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UKRAINE IS MODERN. SCIENTIFIC STUDIES OF THE PAST AND PRESENT

ISBN 979-8-88896-532-0
DOI 10.46299/979-8-88896-532-0

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Monograph

2023

UDC 93/94

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Boiko Y., Bogatchuk S., Levchuk K., Belkin I., Manhora V., Manhora T., Durach O., Makarov Z. Ukraine is modern. Scientific studies of the past and present. Monograph. – Primedia eLaunch, Boston, USA, 2023. – 298 p.

Library of Congress Cataloging-in-Publication Data

ISBN – 979-8-88896-532-0
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ANNOTATION

The collective monograph is devoted to the study of trends in the development of modern Ukrainian society. The research uses an interdisciplinary approach, which allows analyzing various aspects of the development of social processes in Ukraine and obtaining socially significant scientific results.

The subject of **Yuri Boyko's** scientific interests are various manifestations of life activities of the population of Forest-Steppe Ukraine in the 19th century. - demographic, social, economic, cultural. In the proposed research, the author's attention is focused on the structure of the social organism, the dynamics of changes, regional features of the social organization of the population, for the first time in domestic historiography, the issues of social topology, the construction of the social landscapes of the Right-Bank and Left-Bank components of the Forest-Steppe Ukraine, the place of Ukrainian provinces in the social space of the European part of the Russian Empire are specifically considered 1850s - 1860s.

Svitlana Bogatchuk pays attention to the study of the life path of the founder of Ukrainian ethnographic science, the Ukrainian Pavlo Chubynskyi. It should be noted that in 1869-1872, under his leadership, ethnographic expeditions were conducted on the territory of Dnieper Ukraine, based on the materials of which seven volumes of the "Proceedings of the Ethnographic and Statistical Expedition" were published, which became a significant phenomenon in the cultural life of the Ukrainian people, convincingly showing the world their originality Ukrainian national spiritual culture.

In 1872, the South-Western Branch of the Imperial Russian Geographical Society was opened in Kyiv, in the formation of which Pavlo Chubynsky played a decisive role. The main task of the society was to collect, process and distribute geographical, ethnographic and statistical information.

Kostyantyn Levchuk's research is aimed at studying the process of activity of non-governmental organizations of commodity producers of Ukraine in the context of reforming economic relations. Trade union organizations, as the most representative

public organizations of workers, had to prove to the power structures their position, their vision regarding the ways out of the crisis and further social development.

Public organizations operating in the spheres of economy include associations of entrepreneurs, farmers, tenants, employers and private owners. They are the result of self-organization of commodity producers, which contributes to increased structuring and self-regulation of the economy. Unlike trade unions, public associations of entrepreneurs faced other tasks, which consisted in the formation of corporate interests and awareness of the need to develop their own consistent and comprehensive economic policy.

Ihor Belkin's chapter is devoted to trends in the development of educational services under today's conditions. The author pays attention to the dynamics of changes in the educational process under the influence of market relations. Attention is drawn to the key positions of each of the participants in the educational process. The legislative framework of education is analyzed. The content of the final result of the educational process is revealed. Comparative characteristics of the leading higher education institutions of Ukraine and their competitiveness are given. The key trends in the development of the provision of educational services abroad are characterized. In the context of the education market, the position of the main participants in this space is revealed in detail. At the end of his chapter, the author offers a set of analytical conclusions and proposals.

Volodymyr Manhora's scientific research is aimed at forming knowledge about the state when teaching the history of Ukraine. The historical-methodological aspect of the research has been developed, which shows the dynamics of changes in the content of knowledge about the state and the methods of their assimilation in the learning process. According to the author, this is related to the appropriate conditions for the existence of historical and legal education in a specific historical period of the development of society, the development of methodical science, and the accumulation of teaching experience. Only on the basis of the analysis of the historical and methodological aspect of this problem, modern achievements of methodical science

and teaching practice, it is possible to scientifically justify and experimentally verify the effective method of forming knowledge about the state.

Investigating the problem of the formation of the institution of inheritance in Ukraine and the peculiarities of the implementation of inheritance cases in the conditions of martial law, **Tamila Manhora** examines the controversial aspects of the legal regulation of the relevant legal relations.

The introduction of martial law in Ukraine undoubtedly affected all spheres of social relations, including inheritance. In this period, questions that previously had only theoretical importance become urgent. In particular, the war and the temporary occupation of certain territories of Ukraine by the enemy significantly affect the exercise of rights by individuals in the field of inheritance law. It is, first of all, about significant obstacles in the realization of the right to receive inheritance. Because of this, the state must effectively and timely respond to such challenges in order to protect the rights and interests of subjects, as well as ensure the stability of property turnover. There is no doubt that war is a significant destabilizing factor in the dynamics of property relations. Therefore, the task of legal doctrine in this extremely difficult period for the state is to develop effective mechanisms for subjects to exercise their inheritance rights for their further regulatory implementation.

Olga Durach's chapter examines the history of military courts in Ukraine. The main reasons that contributed to the liquidation of military courts have been revealed. The basic principles of the organization of the work of military courts in Ukraine have been determined. Peculiarities and problematic issues of the administration of justice during the period of martial law have been studied, and the reasons for the need to resume the work of military courts have been determined. Ways to resolve controversial issues regarding the resumption of military courts in Ukraine are proposed.

Zorislav Makarov explores traditional forms of philosophical determinism in his creative work. Significant attention is paid to the reception and transformation of such ancient and medieval philosophical concepts in the synthetic context of Renaissance determinism, such as the physics of Aristotle, the history of Titus Livius,

the mystical pantheism of the Neoplatonists and Nicholas of Cusa, the magic and astrology of Hermeticism, the theological ontology of Aurelius Augustine and Thomas Aquinas. The sequence of overcoming medieval dualism in nomology is established from the humanistic mastering of the potential of transcendent powers in legislation by the Renaissance man due to its limitation by the requirements of social and political expediency to the new substantialization of nature in the form of rational principles of its movement and transformations of natural things.

The content of the collective monograph corresponds to the direction of scientific work of the Department of History of Ukraine and Philosophy of Vinnytsia National Agrarian University. The monograph is the result of the initiative topic "Research of trends in socio-economic development and consolidation of Ukrainian society in the modern history of Ukraine". State registration number 0122U001425. The head of the subject is Professor K. I. Levchuk). The monograph uses: historical-genetic method, statistical analysis, sociological, economic, legal and pedagogical methods.

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Abstract

The history of the formation of military courts in Ukraine is studied. The main reasons that contributed to the liquidation of military courts have been revealed. The basic principles of the organization of the work of military courts in Ukraine have been determined. Peculiarities and problematic issues of the administration of justice during the period of martial law have been studied, and the reasons for the need to resume the work of military courts have been determined. Ways to resolve controversial issues regarding the resumption of military courts in Ukraine are proposed.

The relevance of the chosen topic is determined by its novelty, the presence of different, diametrically opposite, scientific points of view, views on the need to restore the work of military courts in Ukraine. On the one hand, before the start of military operations in the State, in the east of Ukraine, there was an illusion about the needlessness of military training of citizens, the armed forces, military justice, and military courts. The conduct of an anti-terrorist operation in the East of Ukraine, the subsequent invasion of the territory of the State by the enemy on February 24, 2022, made us reconsider the need for such institutions. One of the determining factors of the effective operation of the Armed Forces of Ukraine is the well-established structure of military justice, which currently includes the military prosecutor's office, which provides procedural guidance during the investigation of military criminal offenses and supports prosecution in court. But such a construction in itself cannot be considered sufficiently effective during the establishment, pre-trial investigation and maintenance of accusations in the court in the field of military criminal offenses, since the only logical consequence, provided for by the Criminal Procedure Code of Ukraine, after the specified actions is the transfer of the case to court, which will carry out a quick, fair and impartial consideration of the specified cases. At the same time, the court must have a relevant specialty, sufficient competence to make correct and well-founded decisions. So, in fact, military courts can be considered an important and necessary

component of the formation of military justice in Ukraine in the post-war period. The absence of such a component of military justice will lead to the instability of the entire structure, the possibility of its gradual destruction. Thus, V. I. Shishkin notes that military justice is only one of the directions of military justice, but the most important of them in terms of consequences, since the consequence of activity is the highest form of decisions made by the state authorities - a court decision [1, p. 107]. Scientific studies of military courts are represented in works L. N. Husieva, A. S. Koblikova, D. F. Ohnieva, V. V. Serdiuka, O. S. Tkachuka, I. Ya. Foinytskoho, V. P. Shevchenko, V. I. Shyshkina, and a number of other scientists. The problematic issues of the organization of the work of courts in the field of military justice were also investigated in numerous works devoted to the judicial system, justice and the status of judges, in particular, regarding the implementation of the principle of specialization of the judicial system and the institution of special jurisdiction [2, p. 2]. This work is dedicated to the consideration of these issues:

1. The history of the formation of military courts in Ukraine, the determination of the main reasons for the liquidation of military courts in Ukraine

2. The work of Ukrainian courts under martial law. Justification of the need to restore the work of military courts

3. International experience of leading countries in the field of military justice

4. Controversial issues regarding the resumption of military courts in Ukraine. Implementation and directions of development of military courts in Ukraine in the post-war period

7.1 The history of the formation of military courts in Ukraine, the determination of the main reasons for the liquidation of military courts in Ukraine

Analyzing the history of the formation of the Ukrainian court and distinguishing it from Kievan Rus or Zaporizhzhya Sich in order to isolate the historical roots of the modern structure of the domestic judicial system is quite difficult. The Ukrainian state existed as an independent state for too short a period of time. In different periods, the territory of modern Ukraine was part of Kyivan Rus, under the Tatar-Mongol yoke,

under the power of the Lithuanian and Polish states, as part of the Russian Empire, which was also reflected in the country's judicial system. And later, the revolution of 1917 had such a drastic impact on the state system of all the countries that became part of the Soviet Union that the historical traditions in the development of judicial power and the judicial system were completely interrupted, and the age-old achievements of reforming the judicial system were simply rejected and declared harmful.

Regarding the creation of military courts, it can be said that the beginning of the existence of military courts can be considered the times of Zaporizhzhya Sich. So, the judicial system of Zaporizhzhya Sich. Its basis was the general administrative organization, because even in Sich the administrative power was not separated from the judicial power. The courts of kurin atamans and palanquin colonels belonged to the lower judicial bodies in Sich, and the courts of the military judge, kosho ataman and the Sich council belonged to the higher ones. The military judge conducted the executions on his own. His sentences were appealed to the kosh ataman or sich council. In the absence of the bailiff, he represented him in court cases as well. The chieftain of Kosh was considered the supreme judge, whose judgments were final. But in peacetime, his sentences could be appealed to the Sichov Council. He had the right to sentence to death and pardon the condemned. All the Cossacks present in Sich participated in the court of the Sich council. Apparently, only more important matters were brought before the council.

Period in the history of Ukraine - XIX - beginning of XX centuries. - is characterized by the absence of Ukrainian national statehood. Ukrainian lands were part of both the Russian and Austrian empires, and the legal systems on these lands were those of the respective empires. Military courts in these empires existed and belonged to special courts.

The next period of the formation of military courts in Ukraine can be considered the period of revival of Ukrainian statehood (March 1917 - April 1918). Thus, emergency military courts in the Ukrainian People's Republic were established in areas declared under martial law or under siege, as well as in the theater of military operations in accordance with the law of January 26, 1919 approved by the Directory

of the Ukrainian People's Republic. Since, on the basis of the law of January 24, 1919, throughout martial law was declared on the territory of the Ukrainian People's Republic, civil justice was relegated to the background, and the previously existing military field courts were abolished, regardless of the time of their creation. Sentences handed down by emergency military courts under a simplified procedure were not subject to appeal and were immediately executed. However, persons sentenced to death had the right within six hours after the announcement of the sentence to appeal to the "Supreme Power", i.e. the Directorate of the Ukrainian People's Republic, "and in the active army - to the Chief Otaman" with a request for a pardon or a lightening of the sentence. The composition of the extraordinary military court was not permanent. It was created by the authority of the regiment commander or military chiefs with equal or greater rights, as well as provincial or city commandants. They appointed the personnel of the military emergency court, which included: the chairman (drill staff chief), 4 members (chiefs and sub-chiefs), a prosecutor, a defense attorney and a secretary. All military and civilian persons were subject to the jurisdiction of the extraordinary military court for criminal acts referred to it under the law of the Ukrainian People's Republic. Since during the days of the UNR Directory, the old legislation was not revised, but only some of its articles were edited, the laws of the former Russian Empire and the Provisional Government continued to be in force on the territory of the UNR, and extraordinary military courts tried according to the military penal statute of the "Collection of War Crimes" of 1869. Thus , they were institutions of "rapid response" to specific circumstances under the legislation of the transitional period. Among the most famous cases that they had to consider were the cases of Colonel P. Bolbochan, sentenced to death on June 10, 1919, Atamans Palienko, Svyatnenko, Bidenko, Semesenko, and Colonel Yatsenko [4].

In the days of the Hetmanship, the judicial system of which was divided into two periods: the Cossack courts (1648 — 1760-63) and the so-called statutory courts (1763 — 83), the so-called central courts were defined. The central courts include the General Military Court, the General Military Office and the Hetman's court. The General Military Court existed at the hetman's residence. At first, it was the highest court of the

region, and later it was possible to appeal from it to the General Military Chancellery. The general judge and others sat in this court. members of the general foreman and noble society. It acted as a court of first instance in the cases of the general sergeant, colonels, Bunchuk comrades and hetman "protectionists" and as an appellate institution for the verdicts of lower courts. The Court of the General Military Chancellery arose only in the 18th century. under Russian pressure The General Military Chancellery had appellate powers, unnecessarily increasing the already considerable number of appeals. The hetman's court relied on the power of the hetman as the supreme judge of the state. His competence was theoretically unlimited. The hetman could take every case into his own consideration, either in the first instance or after the verdict of the lower courts. His sentence was final [3].

Until the end of 1922, Ukraine was considered an independent republic, from August 4, 1920, the "Guidelines on Criminal Law of the RSFSR" issued on December 12, 1919 in the RSFSR were introduced on its territory. After that, it became customary to put into force on the territory of Ukraine the acts of the RSFSR, and then of the USSR, which regulated responsibility for war crimes. According to the Regulation on Military Tribunals and Military Prosecutor's Office dated August 20, 1926, cases of war crimes and some other crimes committed by military personnel began to be considered by military tribunals, which were established at military districts, fronts, armies, fleets, corps, divisions. The general management of their activities was carried out by the Supreme Court of the USSR. The military collegium of the Supreme Court of the USSR finally became the cassation instance for military tribunals. Each military tribunal had a military prosecutor and his assistant [5, p. 286].

According to Art. 58 of the Law on the Judiciary, military tribunals had jurisdiction over cases of war crimes, as well as some other crimes, which were considered by military tribunals for the execution of special laws. Yes, significant changes in Art. 8 The provisions on military tribunals and the military prosecutor's office of 1926 were introduced by the Decree of the Presidium of the Supreme Court of the USSR of December 13, 1940 "On changing the jurisdiction of military tribunals."

During the existence of the Ukrainian Soviet Socialist Republic, military courts (military tribunals) and the military prosecutor's office functioned, which were endowed with broad powers and formed an integral part of the overall system.

The system of military justice bodies has been operating in Ukraine for almost 20 years since independence. Until 2010, military courts in Ukraine were fully part of the unified system of courts of general jurisdiction.

Before liquidation in 2010, military courts were part of the system of courts of general jurisdiction. According to the legislation, they belonged to the general courts and administered justice in the Armed Forces and other military formations formed in accordance with the law. Military courts were considered to be: military courts of garrisons, military courts of regions, and the Court of Appeal of the Naval Forces. In addition, the Military Judicial Chamber and the Military Judicial Collegium operated as members of the Cassation and Supreme Courts, respectively. At the time of the liquidation of the military courts, their competence was assigned exclusively to the consideration of criminal cases and cases of corruption administrative offenses. Moreover, military courts of garrisons as courts of first instance were subject to criminal cases of persons with military ranks up to and including lieutenant colonel, captain of the 2nd rank, except for those cases that were subject to military courts of a higher level. The military courts of the regions and the Naval Forces as courts of first instance tried cases involving the crimes of persons with the military rank of colonel, captain of the 1st rank and above, cases of crimes of persons holding the position of regimental commander, ship commander of the 1st rank and above, and persons equal to them in official position, as well as cases of all crimes for which, in peacetime, the law provides for the possibility of imposing punishment in the form of life imprisonment.

In addition to the categories of cases listed above, previously military courts were also responsible for all crimes committed by servicemen of the Armed Forces of Ukraine, border troops, SBU and other military formations, as well as conscripts during their military training, and all cases of espionage. As well as some other categories of cases, including cases related to the protection of the rights and freedoms of military

personnel. As for the legal status of the judge of the military court, at the time of the liquidation of these courts, his difference from the legal status of other officers of Themis was that the former was in military service in the Armed Forces and had an officer's rank [8].

As a result of the implementation of the provisions of the Law and the concept during 2010–2012, the Decree of the President of Ukraine dated September 14, 2010 "On the liquidation of military appellate and military local courts" adopted a decision, in particular, regarding the liquidation of military courts as an economically burdensome and impractical institution of state power in the conditions of a minor criminogenic situation in Armed Forces of Ukraine and other military formations formed in accordance with current legislation [9].

The Law of Ukraine "On the Judiciary and the Status of Judges" stipulates that cases that were previously considered by military courts of garrisons should be considered by courts of general jurisdiction of the first instance, and cases that were referred to the competence of appellate military courts, according to the new Law, were to be considered by general appellate courts jurisdiction.

All of this has collectively led to the destruction of military infrastructure, education and a number of related institutions in recent decades. In this context, the liquidation of military courts was seen by many politicians and scientists as a natural step in building a peaceful democratic state.

As it was mentioned, there are diametrically opposite points of view regarding the necessity of military courts in Ukraine.

Thus, the criticism of military courts can be summarized in the following provisions: the existence of military courts is not explained by the principles of specialization and territoriality defined in the Constitution of Ukraine; military courts are an alternative to emergency and special courts; in the world, there is a tendency to reduce the sphere of activity of military justice; the functioning of these courts contradicts the requirements of Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights; judges who have officer ranks are subordinate to the military command; such

proceedings do not correspond to the democratic principles of justice; the jurisdiction of this court violates the rights of a person to "his" judge; cases considered by military courts do not have any special features, etc.

These criticisms contain "legal beacons" that point to the dangers associated with the operation of military courts that must be avoided.

Many valid opinions were also expressed in defense of military courts in Ukraine. When considering cases assigned to the competence of military courts, general procedural rules and norms are applied, which excludes any discrimination of trial participants in all types of proceedings, or special proceedings, and complies with the Constitution of Ukraine and international standards of justice. The existing specialization of military courts is due, first of all, to the specifics of the material legislation on the basis of which these cases are considered, and which determines the specifics of the special legal status of military personnel and persons equated to them (ratione personae, ratione materiae) [7].

Therefore, military courts existed almost throughout the period of the establishment of Ukrainian statehood, starting with the times of Zaporizhia Sich. Indeed, with each decade, the composition of such courts, their functions, and powers changed. Instead, such courts continued their existence, which was conditioned by historical necessity, the constant struggle of our State for its independence. It remained unchanged that justice was carried out by military specialists, people who were familiar with the situations in the military sphere, not by hearsay, but by their own experience. After the end of the Great Patriotic War (1941-1945), and Ukraine, as an independent and independent state since 1991, began to rebuild a peaceful life. The existence of the system of military courts did not meet European standards, as it violated the principle of the unity of the status of judges, and required additional costs of the State. There were no attempts to improve the specified system, to bring it into compliance with such standards, to optimize the costs of maintaining such a system in the form of relevant laws. This was the main reason for the liquidation of the system of military courts in Ukraine.

7.2 Work of courts of Ukraine under martial law. Justification of the need to restore the work of military courts

The imposition of martial law does not affect the judicial process. In particular, in accordance with Art. 26 of the Law of Ukraine "On the Legal Regime of Martial Law", justice in the territory where martial law has been imposed is carried out only by courts. Courts established in accordance with the Constitution of Ukraine operate on this territory. Abbreviation or acceleration of any forms of judicial proceedings is prohibited. In case of impossibility to administer justice by the courts operating in the territory where martial law has been imposed, the laws of Ukraine may change the territorial jurisdiction of court cases considered in these courts, or the location of the courts may be changed in accordance with the procedure established by law. Creation of extraordinary and special courts is not allowed [10].

Currently, Ukraine is under martial law. The jurisdiction of former military courts was transferred to courts of general jurisdiction. Procedural supervision of compliance with the law during the pre-trial investigation, maintenance of the state accusation in court is carried out by the military prosecutor's office, as the only body of military justice in the country at the present time. The process of resuming the work of military prosecutors is interesting. Thus, the version of the Law of Ukraine "On the Prosecutor's Office" dated November 29, 1993 included military prosecutors' offices in the system of prosecutor's offices. Their jurisdiction differed by the subject of the act and included crimes committed by representatives of the defense sector. In 2012, the system of the military prosecutor's office was liquidated, instead, the direction of the work of bodies in the military and defense spheres was singled out. The armed conflict on the territory of Ukraine, which has been ongoing since 2014, has once again returned the issue of the activities of military prosecutors to the agenda. A new structure of the prosecutor's office was introduced. In the conditions of an armed conflict, violations of the laws and customs of war were assigned to their jurisdiction. In 2019, the military prosecutor's office was abolished again. However, the issue became relevant again with the full-scale invasion of the territory of Ukraine on February 24, 2022. On April 1, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine

"On Amendments to Certain Legislative Acts on Improving the Activities of Prosecutor's Offices in the Conditions of Armed Aggression against Ukraine." (draft law 7058), introduced by People's Deputy of Ukraine Vladlen Neklyudov and others. The bill was developed with the aim of ensuring the execution of the powers of prosecutors, defined by the Constitution and Laws of Ukraine, in the conditions of armed aggression of the Russian Federation, a special period, martial law. The task of the draft law is to determine the procedure for staffing specialized prosecutor's offices with military personnel, their secondment to the prosecutor's office, material and technical support and social protection. According to the authors of the initiative, the restoration of the military prosecutor's office will significantly increase the efficiency and effectiveness of the prosecutor's office.

Regarding the organization of the work of courts of general jurisdiction in wartime, a number of decisions of a recommendatory nature were adopted:

Decision of the Council of Judges of Ukraine No. 9 dated February 24, 2022. It was decided: to draw the attention of all courts of Ukraine to the fact that even in conditions of war or a state of emergency, the work of the courts cannot be suspended, that is, the constitutional right of a person to judicial protection cannot be limited; to recommend meetings of judges, heads of courts, judges of courts of Ukraine in the event of a threat to the life, health and safety of court visitors, court staff, judges to promptly make a decision on the temporary suspension of judicial proceedings by a certain court until the circumstances that led to the termination of cases are eliminated; in order to ensure the stable functioning of the judiciary in Ukraine, to appeal to the subjects of the legislative initiative with a proposal to urgently introduce a draft law and adopt a law to provide that in the event that the Supreme Council of Justice is incompetent due to the lack of a sufficient number of its members, determined Article 131 of the Constitution of Ukraine, its powers, determined by this and other laws, with the exception of the powers provided for by the Constitution of Ukraine, are temporarily exercised by the Council of Judges of Ukraine and others.;

Decision No. 10 dated March 14, 2022. Specific recommendations for the organization of the work of courts and judges in martial law conditions were

determined. In particular, the concept of "remote work of the court" was mentioned and it was decided to recommend the management of the courts to find out the real reasons why judges leave their places of residence; in the event that the court did not pass a decision on the temporary suspension of court work (temporary suspension of the administration of justice) or a decision on remote work, - to grant such judges paid or unpaid leave at their request with a simultaneous recommendation to arrive at the place of work as soon as possible; when making a decision on granting vacations, take into account the actual circumstances (presence/absence of hostilities in a specific settlement), the real possibility/necessity of the judge's return/arrival to the workplace, the possibility of remote work; remote work of a judge is possible only on the condition that he stays within the borders of Ukraine;

Decision of the Council of Judges of Ukraine No. 11 dated 25.03.2022 recommended that the Courts of Ukraine, the State Judicial Administration of Ukraine, and other institutions of the justice system temporarily postpone until the end of the martial law in Ukraine the provision of answers to all requests for public information received since the beginning of the introduction of martial law state in Ukraine - February 24, 2022. In the case of receiving requests to provide any public information about the activities of courts and institutions of the justice system, a copy of the request should be immediately sent to the Security Service of Ukraine for a thorough check of the persons collecting such information and the purpose pursued by them;

Decision No. 26 dated 05.08.2022 decided to provide the courts with recommendations, in order to increase the level of use of electronic judicial tools during the administration of justice in conditions of difficult financial provision of the courts to recommend to the courts, in particular,

- in cases where the lawyer, notary public, private executor, arbitration administrator, judicial expert, state body, local self-government body, economic entity of the state or communal sectors of the economy, participating in the case, does not have an official email address in the Unified Judicial Information - the telecommunications system – to require the registration of such an official email address for further sending of procedural documents by the court in electronic form;

- summonses and notices, exchange of procedural documents with participants in court proceedings should be carried out primarily by e-mail and/or using the mobile phones indicated by the participants in court proceedings (including using messengers that allow you to receive information about the delivery of the relevant notice, procedural document, and get information about their reading);

- summonses and notices, exchange of procedural documents with participants in court proceedings using traditional postal communication means should be carried out only in case of impossibility of communication by e-mail and/or using mobile phones specified by participants in court proceedings (including using messengers, which allow you to receive information about the delivery of the corresponding message, procedural document, and receive information about their reading);

- in the event that the court does not have the opportunity to print out the documents received by the court in electronic form due to their considerable volume, appeal to the participants in the court proceedings with the proposal to additionally submit the relevant documents to the court in paper form;

- consider the possibility of posting on official websites information about mobile phones, through which participants in court proceedings will be able to communicate with the court (or the judge's office) using messengers that allow to receive information about the delivery of the relevant message, procedural document, and to receive information about their reading;

- to consider the possibility of creating and placing on the official websites of the court alternative postal addresses (registered on secure domain names), through which the participants of court proceedings will be able to communicate with the court (or the judge's office) in case of impossibility of using the official e-mail address of the court;

Decision No. 31 dated 06.10.2022 approved the draft amendments to the provisions on the ASDS, in particular, it was determined that the meeting of judges of the relevant court has the right to determine the specifics of the implementation of the automated distribution of court cases under certain circumstances: in cases of blackout of the court's power grid, failure of equipment or computer programs or the occurrence

of other circumstances that make it impossible for the automated system to function for more than five working days, in accordance with the requirements of sub-clause 2.3.55 of clause 2.3 of this Regulation; which, according to the legislation, are subject to registration and/or review on non-working days; which were subject to transfer to the presiding judge (rapporteur judge) previously determined in the court case in the absence of such a judge, if this would lead to the impossibility of considering these cases and materials within a reasonable time (subclause 2.3.47 of clause 2.3 of this Regulation);

On January 18, 2023, the Council of Judges of Ukraine issued recommendation No. 9rs-33/23-vyh, according to which, in connection with the fact that, according to forecasts, the situation with the energy supply of courts will continue to be critical, to the heads of court apparatuses:

- to record every case of disconnection of the court's power supply by acts in an arbitrary form;

- in case of lack of power supply 1 hour before the start of the working day, it is recommended to make a decision on the introduction of a remote mode of operation of the court.

- in case of interruption of power supply during working hours for more than 2 hours, postpone the meeting on matters that are not urgent;

- in the case of a lack of power supply, as an exception, the application for the extension of the term of detention shall be considered with the recording of the course of the court session by any available means or a written protocol, and the abbreviated court decision shall be made by hand in one copy.

The provisions of the Criminal Procedural Code have been repeatedly amended, certain provisions on pre-trial investigation in martial law conditions have been improved (Articles 331 and 615 of the Criminal Procedural Code of Ukraine), the relevant sections of the Criminal Code of Ukraine, the Code of Ukraine "On Administrative Offenses" have been supplemented , new categories of crimes and administrative offenses in the military sphere were defined, the punishments became tougher.

The Law of Ukraine "On Amendments to Clause 3-1 of Chapter XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and the Status of Judges" regarding the territorial jurisdiction of local courts on the territory of Ukraine before the adoption of the law on changes to the system of local courts on the territory of Ukraine in in connection with the formation (liquidation) of districts, appropriate changes were made. However, other laws that would clearly define the work of courts of general jurisdiction during the period of martial law were not adopted.

Without dwelling on the main problems of the administration of justice by courts of general jurisdiction, which include ensuring the safety of court employees and visitors, making changes to procedural codes, etc., one cannot fail to pay attention to the fact that in such realities, among the consideration of all other, no less important cases, a review of military criminal offenses is also conducted.

The armed conflict in the East, the full-scale war in Ukraine became the factors that caused a significant increase in the number of military offenses and crimes in 2014-2023.

The result of the implementation of the relevant provisions of the above-mentioned legal acts was a rapid increase in the number of administrative offenses and crimes among servicemen and a decline in the legal awareness of servicemen. One of the factors that influenced this growth was the growing trend of the inability of courts of general jurisdiction to effectively consider cases against military personnel for committing war crimes.

The reasons for this inability are the lack of proper and sufficient experience and knowledge of judges of general jurisdiction in the field of organization, management and functioning of the Armed Forces of Ukraine.

A significant part of the judges did not serve in the ranks of the Armed Forces, the vast majority of judges did not participate in hostilities. The low level of knowledge and experience of judges in the military field prevents a full, professional and objective assessment of the circumstances when considering cases related to military service.

The problem is determined by the fact that the military sphere of management and discipline has its own structure and principles, different from the sphere of

management in ordinary civilian life. In addition, in the conditions of hostilities, the circumstances of the case must be evaluated taking into account the situation at the scene of the incident.

Under such circumstances, the evaluation of the circumstances and arguments of the parties in the process cannot be carried out by the court based on the principles of civilian life, since the specified principles differ significantly from the principles of military management, discipline, etc.

Therefore, in order to objectively evaluate the circumstances that constitute the subject of evidence in the relevant case being considered by the court, judges must take into account the peculiarities of military administration, the basic principles of military discipline, the principles of conducting hostilities, and evaluate the specified circumstances taking into account the principle of proportionality and proportionality.

However, due to the lack of professional knowledge in the field of military administration, military discipline, as well as military legal foundations, excessive workload with the consideration of another category of cases (taking into account the significant shortage of judicial staff in almost all courts of Ukraine), judges of general jurisdiction are unable to ensure an effective and quick review affairs.

Indeed, it can be said that it will be sufficient to hold professional courses, seminars with judges of general jurisdiction, regarding the consideration of proceedings on military criminal offenses, which have been actively conducted since February 24, 2022, but to gain some experience in considering this category of cases, which will significantly increase the speed their review takes a long time, given that, as noted earlier, courts of general jurisdiction consider a wide range of other disputes. There is no such time at the moment. Even gaining some experience in considering the specified category of criminal proceedings will not be able to affect the workload of the judge of the general court, which has always been and will be significant.

Instead, cases related to the commission of military criminal offenses require special treatment, a more thorough investigation of the evidence, and a faster judicial response, since the efficiency and quality of their consideration directly affects the defense capability and authority of our State. All of the above in aggregate leads to the

question of resuming the work of military courts in Ukraine, which would function both in peacetime and in wartime.

7.3 International experience of leading countries in the field of military justice

I want to point out right away that a single, so to speak, universal model of military justice has not been developed in the world. When determining the structure, organizational forms, functions and priorities of military courts, each country takes into account its own historical experience, economic opportunities, legal practice, social and interstate relations, the state of the armed forces and other factors.

It should be taken into account that the military court is an integral part of the system of protection of the rights and legitimate interests of military personnel in many developed countries of the world and Europe. Military courts operate successfully in almost 40 developed countries of the world that have their own armed forces, including countries such as the USA, Great Britain, Switzerland, Sweden, Belgium, Israel, Spain, Canada, and Poland. France at one time abolished military courts, but later this decision was recognized as erroneous, and the system of military courts was restored.

Tkachuk O. S. in his studies [11,12] noted that three main approaches to the issue of the mechanism of justice implementation in the armed forces were formed in the world. This allows us to distinguish three groups of countries according to their attitude to the specified problem. The first group is made up of countries where the activity of military courts in considering criminal cases is limited to the wartime period (Austria, Germany, Portugal). In peacetime, they can be formed only with troops abroad. The second group of countries has a so-called mixed jurisdiction in peacetime. In them, specialized military structures (chambers, departments, councils, offices) function on a permanent basis at the general courts. The third approach has countries in which military courts act as independent authorities in peacetime and in peacetime and in wartime. The vast majority of such countries. Many of them have developed democratic institutions, such as the United Kingdom, the United States, and Canada.

This group includes China, Latin American countries, and almost all former Soviet republics.

Military justice systems in common law countries are based on the exclusive jurisdiction of military courts over offenses committed by military personnel (sometimes their jurisdiction also extends to certain categories of civilians).

In a large number of continental European countries, military offenses fall under the jurisdiction of civilian courts. For example, there are no permanent military courts in Germany. Administrative (disciplinary) tribunals deal with offenses committed during military service, while civilian courts concentrate on crimes.

In many military justice systems, legislation creates civilian appellate courts and sometimes relies on a civilian supreme court as the highest appellate authority. For example, in Canada, the civilian Supreme Court is the highest court after the Military Court of Appeal. In Hungary, military judges of the Supreme Court operate at the first and appellate levels. One of the chambers of the Supreme Court of Poland specializes in military crimes. According to Clause 1 of Art. 183 of the Constitution of Poland: "The Supreme Court supervises the decisions of general and military courts"

Thus, it can be stated that, quantitatively, among the countries of the European Union, there is an absolute priority in realizing the need for the existence of military courts; the legitimization of their activities has been confirmed by both the European Court of Human Rights and the Standing Committee of the Council of Europe. However, it should be stated that existing military courts in the countries of the European Union function on different principles, have different characteristics in terms of composition, powers, etc. Therefore, they can be classified on the basis of certain criteria, the basic model features can be singled out, the possibility of adapting certain models (or their elements) in Ukraine can be predicted, taking into account both peacetime and the conditions of declaring martial law or a special period.

As for determining the status of military judges, as a rule, their composition is formed mainly from military personnel. Yes, in Poland, only professional military personnel can be military judges. A military lawyer must have the rank of officer. A judge who is not a professional lawyer (judge) and representatives of military personnel

must have a military rank not lower than the rank of the accused. In Greece, the composition of the military-field, naval and air-military courts is formed from the employees of the legal service of the armed forces, who are subject to the relevant guarantees of independence. An important factor in determining the status of a military court in European countries is that in many of them, in peacetime and wartime, military courts function differently, based on different norms and, as a result, have different scope of powers. Thus, according to the Constitution of Poland, a simplified judicial procedure may be established during wartime [14].

7.4 Controversial issues regarding the resumption of military courts in Ukraine. Implementation and directions of development of military courts in Ukraine in the post-war period

The question of resuming the work of military courts as part of the judicial reform was widely discussed at the level of the state leadership.

Several draft laws were registered in the Verkhovna Rada of Ukraine. Analyzing the project "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" (Regarding the Restoration of the General Jurisdiction of Military Courts in the System)" (No. 1896), I note that, proposing to restore these courts, the legislator defines them as courts that operate in system of courts of general jurisdiction and specialize in considering cases in the Armed Forces and other military formations formed in accordance with the law. The legislator does not clearly define the range of cases, that is, the competence of military courts, limiting himself to "cases in the Armed Forces and other military formations formed in accordance with the law." Undoubtedly, such an approach not only excessively expands the powers of the military court, but also makes it an improper court, since without clearly establishing the range of cases in respect of which the court is authorized to administer justice, it automatically becomes one that does not act on the basis of the law, and therefore does not is a "court established by law". Therefore, the proposed project in some parts does not meet European standards and needs thorough revision.

In the draft "On Amendments to Certain Legislative Acts of Ukraine (Regarding the Formation of Military Courts and Certain Organizational Matters)" (No. 2557), as well as in the first initiative, the legislator is of the opinion that these courts should be included in the system of courts of general jurisdiction. Outlining the category of cases that should be subordinated to military courts, the legislator proposes to transfer to them for consideration not only criminal cases regarding crimes committed by military personnel, but also cases of administrative offenses and administrative cases with such a subject composition. In addition, the legislator proposes not only to be guided by the subject criterion when determining the subdepartment of cases, but also to fully delegate cases of espionage, sabotage and terrorist acts to these institutions. However, such a decision would be at least controversial, since the subjects of such crimes can also be civilians, and therefore, their conviction by members of the military court would mean a violation of the Johannesburg principles.

In a detailed analysis of the subdepartment of cases, attention is drawn separately to the provisions of Art. 3 projects. According to it, "military courts of garrisons are responsible for cases of crimes committed by certain categories of persons defined by the legislation of Ukraine." This provision cannot be considered to be in line with European standards in the field of human rights protection, since it, as in the case of the previous draft, will unnecessarily expand the scope of cases under the jurisdiction of military courts. The legislator, as in the previous project, proposes to fix the status of a judge of a military court on the model of the status of a judge of the liquidated military courts. In general, project No. 2557 is more perfect and balanced compared to the previous one, although it has minor shortcomings [17].

Also, two more draft laws have been introduced recently: No. 8392 dated 05/22/2018 "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" in relation to military courts" [15] and an alternative draft law - No. 8392-1 [16] dated 01.06.2018 "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" Regarding the Establishment of Military Courts", the subjects of which are submitted by People's Deputies of Ukraine. However, draft law No. 8392 dated 05/22/2018 and 06/01/2018 was withdrawn on 08/29/2019.

The President of Ukraine also outlined the prospect of submitting in 2017-2018 a draft law on amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" with the aim of restoring the institution of military courts in the judiciary of Ukraine. However, as of now, the Head of State has not implemented the right of legislative initiative on the issues of restoration (or creation) of military courts.

Taking into account the historical experience of our country, namely the existence of military courts in the historical past, at the same time, the duration of such a period in itself confirmed the effectiveness and necessity of such a judicial system at that time, and taking into account the needs of today, when the military invasion of the territory of Ukraine highlighted all the shortcomings of its functioning of the judicial system, the practice of considering military criminal offenses, it is possible to assert with confidence the necessity of reforming the judicial system, in particular, in terms of restoring the work of military courts.

Instead, when solving this issue, it is necessary to take into account both the historical experience of Ukraine and the positive experience of the international countries of the world, taking into account the needs and economic condition of the State today.

First of all, it is necessary to determine whether there is a need to restore the work of military courts in Ukraine on a permanent or temporary basis.

There are different views on this matter. Yes, there are proposals for the organization of a dual system of military courts - peacetime and wartime. For peacetime, it is proposed to restore the system that existed before 2010 - the military organization of the state has significantly increased in number and, most likely, will remain so even after the war. Therefore, civil courts, even "very professional" ones, simply will not be able to ensure its existence. It is proposed to include criminal, administrative and civil cases, as well as cases of administrative offenses in the Armed Forces and other military formations, within their competence.

For a situation of war, in particular, a hybrid one, it is proposed to adopt a separate law that would temporarily remove military courts from the system of general jurisdiction and define them as specialized. By the way, in most European countries

military courts belong to special ones. The main purpose of this law is to create a flexible system of adaptation of military justice to the level of threats to the security of the wartime state. Such a law, in particular, may include the creation of a temporary appointment institute, the dismissal and transfer of military judges according to a simplified procedure, the ability to quickly adapt the network of military courts depending on the change in the deployment of military formations [13].

Instead, there is another opinion that also deserves respect. Historically, Ukraine belongs to the countries with special military justice, which operates on a permanent basis.

Common law countries are increasingly moving in the direction of establishing a system of permanent military courts. Some of the main drivers of this trend are the belief that it improves the flexibility of the military justice system and that it is compatible with international human rights standards.

Therefore, taking into account the organization of the work of the judicial system in Ukraine, the workload of courts of general jurisdiction, the complexity and the need for the most prompt resolution of proceedings (both criminal and administrative) in the field of military offenses, it can be considered more effective to create military courts on a permanent basis.

When solving the issue of the need to restore the work of military courts, it is necessary to examine their disadvantages and advantages in comparison with the activities of civilian courts (courts of general jurisdiction).

Yes, military courts have the following advantages:

- experience Military judges have experience in military criminal law and service procedures. They well understand the specifics of military life and culture, are familiar with the requirements of statutes, internal military documentation;
- efficiency. Accelerated procedures for consideration of criminal, administrative offenses and disciplinary violations;
- efficiency. Optimum conditions are created under which the goal of military widows' activities is achieved, certain standards of activity are achieved;
- unity and stability of judicial practice of military courts;

- proximity of military courts to troops.

On the other hand, the topic of the shortcomings of military courts cannot be ignored.

Disadvantages of military court include:

- possible encroachment on non-independence. As military personnel, military judges may be subject to vertical command. Therefore, they can follow the opinion of the commander who is responsible for a certain case (leveled, taking into account the established principle of independence of judges)

- a lengthy legislative process for the restoration of the activities of military courts, the need to adopt new laws and introduce changes to existing legislative acts (levelled by the rapid adoption of the necessary legislative acts)

- additional budget expenses.

The advantages of the activity of civilian courts in relation to military offenses:

- civilian judges are not subordinate to the military hierarchy. Therefore, the incentives to comply with the decision of military representatives may be weaker;

- absence of additional budget expenditures for the activity of courts in the specified area (excluding additional, long-term training of judges).

Disadvantages of the activity of civil courts (general jurisdiction) in the field of consideration of criminal offenses:

- experience Civilian judges may not have special knowledge of military matters and sufficient experience in the application of military criminal law;

- efficiency. Courts of general jurisdiction have a significant workload, consider a wide range of other disputes, as a result of which they cannot always promptly consider military proceedings;

- efficiency. The lack of sufficient experience and the ability to promptly consider proceedings related to violations in the military sphere collectively leads to a decrease in the effectiveness of consideration of this category of cases.

From the above, it can be concluded that one of the possible justifications for turning to military courts is to ensure effective access to justice. However, this assumes

that the military justice system meets the basic requirements of judicial independence and a fair trial.

One of the main problems of military justice is finding ways to increase the independence of military courts. When analyzing the effectiveness and reforming the military justice system, international standards on this issue should be taken into account. The UN Human Rights Committee notes that the requirement for independence refers to: "...Procedures and qualifications for the appointment of judges, as well as guarantees for ensuring their powers, the conditions governing the extension, transfer, suspension and termination of their functions, and the effective independence of the judiciary power from political interference by the executive or legislative bodies."

Many countries are modifying their military justice systems to include civilian elements in order to ensure a higher degree of judicial independence. For example, more and more cases of military personnel are considered by prosecutors instead of military investigators. The independence of military judges can be strengthened in various ways. One of these ways is to increase the number of replacements of military personnel by civilians. However, this does not mean that separate systems of military justice cannot, in principle, satisfy the requirements of judicial independence. In some Eastern and Central European countries, the safeguards that apply to civilian judges are equally applicable to military justice systems (eg Bulgaria, Romania and Poland).

If the military justice system is truly independent and meets all the requirements of impartiality, it can be seen as an important tool to combat impunity in military institutions. Such systems have increased public trust and contribute to strengthening the combat capability of the armed forces.

Therefore, first of all, it is necessary to establish a selection procedure for the position of military court judge, which would initiate and ensure the independence of his activity. It is also necessary to determine the quantitative composition of judges of the military court by examining the number of proceedings in the military sphere that were considered after the liquidation of the military court, taking into account the territory, the population, the level of trust in the court, the quality of procedural

legislation, the development of the network of courts in the territory and many other factors. Determine the source of financing military courts, in order to ensure their independence. Legislate the specified issues.

In addition to the question of whether the military court will be appropriate in terms of human rights protection standards, it is also important to clearly define what competence it will have. This issue at the international level is currently not resolved. There is no universal international treaty to which Ukraine would be a party and which would delineate the border, crossing which the military court would go beyond its scope of competence. However, the International Center Against Censorship, in collaboration with the Center for Applied Legal Research at the University of the Witwatersrand in Johannesburg, has developed a set of human rights standards that must be followed when determining the scope of cases that fall within the jurisdiction of military courts.

Thus, according to the 22nd principle of the Johannesburg standards "National security, freedom of expression and access to information", a criminal charge of committing a crime against national security must be tried (at the choice of the accused) by a jury, if such a body exists, or by truly independent judges. Consideration of the cases of persons accused of crimes against national security by judges whose independence is not guaranteed is perceived as a violation of the right to a trial by an independent court. Under no circumstances may a civilian be tried by a military court or tribunal for committing such a crime. Having analyzed this provision in detail, it can be concluded that military courts can potentially go beyond their competence in the event that, in addition to the subject criterion, substantive subordination is also applied to determine the sub-department of the cases that will be referred to them for consideration.

Also, it should be noted that, in addition to the norms of substantive and procedural law, when considering cases involving military personnel, the resolution of the case is impossible without the application of the norms set forth in military statutes and normative legal acts of military law, which in some cases are not publicly available and have the status of a document with limited access, which also complicates the

process of full and comprehensive consideration of the case on its merits. It should be noted that war crimes are largely cases related to military secrecy. Documents marked with secrecy have limited access, and cannot simply be submitted to the court at the request of the court in the general procedure for presenting and examining evidence. Therefore, it is necessary to give military judges access to state secrets by providing the courts with a specially equipped room for storing such evidence.

As for procedural changes, there is generally no need to make any changes to the procedure for consideration of military offenses. But it is necessary to take into account that it is usually problematic for military personnel to appear in court, given the peculiarities of military discipline, and, in particular, because in a combat situation, leaving combat positions poses a serious risk. At the same time, most of the witnesses in these categories of cases are military personnel. Therefore, summoning these persons to a court session becomes problematic. In such a case, the practice of conducting court hearings in the mode of video conferences will be positive, including with the provision of the opportunity to conduct such video conferences using own means for conducting them, as well as, at the discretion of the court, to use the practice of visiting court hearings and consideration of cases in the locations of military units in the presence of military personnel.

Among the necessary mechanisms is the introduction of a simplified procedure for consideration of criminal proceedings in military courts during wartime. That is, reducing the term of procedural actions, limiting the number of instances reviewing the decisions of military courts to two, with the simultaneous limitation of the maximum possible punishment that can be imposed by a military court to 10 years of imprisonment, as well as the mandatory review of decisions made in such order after the end of the war by higher courts [17].

This will guarantee a faster and more objective consideration of the case.

Conclusions

The idea of creating a military court arose in the historical past of our country. During all this time, the activities of such military courts changed and improved, taking

into account the needs of society and the state of the country in various periods of its development.

The policy of the state from the moment Ukraine gained independence until 2012 was mostly aimed at optimizing spending on the defense sector, which led to both significant reductions in the number of the Armed Forces of Ukraine and the liquidation of certain institutions of the military sphere.

Implementing this policy, the Law of Ukraine "On the Judiciary and the Status of Judges", adopted on July 7, 2010 No. 2453-VI decided to liquidate military courts and transfer their functions to courts of general jurisdiction. The reasons for this were doubts about ensuring the independence of the activities of military judges, compliance with the recommendations of the Council of Europe, optimization of costs for ensuring the judiciary.

The Law of Ukraine "On the Judiciary and the Status of Judges" stipulates that cases that were previously considered by military courts of garrisons should be considered by courts of general jurisdiction of the first instance, and cases that were referred to the competence of appellate military courts, according to the new Law, were to be considered by general appellate courts jurisdiction.

Instead, after 2014, since the start of a full-scale war in Ukraine, significant gaps in the organization of the judiciary, including the restoration of military courts, were highlighted.

Thus, in the course of the conducted work, it was established that the advantages of the activity of military courts are efficiency, speed and efficiency of consideration of cases by military courts; unity and stability of judicial practice of military courts; proximity of military courts to troops. The shortcomings of military courts can be leveled by establishing certain factors at the legislative level.

The statement regarding the inexpediency of the existence of military courts in Ukraine in view of international experience is not unambiguous and cannot be taken as a basis in the state on the territory of which hostilities are taking place.

If we examine the judicial systems of the countries of Europe and the world in more detail, we can conclude that the institute of military justice has been introduced and is successfully functioning professionally in many countries of the world.

Currently, military courts operate in almost 40 developed countries of the world, including Europe, which have their own Armed Forces.

Reconstruction of the system of military courts in the interest of ensuring the defense capability of the state is a necessary step in the conditions of military aggression regarding our State. The legislative regulation of the organization and activities of military courts is preceded by the creation of a theoretical model, the development of specific recommendations that would allow later to avoid practical mistakes.

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