

## Research Article

# PROSECUTOR'S OFFICE OF UKRAINE UNDER MARTIAL LAW: CHALLENGES, TRENDS, STATISTICAL DATA

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**Summary:** 1. Introduction. – 2. Activity of Prosecutor's Office under Martial Law. – 2.1. *Procedural Field.* – 2.2. *Cooperation Field.* – 3. Civic Position and Destructions as Response of Prosecutor's Office to War. – 3.1. *Support of Defence Capability of the State.* – 3.2. *Destructions.* – 4. Prospects for Prosecutor's Office under Martial Law. – 5. Conclusions.

**Keywords:** Prosecutor's Office, prosecutor, functions of the Prosecutor's Office, war, Prosecutor's Office in wartime, justice, Ukraine

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## ABSTRACT

**Background:** Introduction of martial law on the territory of Ukraine on 24 February 2022, due to the full-scale invasion of the Russian Federation<sup>4</sup>, led to a shift in the emphasis in activity of all public authorities and institutions. They promptly adapted to the challenges brought by the war to ensure continuous functioning of the institutions of key importance for the state. Such include the institution of justice; the Prosecutor's Office is an integral element of its implementation. During the war, Ukraine gained new experience in the matters of its organization and functional development. It is expected to be useful to anyone interested in the justice system, particularly the Prosecutor's Office, and for the study of its responses to the extraordinary conditions of the war.

The publication is the result of a systematic analysis of the indicators of the Prosecutor's Office of Ukraine activity within the context of the events caused by the war's development, which has been taking place for more than one year. This time span allows the authors to draw certain conclusions and highlight trends.

The performance indicators of four regional Prosecutor's Offices, representing the north, south, east, and west of Ukraine, are taken as a basis. This approach is driven by different degrees of military aggression intensity in relation to the various regions, allowing tracing of the relevant correlation between the "territorial factor" and effectiveness of the Prosecutor's Office's operation.

The study is based on statistical indicators and reports of the Office of the Prosecutor General, data from Kyiv, Odesa, Lviv, and Kharkiv's regional Prosecutor's Offices, as well as materials from the Qualification and Disciplinary Commission on Public Prosecutors.

**Methods:** The authors used systematic, statistical, historical, and comparative methods, as well as the method of selective analysis and synthesis of information, ensuring the objectivity and complexity of the study. Actual statistical and empirical data are used for proper argumentation of the conclusions.

**Results and Conclusions:** It was concluded that the activity of the Prosecutor's Office in Ukraine under martial law is largely determined by the territorial factor. At the same time, the full-scale war became a catalyst for polar phenomena among prosecutors: intensification of the civil position in opposition to the aggressor, professional, and behavioural destructions, which are assessed by a disciplinary body to finalize the prosecutor's career.

## 1 INTRODUCTION

Introduction of martial law on Ukraine's territory on 24 February 2022, due to the full-scale invasion of the Russian Federation, affected the functioning of all institutions of state power without exception, including the field of justice. Its continuous functioning is a prerequisite for statehood and national security. This naturally led to a shift in the emphasis in scientific research, focusing on the problems that ensure the right to a fair trial. This emphasis that a person's right to a fair trial is inviolable, even in conditions of martial law<sup>5</sup>, led to emergence of studies which focus on a few problems, including organizing the work of courts in wartime<sup>6</sup>,

4 Editorial note: Authors retain the right to title the state aggressor with lowercase letters. We recognize and respect the autonomy of authors in expressing their perspectives and preferences regarding the use of capitalization.

5 O Uhrynovska, A Vitskar 'Administration of Justice during Military Aggression against Ukraine: The "Judicial Front" 2022 3 (15) *Access to Justice in Eastern Europe*. 1-10.

6 O Khotynska-Nor, A Potapenko, 'Courts of Ukraine in Wartime: Issues of Sustainable Functioning' 2022 31 *Revista Jurídica Portucalense*, 218-240.

advocacy's functioning<sup>7</sup>,<sup>8</sup> judgments' enforcement<sup>9</sup>, and other related aspects. In this sense, the Prosecutor's Office, as an integral element of justice administration, was undeservedly neglected. The study of the specificity of the Prosecutor's Office's work under martial law is isolated and eclectic in nature.

For a long time in Ukraine, the Prosecutor's Office was the object of discussions focused on the following issues: (a) its place in the system of public authorities<sup>10</sup>, (b) the list of functions<sup>11</sup>, (c) the system of Prosecutor's Offices<sup>12</sup>, (d) requirements for the Prosecutor General<sup>13</sup>. However, the war created some adjustments. Like other state and public institutions, the entire prosecution system adapted to modern challenges associated with security problems, power outages, lack of mobile communication and Internet connection. The problems listed apply to Prosecutor's Offices on all levels: the Office of the Prosecutor General, Regional Prosecutor's Offices, district Prosecutor's Offices, and the Specialized Anti-Corruption Prosecutor's Office.

Our study is based on the activity indicators of Kyiv, Odesa, Lviv, and Kharkiv Regional Prosecutor's Offices, representing the northern, southern, western, and eastern regions of Ukraine, respectively. Considering the course of the war, different intensities of military aggression in various territories<sup>14</sup>, the regional (territorial) factor has a significant impact on the effectiveness of performance of the Prosecutor's Office functions and specifies them. Therefore, such a sample will ensure the representativeness of the study's results.

We hope that these findings will be useful for everyone interested in the justice system's functioning problems, in particular, the Prosecutor's Office. After all, the Prosecutor's Office of Ukraine is now gaining a unique experience of operating under the conditions of a full-scale war, which European countries do not have. Taking into account the global threats posed by the Russian Federation to the civilized world, study of the Prosecutor's Office's response to the extraordinary conditions of war will enable us to avoid destruction in the system of judicial protection of individual rights and freedoms in the future.

7 O Khotynska-Nor, N Bakaianova, 'Transformation of Bar in Wartime in Ukraine: on the Way to Sustainable Development of Justice (On the Example of Odesa Region)' 2022 3(15) *Access to Justice in Eastern Europe* 146-154.

8 T Vilchik, 'Advocacy of Ukraine in the period of martial law and restoration after the war: problems of legal regulation of the organization and activities' 2022 32 *Revista Jurídica Portuguesa*, 254-273.

9 Yu Prytyka, I Izarova, L Maliarchuk, O Terekh 'Legal Challenges for Ukraine under Martial Law: Protection of Civil, Property and Labour Rights, Right to a Fair Trial, and Enforcement of Decisions' 2022 3(15) *Access to Justice in Eastern Europe* 219-238.

10 In Ukraine, four main approaches to the place of the prosecutor's office in the system of public authorities have been formed: 1) affiliation of the prosecutor's office to the executive branch of government; 2) affiliation of the prosecutor's office to the legislative branch of government; 3) affiliation of the prosecutor's office to the judicial branch of government; 4) allocation of a separate, fourth "control and supervisory" branch of government. For now, this discussion continues.

11 In 2014, the transport and environmental protection prosecutor's offices were liquidated; the system of prosecutor's offices has been changed; in 2019, military prosecutor's offices were abolished.

12 The prosecutor's office was deprived of the functions of monitoring compliance with the laws by officials and citizens, conducting pre-trial investigations (i.e., the function of "general supervision"); the function of "maintenance of state prosecution" was transformed into "maintenance of public prosecution" and the prosecutor's office lost the opportunity to represent the interests of citizens in court.

13 In 2014, the law did not envisage the requirements for the Prosecutor General for obtaining a higher legal education.

14 The intensity of military aggression on the entire territory of Ukraine is clearly expressed in the direction of decrease from the eastern to the western region and from the northern to the southern region, which is explained by the borders with Russia.

The study is based on the systematic, statistical, historical, and comparative methods, as well as the method of selective analysis and synthesis of information, ensuring objectivity and complexity of the study. The authors used actual statistical and empirical data, particularly the materials of disciplinary practice, to properly argue their conclusions.

## 2 ACTIVITY OF PROSECUTOR'S OFFICE UNDER MARTIAL LAW

### 2.1 Procedural Field

At the beginning of a full-scale war, decisive action was expected from the Office of the Prosecutor General. Thus, on 24 February 2022, the Office began procedural management in the criminal proceedings, initiated by the Main Investigative Department of the Security Service of Ukraine, due to the invasion of the Armed Forces of the Russian Federation into the territories of northern, eastern, and southern regions of Ukraine, and air and artillery strikes made on Ukraine's military facilities and units<sup>15</sup>. In addition, the Office determined that all Prosecutor's Office's forces and resources should be directed to maintaining law and order on the territory of the state, recording, and documenting the crimes of the aggressor<sup>16</sup>.

At the same time, the Prosecutor's Office had to ensure continuity of the functions assigned to it by the Constitution of Ukraine: maintenance of public prosecution in court; arrangement and procedural management of pre-trial investigation; settlement of other issues during criminal proceedings in accordance with the law; supervision of undercover and other investigative and search actions of law enforcement agencies; representation of the state's interests in court in exceptional cases, and in accordance with the procedure specified by the law<sup>17</sup>.

The constitutional level of the specified functions requires attention on the issue of their implementation in the conditions of martial law. This will make it possible to show the impact of the war on the Prosecutor's Office and clarify the specificity of its wartime activity. To do this, we will apply generalization of statistical indicators of accounting for criminal offences and use the indicators for January 2023, provided by the Prosecutor's Offices of Ukraine's relevant regions for comparison.

Thus, according to the data of Kyiv Regional Prosecutor's Office, in January 2023, a total of 3,239 criminal offences were recorded (860 offences of which individuals were served with a notice of suspicion for committing, and 269 offences were the object of the proceedings forwarded to court)<sup>18</sup>.

During the same period, Odesa Regional Prosecutor's Office recorded 2,126 criminal offences (458 offences of which individuals were served with a notice of suspicion for committing, and 188 offences were the object of the proceedings forwarded to court)<sup>19</sup>.

15 Invasion of the Armed Forces of the Russian Federation - criminal proceedings have been initiated <<https://gp.gov.ua/ua/posts/vtorgnennyya-zs-rf-rozpocato-kriminalni-provadzennyya>> accessed 23 February 2023.

16 We do not betray our oaths, keep a cool head, protect Ukraine and its laws <<https://gp.gov.ua/ua/posts/ne-zradzujemo-prisyazi-zberigajemo-xolodnii-rozum-zaxishhajemo-ukrayinu-i-yiyi-zakoni>> accessed 23 February 2023.

17 Constitution of Ukraine, 28 August, 1996 <<https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>> accessed 23 February 2023.

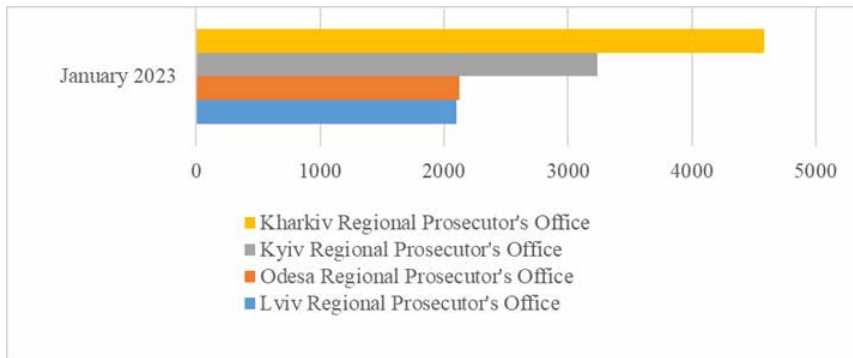
18 Unified report on criminal offences for January 2023. Kyiv Region Prosecutor's Office. <[https://kobl.gp.gov.ua/ua/documents.html?dir\\_id=115438&libid=100130](https://kobl.gp.gov.ua/ua/documents.html?dir_id=115438&libid=100130)> accessed 23 February 2023.

19 Unified report on criminal offences for January 2023. Odesa Region Prosecutor's Office. <[https://od.gp.gov.ua/ua/documents.html?dir\\_id=115449&libid=>](https://od.gp.gov.ua/ua/documents.html?dir_id=115449&libid=>)> accessed 23 February 2023.

The data of Lviv Regional Prosecutor's Office include 2,102 criminal offences (1,021 offences of which individuals were served with a notice of suspicion for committing, and 441 offences were the object of the proceedings forwarded to court)<sup>20</sup>.

Kharkiv Regional Prosecutor's Office, in turn, showed the following indicators: 4,579 criminal offences (1,256 offences of which individuals were served with a notice of suspicion for committing, and 303 offences were the object of the proceedings forwarded to court)<sup>21</sup> (Table 1).

**Table 1**



As may be seen, closer proximity to the front lines (Kharkiv Regional Prosecutor's Office) increases the criminogenic nature of the region's situation, which may be reflected in the quantitative indicators of the committed offences.

Statistical indicators of the criminal offences related to war crimes require special attention.

*A) Offences against foundations of national security:*

Kyiv Regional Prosecutor's Office recorded 14 offences (1 offence of which an individual was served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court);

Odesa Regional Prosecutor's Office recorded 20 offences (2 offences of which individuals were served with a notice of suspicion for committing, and 1 offence was the object of the proceedings forwarded to court);

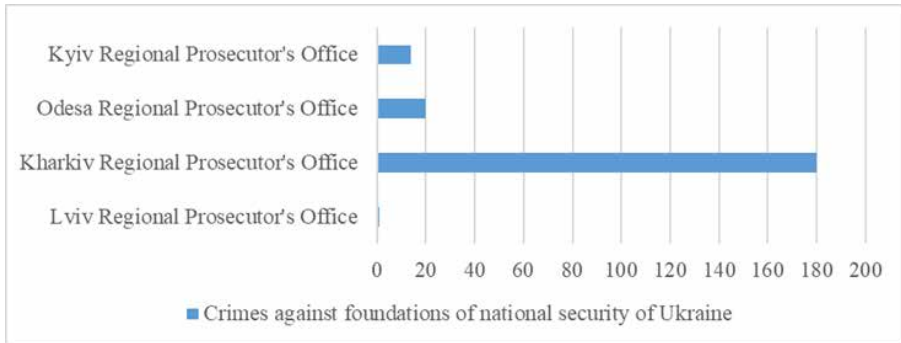
Lviv Regional Prosecutor's Office recorded 1 offence (0 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court);

Kharkiv Regional Prosecutor's Office recorded 180 offences (6 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court) (Table 2).

20 Unified report on criminal offences for January 2023. Lviv Region Prosecutor's Office. <[https://lviv.gov.gov.ua/ua/lvdoc.html?\\_m=publications&\\_t=rec&id=327715](https://lviv.gov.gov.ua/ua/lvdoc.html?_m=publications&_t=rec&id=327715)> accessed 23 February 2023.

21 Unified report on criminal offences for January 2023. Kharkiv Region Prosecutor's Office. <[https://khar.gov.gov.ua/ua/documents.html?dir\\_id=115343&libid=](https://khar.gov.gov.ua/ua/documents.html?dir_id=115343&libid=)> accessed 23 February 2023.

**Table 2**



Therefore, we may once again assert that intensification of military operations affects the increase in the number of offences, which is especially noticeable in the comparative analysis of the indicators of criminal offences related to war crimes as recorded by Lviv Regional Prosecutor's Office and Kharkiv Regional Prosecutor's Office (1:180).

**B) Criminal offences in the field of protection of state secrets, inviolability of state borders, ensuring conscription and mobilization:**

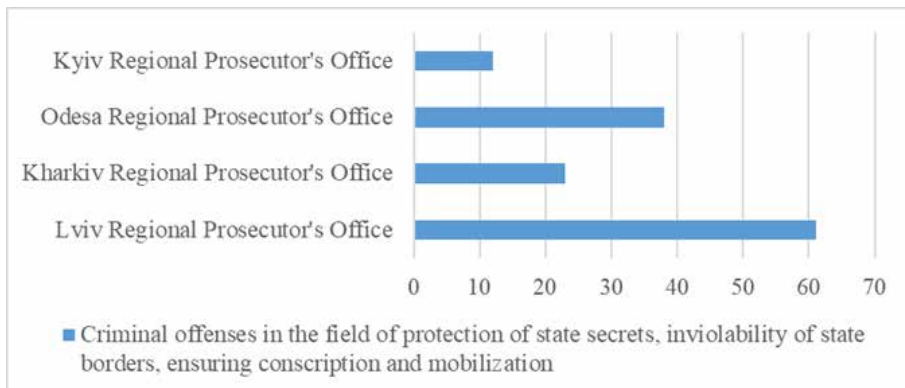
Kyiv Regional Prosecutor's Office recorded 12 offences (0 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court);

Odesa Regional Prosecutor's Office recorded 38 offences (4 offences of which individuals were served with a notice of suspicion for committing, and 1 offence was the object of the proceedings forwarded to court);

Lviv Regional Prosecutor's Office recorded 61 offences (41 offences of which individuals were served with a notice of suspicion for committing, and 9 offences were the object of the proceedings forwarded to court);

Kharkiv Regional Prosecutor's Office recorded 23 offences (4 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court) (Table 3).

**Table 3**



This graphic representation of the criminal offences seen in the fields of protection of state secrets, inviolability of state borders, ensuring conscription, and mobilization shows that Odesa Regional Prosecutor’s Office and Lviv Regional Prosecutor’s Office had the greatest workload. In our opinion, a similar situation is due to the proximity of the territories of these two regions to the Republic of Poland and the Republic of Moldova, respectively, which are most often chosen for attempts to illegally cross the border by individuals subject to mobilization. For example, in September 2022, the prosecutors of Odesa Regional Prosecutor’s Office submitted an indictment against four members of a transnational organized group to the court upon illegal transportation of people across Ukraine’s state border (Part 3 of Article 332 of the Criminal Code of Ukraine). It was established that a citizen of Moldova in the territory of the Pridnestrovian Moldavian Republic transported willing men of draft age to Moldova for a reward of 3-4 thousand US dollars, together with accomplices<sup>22</sup>. Such cases have become systematic during the period of the war.

*C) Criminal offences against peace, security of mankind, and international legal order:*

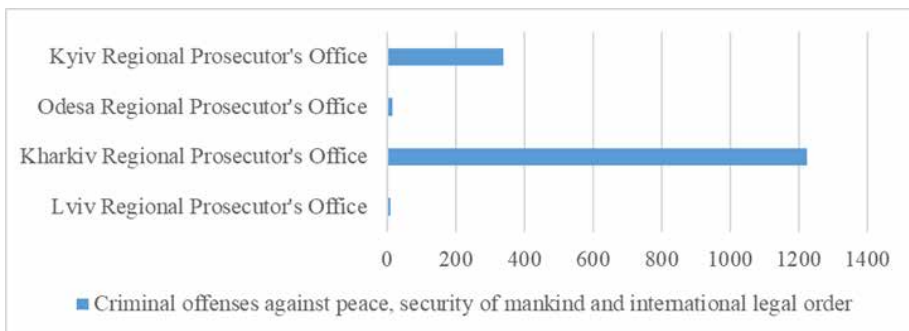
Kyiv Regional Prosecutor’s Office recorded 340 offences (2 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court);

Odesa Regional Prosecutor’s Office recorded 17 (4 offences of which individuals were served with a notice of suspicion for committing, and 4 offences were the object of the proceedings forwarded to court);

Lviv Regional Prosecutor’s Office recorded 9 (3 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court);

Kharkiv Regional Prosecutor’s Office recorded 1,222 (31 offences of which individuals were served with a notice of suspicion for committing, and 0 offences were the object of the proceedings forwarded to court) (Table 4).

**Table 4**



As may be seen, Kharkiv Regional Prosecutor’s Office and Kyiv Regional Prosecutor’s Office had more cases associated with the offences against foundations of national security and criminal offences against peace, security of mankind, and international

22 Unified report on criminal offences for January 2023. Kharkiv Region Prosecutor’s Office. <[https://khar.gov.gov.ua/ua/documents.html?dir\\_id=115343&libid=](https://khar.gov.gov.ua/ua/documents.html?dir_id=115343&libid=)> accessed 23 February 2023.



legal order. This seems logical due to the proximity of Kharkiv's region to the line of hostilities and the aggressor country, combined with military events in the Kyiv region in the spring of 2022<sup>23</sup>.

The trend of increase in the number of the abovementioned criminal offences over the years is also quite interesting to analyse in the study.

To demonstrate this, we would like to refer to the indicators of Odesa Regional Prosecutor's Office for 2022 and 2021. This region is "averaged" in terms of military aggression intensity against certain territories and the scale of the damage caused as a result.

Thus, in 2022, Odesa Regional Prosecutor's Office recorded the following criminal offences:

*against foundations of the national security of Ukraine* – 281 (95 offences of which individuals were served with a notice of suspicion for committing, and 83 offences were the object of the proceedings forwarded to court);

*in the field of protection of state secrets, inviolability of state borders, ensuring conscription, and mobilization* – 242 (104 offences of which individuals were served with a notice of suspicion for committing, and 79 offences were the object of the proceedings forwarded to court);

*against peace, security of mankind, and international legal order* – 170 (70 offences of which individuals were served with a notice of suspicion for committing, and 68 offences were the object of the proceedings forwarded to court)<sup>24</sup>.

These indicators significantly exceed the indicators for 2021 (Table 5), namely:

*criminal offences against foundations of the national security of Ukraine* – 13 cases (5 offences of which individuals were served with a notice of suspicion for committing, and 5 offences were the object of the proceedings forwarded to court);

*criminal offences in the field of protection of state secrets, inviolability of state borders, ensuring conscription, and mobilization* – 54 cases (18 offences of which individuals were served with a notice of suspicion for committing, and 17 offences were the object of the proceedings forwarded to court);

*crimes against peace, security of mankind, and international legal order* – 2 cases (2 offences of which individuals were served with a notice of suspicion for committing, and 2 offences were the object of the proceedings forwarded to court)<sup>25</sup>.

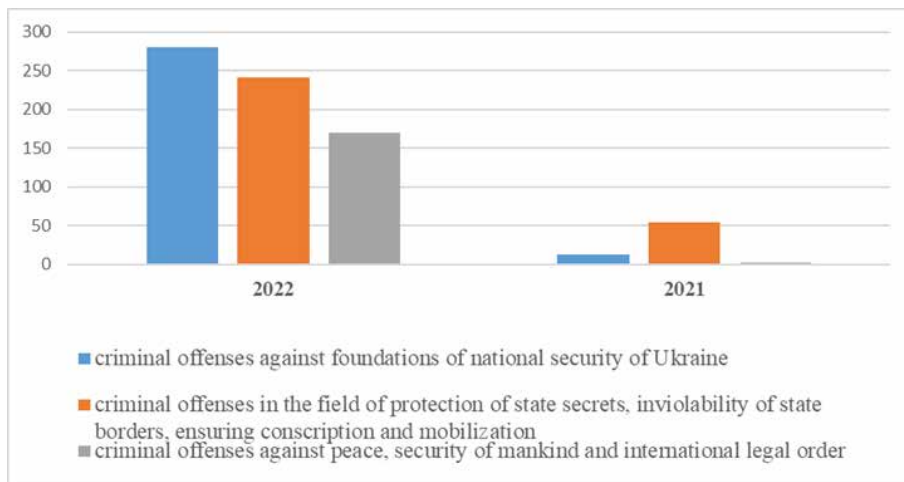
23 The tragedy of entire cities and towns of Kyiv region (Bucha, Borodianka and others) gained international publicity.

24 About registered criminal offences and the results of their pre-trial investigation <<https://od.gp.gov.ua/ua/documents.html#>> accessed 23 February 2023.

25 About registered criminal offences and the results of their pre-trial investigation <<https://od.gp.gov.ua/ua/documents.html#>> accessed 23 February 2023.



**Table 5**



We would like to note that the indicators for other criminal offences are more stable. For example, criminal offences against property in the Odesa region in 2022 made up 8,003 cases, and 7,144 cases in 2021; criminal offences against production safety in 2022 made up 33 cases, and 22 cases in 2021.

## 2.2 Cooperation Field

To implement its functions, the Prosecutor's Office of Ukraine is carrying out international cooperation on an ongoing basis. In light of the European integration processes, direction towards the membership of Ukraine in the European Union, interaction with international and European institutions acquires special importance. Our state is trying to account for the recommendations of European partners when reforming, not only the prosecutorial system, other law enforcement agencies, or the judicial system, but also non-legal fields.

Thus, the war crimes' special resource, implemented by the Office of the Prosecutor General together with Ukrainian and international partners for documenting war crimes and crimes against humanity committed by the Russian army in Ukraine, is innovative and was created due to the war. All documented evidence will be used to prosecute those involved in the crimes under Ukrainian law, as well as at the International Criminal Court in The Hague and the Special Tribunal, once established.

This resource allows submission of not only text information, but also photo and video materials. The following facts are considered: injury or death of civilians due to the use of physical violence by the occupier; deprivation of the civilian population's liberty by the occupier; violence against medical personnel, damage to medical transport, hospitals, and equipment; refusal or deprivation of medical care access; violence against the clergy, damage or destruction of religious buildings (temples, mosques, synagogues, etc.)<sup>26</sup>.

<sup>26</sup> The Office of the Prosecutor General of Ukraine calls to collect and document the facts of Russia's war crimes against the civilian population <<https://2022.uba.ua/news/ofis-generalnogo-prokurora-ukrayiny-zaklykaye-zbyraty-ta-dokumentuvaty-fakty-voyennyh-zlochyniv-rosiyi-proty-chyvilnogo-naselennya/>> accessed 23 February 2023.

In addition, the Office of the Prosecutor General and the International Bar Association have entered a Memorandum of Understanding on cooperation to ensure prosecution of war crimes and other international crimes, including the crimes of aggression, genocide, and crimes of conflict-related sexual violence. The fields of cooperation in accordance with the Memorandum are as follows: 1) access and use of photo and video files as potential evidence of international crimes committed in Ukraine collected through the mobile application, eyeWitness to Atrocities; 2) establishment of a Special Tribunal on the crime of aggression to prosecute the senior political and military leadership of the Russian Federation; 3) assistance to the Interagency Working Group of Ukraine on Asset Freezing, coordinating the search, arrest, and confiscation of the assets of individuals, directly or indirectly, involved in Russia's aggression against Ukraine, etc.<sup>27</sup>

At the regional level, the interaction of Odesa Regional Prosecutor's Office and the United Nations Human Rights Monitoring Mission may be cited as an example. Thus, during a joint meeting of Odesa Regional Prosecutor's Office and the Head of the United Nations Human Rights Monitoring Mission's leadership in Ukraine's Odesa, Mykolaiv, and Kherson regions, the parties discussed how to ensure responsibility for war crimes and crimes committed as an armed attack of the Russian Federation on Ukraine<sup>28</sup>. Additionally discussed during the meeting was the arrangement of work on identifying, recording, and preserving evidence of the Russian Federation's military aggression against Ukraine and its breach of the regulations of international humanitarian law<sup>29</sup>.

### 3 CIVIC POSITION AND DESTRUCTIONS AS RESPONSE OF PROSECUTOR'S OFFICE TO WAR

#### 3.1 Support of the defence capability of the state

The full-scale war united Ukrainian society with the key goal to help the country resist the aggressor. Like other representatives of the justice system (judges, attorneys), prosecutors actively participated in the initiatives targeted at strengthening the state's defence capabilities. One of the most effective ways to achieve this goal was financially supporting the Armed Forces of Ukraine (hereinafter referred to as the "Armed Forces").

Donation by prosecutors to the state's defence field manifested in various forms. By analogy with judges, it is carried out at the official (by delivering relevant judgments) and private levels, and the financial assistance provided to the Armed Forces is both direct and indirect in nature<sup>30</sup>. However, it also has its own specificity associated with the procedural tools available to the prosecutor.

27 The Office of the Prosecutor General and the IBA announced signing of the Memorandum of Understanding <<https://www.gp.gov.ua/ua/posts/ofis-generalnogo-prokurora-ta-iba-zayavili-pro-pidpisannya-memorandumu-pro-vzajemorozumynnya>> accessed 23 February 2023.

28 The UN Human Rights Monitoring Mission in Ukraine began its work in March 2014. The mission carries out monitoring, publishes reports and advocates on the human rights situation in the country in order to promote access to justice and bring perpetrators to justice. In the context of the Russian Federation's invasion in Ukraine, the Mission focused on monitoring how the invasion affected the human rights situation in Ukraine. In connection with hostilities, the Mission moved part of its offices and now operates in Uzhhorod, Kyiv, Odesa, Dnipro and other cities.

29 A meeting with representatives of the UN Human Rights Monitoring Mission was held at the Prosecutor's Office <[https://od.gp.gov.ua/ua/news.html?\\_m=publications&\\_c=view&\\_t=rec&id=313390](https://od.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=313390)> accessed 23 February 2023.

30 O Khotynska-Nor, A Potapenko, 'Courts of Ukraine in Wartime: Issues of Sustainable Functioning' 2022 31 *Revista Jurídica Portucalense*, 218–240.

Thus, according to the Office of the Prosecutor General, 4.898 billion hryvnias of funds and valuables were transferred for the needs of the Armed Forces to defeat the aggressor, as well as 880 vehicles and 13 thousand tons of fuel<sup>31</sup>.

Unfortunately, there is no generalized information on the scope of assistance given by the Prosecutor's Offices with regional criteria. It remains as a one-off. Thus, from the beginning of the war until the beginning of June 2022, the prosecutors of Kharkiv Regional Prosecutor's Office ensured transfer of the funds to the Armed Forces' account<sup>32</sup> in the amount of about UAH 3.3 million, deposited in the form of bail in criminal proceedings; as of 21 April 2022, the prosecutors of Lviv region transferred more than 4.5 million hryvnias and 42 vehicles<sup>33</sup>.

Regarding individual cases of assistance, at the request of the prosecutors from the Office of the Prosecutor General, goods for military purposes (helmets, body armour, thermal imaging cameras, quadcopters) for the total amount of about 5 million UAH were transferred for the needs of the Armed Forces. The goods were seized during a pre-trial investigation on suspicion of a group of individuals evading customs payments when the goods were imported under the guise of humanitarian aid during martial law, and their subsequent legalisation on the territory of Ukraine (Part 3 of Article 212, Part 3 of Article 209 of the Criminal Code of Ukraine)<sup>34</sup>.

In turn, at the request of the prosecutors in Odesa Regional Prosecutor's Office, more than 600 spare parts and units of military aviation equipment, for the sum amount of more than 4 million hryvnias, were transferred for the needs of the Armed Forces. This equipment was seized and arrested during the pre-trial investigation of the criminal proceedings upon encroachment on the territorial integrity and inviolability of Ukraine<sup>35</sup>.

Thus, for the support of the defence capability of the state, the Prosecutor's Office uses the range of possibilities envisaged by the legislation within the framework of criminal proceedings.

## 3.2 Destructions

It should be recognized that, in addition to manifestations of national consciousness and active civic position in confrontation with the aggressor in the justice system, particularly in the Prosecutor's Office, the war resulted in a number of destruction occurrences. This refers to the collaboration, treason, and violation of the prosecutor's oath. All these are associated with the human factor.

Prosecutors, like judges, represent state power in society and are involved in the process of justice execution. This imposes obligations and restrictions on them, which they must

31 Official website of the Office of the Prosecutor General <<https://www.gp.gov.ua/>> accessed 23 February 2023.

32 Support of the Ukrainian army: Kharkiv prosecutors ensured transfer of seized funds as part of criminal proceedings for the needs of the Armed Forces <[https://khar.gp.gov.ua/ua/news.html?\\_m=publications&\\_c=view&\\_t=rec&tid=314277](https://khar.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&tid=314277)> accessed 13 February 2023.

33 The Prosecutor's Office of Lviv Region handed over 42 vehicles for the needs of the Armed Forces of Ukraine <[https://tvoemisto.tv/news/prokuratura\\_lvivshchyny\\_peredala\\_na\\_potreby\\_zsu\\_42\\_avtomobili\\_131155.htm](https://tvoemisto.tv/news/prokuratura_lvivshchyny_peredala_na_potreby_zsu_42_avtomobili_131155.htm)> accessed 23 February 2023.

34 Military goods for the amount of UAH 5 million were transferred to the needs of the Armed Forces <[https://www.facebook.com/pgp.gov.ua/posts/446013574228148/?paipv=0&eav=AfYISIBsNfozpyctXJUIP4w8gsz-rHpakSKmF3kXXSDuKr6gtC1DvOIKcZHiW2aU3JE&\\_rdr](https://www.facebook.com/pgp.gov.ua/posts/446013574228148/?paipv=0&eav=AfYISIBsNfozpyctXJUIP4w8gsz-rHpakSKmF3kXXSDuKr6gtC1DvOIKcZHiW2aU3JE&_rdr)> accessed 23 February 2023.

35 In Odesa, the prosecutor's office seized equipment for military aviation from a private enterprise and handed it over to the Armed Forces of Ukraine <<https://yug.today/na-odeshchyni-prokuratura-vyluchyla-u-privatnoho-pidpriemstva-obladnannia-dlia-viyskovoi-aviatsynoi-tekhniky-ta-peredala-yoho-zsu/>> accessed 23 February 2023.

observe, even during martial law. However, like all humans, they act according to instinct (especially the instinct of self-preservation), emotions (fear, hatred, anger, etc.), personal views, and beliefs.

Our analysis of the materials of the disciplinary practice to bring prosecutors to responsibility<sup>36</sup> during the period from 24 February 2022 to 24 February 2023 shows that:

- 41% of decisions to dismiss prosecutors from their positions (13 decisions out of 32) are justified by the circumstances caused by the war, including:
- 8% of decisions are justified by circumstances such as providing assistance to the occupiers in carrying out subversive activities against Ukraine;
- 77% of decisions are justified by circumstances such as staying in the occupied territory or refusal to move to the territory controlled by the Ukrainian authorities;
- 15% of decisions are justified by circumstances such as going abroad or to a region of Ukraine other than the place of work to ensure personal safety and safety of their family members.

In some cases, depending on the specific circumstances, less stringent types of disciplinary sanctions were applied in relation to the prosecutors who went abroad (or stayed there until 24 February 2022 and did not return) due to their personal safety and safety of their family members, particularly seen as a reprimand.

As part of the decisions on dismissal from the positions, an assessment was made of the actions of the prosecutors, which became the subject of criminal proceedings under the Articles of the Criminal Code of Ukraine “Treason,” and “Collaborative Activity.”

It is important that assessment of the circumstances caused by the war in the analysed decisions gave impetus to develop the standards of prosecutorial activity. As an example, it is necessary to cite the position formulated in one of the decisions of the Qualification and Disciplinary Commission on Public Prosecutors: “Complying with the requirements to prevent illegal non-official relations and prohibition of the actions that may cast doubt on the objectivity, impartiality and independence of the prosecutor, on the integrity and incorruptibility of the bodies of the Prosecutor’s Office, and even in favour of the enemy in wartime conditions, is obvious and mandatory, and violation of such requirements cannot be justified by any circumstances. Such behaviour undermines the authority of the prosecutor, Prosecutor’s Office, and the state as a whole, because prosecutors represent the state when exercising their powers. Such actions in wartime in favour of the occupier may result in growing dissatisfaction of the society with the actions of the authorities, provoking social conflicts. Committed specified disciplinary offences by the prosecutor are incompatible with further holding by this prosecutor of any position in the Prosecutor’s Office and cannot result in imposition of a less stringent penalty than dismissal from the position in the Prosecutor’s Office”<sup>37</sup>.

Therefore, the analysed cases are professional and behavioural destructions which are assessed by a disciplinary body to finalize the prosecutor’s career.

36 The decision to impose disciplinary sanctions on prosecutors, published on the official website of the Qualification and Disciplinary Commission on Public Prosecutors was analysed. <<https://kdkp.gov.ua/decision>> accessed 23 February 2023.

37 On imposition of disciplinary sanctions with regard to the Head of Mykolaiv District Prosecutor’s Office of Mykolaiv Region H.Yu. Herman: Decision of the Qualification and Disciplinary Commission on Public Prosecutors No.61дп-22. 25.05.2022 <<https://kdkp.gov.ua/decision/2022/05/25/2243>> accessed 23 February 2023.

## 4 PROSPECTS FOR PROSECUTOR'S OFFICE UNDER MARTIAL LAW

The conditions of martial law outlined new prospects for development of the prosecutorial system. First, the full-scale war exacerbated discussion of the expediency of returning the military Prosecutor's Office as a part of the prosecutorial system<sup>38</sup>.

The above resulted in development of the legislative initiatives to staff separate Prosecutor's Offices with servicemen of the Armed Forces of Ukraine. According to the authors, this will ensure effective organisation and procedural management over investigation and disclosure of war crimes, contribute to maintenance of military discipline, combat, and mobilization readiness of the Armed Forces of Ukraine and other Ukrainian military units at a level that guarantees an adequate response to threats to territorial integrity and inviolability, defence capability, national security and defence, and protection of military personnels' rights and legitimate interests<sup>39</sup>.

Such an idea is interesting for discussion because, in the modern world, there is no single model of functioning military Prosecutor's Offices (for example, in the Czech Republic, they are created only in emergency situations)<sup>40</sup>. Considering the key role of the Armed Forces in today's conditions with the increase of military personnel through mobilization, the proposed idea of staffing the Prosecutor's Offices with servicemen from the Armed Forces of Ukraine, at first glance, may be considered acceptable for Ukraine. However, in our opinion, based on the requirements for prosecutors envisaged by the legislation of Ukraine, it is the military Prosecutor's Offices that should be staffed, not vice versa.

In addition, the idea of assigning some of the investigating judge's powers to the prosecutors, if the former does not have the objective ability to perform them, was formalized.

The above shows that the conditions of martial law require a prompt response to the situation and wartime needs of all state power subjects without exception, particularly parliament, which must ensure an adequate modern regulatory framework for the Prosecutor's Office's functioning. The effective performance of its functions by the Prosecutor's Office depends on it.

## 5 CONCLUSIONS

In summary, it may be confidently noted that influence of martial law on the activity of the Prosecutor's Office of Ukraine is observed in all fields and directions of its work.

Our selective analysis of the Prosecutor's Offices' performance indicators by regional criteria showed the following results: 1. Prosecutor's Offices continue to fulfil their constitutional duties in coordination with other law enforcement agencies and military administrations; 2. The activity of Prosecutor's Offices during the period of martial law is largely determined by the territorial factor; 2.1. The proximity of a certain region (oblast) to the front line or

38 The military prosecutor's office system existed in Ukraine until 2012, and its jurisdiction extended to the crimes committed by the representatives of the defence sector. In 2014, with the beginning of the armed conflict, the state resumed the activity of military prosecutors and extended their jurisdiction also to the crimes classified as "violations of the laws and customs of war". In 2019, the military prosecutor's offices were liquidated again, but the question of their next return became relevant with the beginning of the full-scale invasion of the Russian Federation into the territory of Ukraine.

39 Explanatory note to the Draft Law of Ukraine on Amendments to Certain Legislative Acts on Improving the Activity of Prosecutor's Offices in the Conditions of Armed Aggression against Ukraine <<https://itd.rada.gov.ua/billInfo/Bills/pubFile/1221948>> accessed 23 February 2023.

40 M Vashakmadze, (2018) Understanding Military Justice: A Practice Note. Geneva. <[https://www.dcaf.ch/sites/default/files/publications/documents/Military-Justice\\_Practice-Note\\_eng.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Military-Justice_Practice-Note_eng.pdf)>

the border with the aggressor country increases the criminogenic nature of the situation in that region, as displayed on quantitative indicators of the committed offences; 2.2. Criminal offences in the fields of protection of state secrets, inviolability of state borders, ensuring conscription, and mobilization are most common in the regions that are often chosen by the persons subject to mobilization for attempts to illegally cross the border (Lviv region, Odesa region); 2.3. The military operations' activity is directly reflected in the change in the types of recorded criminal offences, especially noticeable in the comparative analysis of indicators of criminal offences associated with war crimes; 2.4. Incidents of procedural management over the cases associated with the offences against foundations of national security and criminal offences against peace, security of mankind, and international legal order, are significantly increasing in the regions close to the line of hostilities.

As a response to the war, the following trends became pronounced in the activity of the Prosecutor's Office of Ukraine: 1. The impact of digitization on the activity of the Prosecutor's Office expanded the scope of its penetration. If previously, digitalization was manifested mainly in presence of the websites used to cover news of the Prosecutor's Office's activity, now the platforms for interaction with the public are being created, thus contributing to effectiveness of the Prosecutor's Office; 2. Strengthening of international cooperation, determined by the European integration processes and support of our country by European partners under difficult conditions of martial law.

The full-scale war catalysed development of polar phenomena among prosecutors: 1) enhancing the civil position in opposing the invader; and 2) professional and behavioural destructions, of which a disciplinary body evaluates and finalizes the prosecutor's career. The decisions of this body contribute to development of the prosecutorial activity standards in wartime conditions.

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