Another important aspect that influences the conclusion regarding the need to create military courts is that the investigation of war crimes and their trial are often related to *state secrets*, that is, a type of secret information covering, in particular, information in the field of defense, state security and law enforcement, the disclosure of which may harm the national security of Ukraine and which are subject to state protection. The law stipulates that the state secrets relate to a wide range of information in the field of defense. This, for example, may be the content of strategic and operational plans and other documents of combat management; information on the preparation and conduct of military operations, strategic and mobilization deployment of troops; information about other important indicators that characterize the organization, number, deployment, combat and mobilization readiness, combat and other military training, weapons and logistical support of the Armed Forces of Ukraine and other military formations, etc⁵⁷. Such a small illustration indicates a significant segment of legal regulation of the list of information, non-disclosure of which can be of strategic importance and what can really be ensured only in the field of military justice.

In the context of the issue raised, one more important aspect should be pointed out, which is related to *traditions and experience*. The military courts in Ukraine were liquidated relatively recently, so the experience gained during the functioning of military justice, trained professional personnel can be used during the rapid restoration and 'launch' of military courts. In particular, the system of training legal personnel, including for military justice bodies, has not been lost and has been operating for many years at the Yaroslav Mudryi National Law University⁵⁸, a higher educational institution that has been training lawyers for 215 years. Military courts can be equipped with the graduates with the second (Master's) degree of the Military Law Institute, who, along with knowledge in the field of 'traditional'

57 The Law of Ukraine 'On State Secrets' No3855-XII of 21 January 1994 (Official website of the Verkhovna Rada of Ukraine: official web portal) <<https://zakon.rada.gov.ua/laws/show/3855-12#Text>> accessed 25 June 2022.

58 Yaroslav Mudryi National Law University. Military Law Institute Official website. <<https://nlu.edu.ua/instituty-fakultety/vijskovo-yurydychnyj-institut/>> accessed 25 June 2022.

law, receive in-depth knowledge of military law, international humanitarian law, social protection of servicemen, representation of military units in courts, etc.

One of the arguments for the need to create a system of military courts is also a *prospect*. We are talking about the fact that the law enforcement system of Ukraine sees its task in recording all the offenses committed on the territory of the state (both crimes and misdemeanors). Carrying out their quick, complete and impartial investigation and trial so that everyone who committed a criminal offense is brought to justice to the extent of his/her guilt is the task of criminal proceedings (Art. 2 of the CrimPC of Ukraine). Therefore, the law enforcement system of Ukraine will carry out pre-trial investigation for many years to fulfill the statutory task and establish peace, justice and the regime of legality in the state.

Another important factor is that judges of military courts, having experience in military service and consciously choosing the path of military justice, have *psychological stability* and stress resistance, which is extremely important in conditions of martial law or the administration of justice in the military sphere, while judges of general courts may not have it. Justice in Ukraine often has a more 'feminine face', while the conditions for the administration of justice during martial law differ significantly not only in the objective, but also in the subjective aspect. Therefore, in addition, it is necessary to point out another important factor that belongs to the subjective qualities of a judge of a military court – stress resistance.

Summarizing the arguments given in support of the idea of introducing military courts in Ukraine, it can be indicated that it includes the following elements: 1) the originality of normative regulation, which differs significantly from the traditional normative regulation of the subject area of the general court judge, including taking into account their specialization; 2) the exclusivity of the object in the trial – mainly military and military crimes; 3) the peculiar type of the subjects who are brought to justice; 4) the need to apply the regime of preservation of state secrets; 5) the presence of experience in military service (may be an optional requirement); 6) the exclusivity of objective conditions in which administration of justice or judicial control can be carried out by the judges of a military court; 7) requirements of a subjective nature, which consist in the need for psychological strength and stress resistance; 8) the existence of the need for military courts not only during the war, but also after the establishment of peace in order to ensure the prosecution of the perpetrators and a complete return to the regime of legality and the rule of law in the state.

Realizing that the creation of a system of military courts can take a lot of time for the state that has suffered armed aggression, and presupposes the allocation of certain funding, it is also possible to consider the creation of a compromise model of military justice in Ukraine. Such alternative models can be built at the expense of: 1) the introduction of military specialization in local, appellate and Supreme Court and; 2) the creation of military boards at local, appellate and cassation courts.

Such proposals do not violate the Constitution of Ukraine (Part 1 of Art. 125) and the Law of Ukraine 'On the Judiciary and Status of Judges' (Part 1 of Art. 17), which provide that the judicial system in Ukraine is built on the principles of territoriality, specialization and instance.^{59 60}

As for the procedural support of the military justice system, we consider it unnecessary to adopt special military procedural legislation, such as the Military Criminal Procedure Code

59 Constitution of Ukraine of 28 June 28 1996 () <https://zakon.rada.gov.ua/laws/show/254_k/96-vr#Text> accessed 25 June 2022.

60 The Law of Ukraine 'On the Judiciary and Status of Judges' No 2016 1402-VIII of 2 June 2016 (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/1402-19#Text>> accessed 25 June 2022.

in Switzerland (Militärstrafprozess)⁶¹ or the Code of Military Justice of France⁶², because the current Code of Justice of Ukraine⁶³ is capable of ensuring proper legal procedure for pre-trial investigation, including military and war crimes, or under martial law. The Ukrainian CrimPC contains specially developed and introduced separate procedures 'Special Regime of Pre-trial Investigation, Trial under Martial Law' (Section IX-1, Arts. 615, 615-1, 616); 'Criminal Proceedings Containing Information Constituting a State Secret' (Chapter 40, Arts. 517-518); 'Peculiarities of Cooperation with the International Criminal Court' (Section IX-2, Art. 617-636). If necessary, small legislative corrections will ensure proper legal procedure for the implementation of legal proceedings. These include, in particular, proposals to consolidate the jurisdiction of military courts; permission to record the court session in cases of lack of electricity supply and impossibility of video recording of the court session; introduction of interruptions of the court session during the air alert; simplification of some procedures, etc. However, these are individual points that do not significantly affect the implementation of the criminal case trial, because its procedure can be fully implemented during martial law as well.

5 CONCLUSIONS

The study gave the authors the opportunity to draw the following conclusions. The decision, which was made in 2010 by the political authorities of Ukraine on the liquidation of military courts, should be evaluated critically, since the functioning of military justice systems and, in particular, military courts, as its component, should contribute to the protection of interests of Ukraine, ensuring the combat capability of the Armed Forces of Ukraine and other military formations, as well as protecting the rights and legitimate interests of military personnel and military institutions. Twelve years in a row, the discussion on the revival of military courts has been ongoing, and active steps aimed at the development and adoption of the relevant draft law were taken, which testified to the rejection by society of a political decision to terminate the existence of military courts.

The armed aggression of the Russian Federation against Ukraine has demonstrated the short-sightedness of this unpopular step, since on 24 February 2022 the work of some general courts, and therefore, investigative judges, was completely terminated, which prevented law enforcement agencies from conducting pre-trial investigation of criminal offenses in accordance with the current legislation, apply measures to ensure criminal proceedings, conduct investigative and secret investigative activities.

Therefore, for Ukraine, which not only repels the aggressor, but also actively improves its legal institutions, the methodology of comparative analysis, comparative research becomes especially in demand. It allows us to deeper understand the essence of legal regulators existing in other states, to identify general trends in the development of legal phenomena, to borrow really positive, proven experience, preventing protest legal divergence.

The appeal to the practice of the ECtHR, in which it mainly considers ensuring the right to a fair trial in the context of alleged violations of Art. 6 of the ECHR by military courts,

61 Militärstrafprozess (MStP) vom 23. März 1979 (Stand am 1. Januar 2017) <<https://www.admin.ch/opc/de/classified-compilation/19790061/201701010000/322.1.pdf>> accessed 25 June 2022.

62 Code de justice militaire (nouveau) Version en vigueur au 09 juillet 2022 <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071360/LEGISCTA000006121306/#LEGISCTA000006121306> accessed 25 June 2022.

63 Criminal Procedure Code of Ukraine of 13 April 2012 No 4651-VI (*Official website of the Verkhovna Rada of Ukraine: official web portal*) <<https://zakon.rada.gov.ua/laws/show/4651-17#Text>> accessed 25 June 2022.

gave the authors the opportunity to synthesize key approaches that should be taken into account when creating and operating military courts in Ukraine: 1) The Convention may be applicable to military personnel, not just civilians, which means that every serviceman who has suffered a violation of the rights provided for by the ECHR may also seek their protection; 2) The ECtHR in principle does not adversely relate to the existence of military courts. Consideration by the military courts of criminal charges against servicemen in principle does not contradict the provisions of Art. 6 of the ECHR; 3) there is no reason to consider judges of military courts less professional than their colleagues in the general courts, since they have undergone the same professional training as their 'civilian' counterparts; 4) The Convention permits the functioning of military courts only as long as there are sufficient guarantees to ensure their independence and impartiality.

The authors, adhering to the point of view that there is the need to create a system of military justice in Ukraine, believe that the revival of military courts in Ukraine, as an important component of the military justice system, is due to the specific scope of spheres and their subject competence, which is significantly different from the general courts and is able to ensure the administration of justice and judicial control, including in wartime. This specificity of the functioning of military courts is polyaspective and is stipulated by: 1) the specificity of normative regulation, which differs significantly from the traditional normative regulation of the subject area of a general court judge, including taking into account their specialization; 2) the exclusive object of the trial, which is mainly military and war crimes; 3) the specialty of the subjects who are brought to justice; 4) the need to apply the regime of preservation of state secrets; 5) the presence of experience in military service; 6) the exclusivity of objective conditions in which administering justice or judicial control can be carried out by judges of a military court; 7) requirements of a subjective nature, which consist in the need for psychological strength and stress resistance; 8) demand for military courts not only during the war, but also after the establishment of peace in order to ensure the prosecution of the perpetrators and the full return of the regime of legality and the rule of law in the state.

Among promising scientific directions, the authors see the definition of the model of judicial justice, the development of issues regarding the system of military courts, the formation of the judiciary, the definition of jurisdiction, which should be optimal for modern Ukraine, which is fighting for its independence.

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