

INTRODUCTION OF THE MILITARY PROSECUTOR'S OFFICE AS AN ELEMENT OF MILITARY JUSTICE

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The article is devoted to the possibility of introducing the military prosecutor's office as an element of military justice. It is proved that the functioning of the Specialized Military Prosecutor's Office, which is staffed by military personnel, under the conditions of the introduction of the legal regime of martial law and a special period in Ukraine, an effective solution to the tasks of protecting national interests from military threats will be ensured, maintaining proper law and order in the military sphere, including supervising the observance by the intelligence agencies of Ukraine of the laws of Ukraine and the observance of legality by the military counterintelligence bodies of the Security Service of Ukraine, carrying out counterintelligence activities, ensuring the protection of the rights and legitimate interests of military personnel and their families, as well as improving the efficiency of detection, documentation and investigation of war crimes, crimes of genocide and crimes against humanity committed by the Russian Federation on the territory of Ukraine, as well as effective supervision of the system of vowel and secret search and counterintelligence measures, carried out with the use of operational and operational-technical means (Articles 2 and 5 of the Law of Ukraine «On operational-search activities»).

It is emphasized that the establishment of the Specialized Military Prosecutor's Office, within the framework of building a system of bodies of Military Justice of Ukraine, under the conditions of the legal regime of martial law, military aggression of the Russian Federation against Ukraine, will be aimed at achieving the goal of strengthening a special partnership with NATO and Ukraine's

full membership in the North Atlantic Treaty Organization, in terms of interoperability of the components of the security and defense sector with the relevant structures of the Alliance.

The specialized military prosecutor's office has been proposed to define as a legal entity of public law, which has separate property that is state property, accounts in bodies that carry out treasury services for budget funds, a seal depicting the State Emblem of Ukraine and its name.

Keywords: introduction, military prosecutor's office, justice, prosecutor's office, reform, martial law, war, prosecutor's office.

The President of Ukraine by Decree of May 11, 2023 No. 273/2023 approved the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defense Sector of Ukraine for 2023 - 2027, to achieve the mission, which is the strategic and operational ability of law enforcement agencies and prosecutors to serve the people, to protect order, public and state security in compliance with human rights and standards of accountability, integrating Ukraine into the European space of freedom, security and justice [1]. It should be noted that throughout the existence of independent Ukraine at the level of the by-law, law enforcement agencies and the prosecutor's office have been separated. Earlier and still there is an opinion that the prosecutor's office is part of law enforcement agencies and identified with them, outside the general system of justice. However, for quite a long time the prosecutor's office together with the bar

and the court, in accordance with the Constitution of Ukraine, is part of the justice system of Ukraine. Thus, at the level of the Comprehensive Plan for the Strategic Reform of the Law Enforcement Agencies, the affiliation of the Prosecutor's Office to the justice system is determined, as it should be, in accordance with the Constitution of Ukraine.

Special attention should be paid to the strategic plan for reforming law enforcement agencies defined by the Comprehensive Plan:

— ensuring legal certainty of the functions of the prosecutor in organizing the pre-trial investigation, the procedural management of the pre-trial investigation, the supervision of the observance of laws by the pre-trial investigation bodies, in particular the distinction between the procedural status of the prosecutor, the head of the prosecutor's office and the head of the pre-trial investigation body.

— expanding the scope of the prosecutor's discretion in criminal proceedings to ensure the fulfillment of the functions assigned to him, in particular at the initial and final stages of the pre-trial investigation, taking into account the priority directions of combating crime;

— improving the internal structure and functions of law enforcement agencies and the prosecutor's office, ensuring their rational construction and ability to effectively perform their functions by optimizing resources in accordance with the powers determined by law.

— strengthening the coordination role of the Office of the Prosecutor General, the introduction of a legal mechanism for the approval and/or approval by the Prosecutor General of interdepartmental acts of law enforcement agencies on issues of pre-trial investigation and operational-search activities (standards, guidelines).

The above will require, to a certain extent, the revision of the legislation of Ukraine and the introduction of appropriate changes.

It should be noted that the decision to approve the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies, adopted during a special period and during the stay of Ukraine in the conditions of the legal regime of martial law, entered February 24, 2022, in connection with the military aggression of the Russian Federation against Ukraine, on the

basis of the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20 of part one of Article 106 of the Constitution of Ukraine, Law of Ukraine "On the legal regime of martial law," Decree of the President of Ukraine No. 64/2022 [2].

Special attention deserves, in connection with the above, the question of building a system of bodies of Military Justice of Ukraine, the restoration of the military prosecutor's office, as an integral element of this system.

In 2014, the Russian Federation committed an act of aggression against Ukraine, which resulted in the temporary annexation of part of the territory of Ukraine, in particular the purges of the Luhansk and Donetsk regions, the Autonomous Republic of Crimea. As a result, on March 18, 2014, in accordance with the Decree of the President of Ukraine No. 303/2014 "On Partial Mobilization," a special period began in Ukraine. In this regard, the President of Ukraine was instructed to the Head of the Security Service of Ukraine, Head of the State Guard of Ukraine, Head of the Foreign Intelligence Service of Ukraine, the highest command of the National Guard of Ukraine, the heads of the central executive bodies, which are subordinate to the military formations of Ukraine, Operational and rescue service of civil protection, transfer subordinate military formations of Ukraine, Civil Protection Operations and Rescue Service on organization and wartime states [3].

In February 2022, Russia committed an act of military aggression against Ukraine, through a full-scale military invasion of Ukraine.

It should be noted that as of February 2022, in the conditions of military aggression of the Russian Federation against Ukraine, in Ukraine there is no full-fledged system of military justice bodies (military police, military counterintelligence, military prosecutor's office, military advocacy, military court). Military justice of Ukraine, in a special period and under the legal regime of martial law, in accordance with the Strategy for Ensuring National Security of Ukraine, approved by the Decree of the President of Ukraine of 14.11.20 No. 392/2020 should become an effective element of ensuring national security by achieving sufficient interoperability of the components of the

security and defense forces with the relevant structures of the member states of the North Atlantic Treaty Organization and implementing Ukraine's strategic course towards full membership in the European Union and the North Atlantic Treaty Organization, in accordance with their standards and procedures [4].

It should be noted that in August 2014 the Main Directorate for Supervision of Compliance with Laws in the Military Sphere was disbanded, and on its basis the Main Military Prosecutor's Office of Ukraine was formed, and a new position was introduced, Deputy Prosecutor General - Chief Military Prosecutor. All prosecutors who worked in the Main Military Prosecutor's Office of Ukraine had the status of military personnel.

On September 19, 2019, the Verkhovna Rada of Ukraine adopted a bill on the reform of the prosecutor's office under No. 1032 "On Amending Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecutor's Office." This law provided for the liquidation of military prosecutor's offices by January 1, 2021 [5].

The elimination of military prosecutor's offices led to a number of problems that do not properly allow to ensure proper law and order in the troops. In particular, the elimination of military prosecutor's offices practically makes it impossible for employees of the already civilian prosecutor's office to exercise their powers in the areas of warfare.

Decision of the National Security and Defense Council of Ukraine "On the National Security Strategy of Ukraine" of 14.09.20 clearly illustrates the mistake made within the framework of the long-term reform of the prosecutor's office, namely, in fact, the elimination of the military prosecutor's office in Ukraine by the decision of the Parliament of Ukraine in 2019.

The Office of the Attorney General tried to correct this mistake. Thus, according to the results of the processing by the Office of the Prosecutor General of the materials for consideration at the meeting of the National Security and Defense Council of Ukraine on the issue "On Urgent Measures to Deepen Ukraine's Integration into the North Atlantic Treaty Organization," a letter of 14.05.21 was sent to the

Secretary of the National Security and Defense Council of Ukraine. No. 11/4-4vih-21 with the proposals of the Office of the Prosecutor General on the establishment of a military justice system in Ukraine, consisting of the military police, military prosecutor's office and military courts [10].

The proposals were submitted by the Office of the Prosecutor General in a letter dated 14.05.21. No. 11/4- 4vih-21 were urgent and consistent with the Decree of the President of Ukraine of 14.09.20. No. 392/2020, which approved the decision of the National Security and Defense Council of Ukraine "On the National Security Strategy of Ukraine" of 14.09.20, especially taking into account that in the context of the armed aggression of the Russian Federation against Ukraine, the creation and functioning of the system of Military Justice of Ukraine, responsible for ensuring law and order, the administration of justice, the protection of human rights in the military, military and defense spheres, is of exceptional importance.

Unfortunately, for unknown reasons, the proposal to create a Military Justice of Ukraine at the meeting of the National Security and Defense Council of Ukraine on the issue "On urgent measures to deepen Ukraine's integration into the North Atlantic Treaty Organization" in 2021 was not considered. as evidenced by the decision adopted on June 4, 2021 by the NSDC of Ukraine "On urgent measures to deepen Ukraine's integration into the North Atlantic Treaty Organization," approved by the Decree of the President of Ukraine of 23.07.21 № 307/2021 [6].

In particular, in 2021, an international scientific event "Activities of Military Justice in Conditions of Armed Conflict. The Experience of the Ukrainian Prosecutor's Office," "within the framework of which the peculiarities of the organization and functioning of the system of bodies of Military Justice of Ukraine, the activities of the prosecutor's office in the conditions of international armed conflict and counteraction to the aggression of the Russian Federation against Ukraine were considered. The current state and the need to develop the system of military justice of Ukraine, taking into account the experience and standards of NATO member

states on the implementation of military justice, the organization and activities of military law enforcement agencies, are highlighted. Within the framework of this event, G. Tin of the Committee on Law Enforcement of the Verkhovna Rada of Ukraine noted - "The immutability of Ukraine's course regarding the fastest entry into the North Atlantic Treaty Organization has been repeatedly emphasized by the President of our state Volodymyr Zelensky. Therefore, our task is to develop and propose ways of our integration in the sphere of activity of the military justice bodies, especially in the conditions of a military conflict on the territory of Ukraine [9].

The challenges facing us certainly require from us, I mean including all branches of government, concerted actions to introduce effective institutions of military law and order in Ukraine and the effective activities of prosecutors of the Specialized Prosecutor's Office in the military and defense sphere. Two years ago, the Verkhovna Rada of Ukraine adopted amendments to the Law of Ukraine "On the Prosecutor's Office," which liquidated the military prosecutors as part of the prosecutor's office of Ukraine. Subsequently, the Specialized Prosecutor's Office in the military and defense sphere was created on their basis from scratch "[7; 11].

Being in a high-risk zone, civil prosecutors do not have social security guarantees that are provided for military personnel. This situation is discriminatory and needs to be corrected. "All this shows that the Office of the Prosecutor General stands on an understandable and clear position on the restoration (creation) of the military prosecutor's office, which will consist of prosecutors of military personnel. However, since April 2021, there have been no changes in this direction, with the exception of some initiatives of people's deputies of Ukraine, which in the second year of Russia's military aggression against Ukraine are still initiatives in the form of bills [8].

The establishment of a system of bodies of Military Justice of Ukraine is a way that will correspond to the implementation of the provisions of the National Security Strategy of Ukraine, including in the field of strengthening a special partnership with NATO and

gaining full membership in the North Atlantic Treaty Organization, in terms of the interoperability of the Armed Forces of Ukraine and other components of the security and defense sector with the relevant structures of the Alliance, as well as the implementation of the provisions of the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defense Sector of Ukraine for 2022-2027. Within the framework of this, it should be noted that in most NATO member states there are bodies responsible for the investigation and consideration of war crimes (the service of military prosecutors, the military legal corps, the military prosecutor's office).

Література

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ЗАПРОВАДЖЕННЯ ВІЙСЬКОВОЇ ПРОКУРАТУРИ ЯК ЕЛЕМЕНТА ВІЙСЬКОВОЇ ЮСТИЦІЇ

Стаття присвячена можливості запровадження військової прокуратури як елемента військової юстиції. Доведено, що функціонування Спеціалізованої військової прокуратури, яка

укомплектована військовослужбовцями, в умовах впровадження правового режиму воєнного стану та особливого періоду в Україні, буде забезпечено ефективно вирішення завдань захисту національних інтересів від воєнних загроз, підтримання належного правопорядку у воєнній сфері, у тому числі здійснення нагляду за додержанням розвідувальними органами України законів України та дотриманням законності органами військової контррозвідки Служби безпеки України, що здійснюють контррозвідувальну діяльність, забезпечення охорони прав і законних інтересів військовослужбовців та членів їх сімей, а також підвищення ефективності виявлення, документування і розслідування воєнних злочинів, злочину геноциду та злочинів проти людяності, скоєних рф на території України, а також здійснення дієвого нагляду за системою гласних і негласних пошукових та контррозвідувальних заходів, що здійснюються із застосуванням оперативних та оперативно-технічних засобів (статті 2 та 5 Закону України "Про оперативно-розшукову діяльність").

Акцентовано увагу, що утворення Спеціалізованої військової прокуратури, у рамках побудови системи органів Військової юстиції України, в умовах правового режиму воєнного стану, військової агресії рф проти України, буде спрямоване на досягнення мети щодо зміцнення особливого партнерства з НАТО та набуття Україною повноправного членства в Організації Північноатлантичного договору, у частині взаємосумісності складових сектору безпеки і оборони з відповідними структурами держав Альянсу.

Запропоновано спеціалізовану військову прокуратура визначати як юридичну особу публічного права, яка має відокремлене майно, що є державною власністю, рахунки в органах, що здійснюють казначейське обслуговування бюджетних коштів, печатку із зображенням Державного Герба України та своїм найменуванням.

Ключові слова: запровадження, військова прокуратура, юстиція, прокуратура, реформування, воєнний стан, війна, офіс прокурора.