

PROBLEMS OF NATIONAL PUBLIC AND PRIVATE LAW

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European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CRIMINAL JUSTICE SYSTEM OF UKRAINE IN THE WARTIME: IMPACTS AND CHALLENGES

The 2022 military invasion to Ukraine became the event that significantly changed the European political landscape as well as impacted economic and cultural life in all European countries and the EU in general in context of perspectives of the EU – Ukraine relations.

The problem of the criminality and crime rates in Ukraine have become more an issue after the European Parliament's resolution have called on the Heads of the EU states or governments to grant the EU candidate status to Ukraine "without delay".

All aspects of life in the contemporary Ukrainian society have become affected by wartime including criminal justice system and its elements. A traditional burden of protection human rights imposed on the Ukrainian criminal justice system according to the European Convention of Human Rights has become obviously impossible to comply with in frontline areas.

Therefore, the first step in the sphere in criminal justice (and justice in general) was expectedly concerned with derogation of Ukraine from its obligations under the European Convention on Human Rights what had been done on March 2, 2022. The same steps have been taken on the national level (martial provision of the Code of Criminal Procedure, for example) that are discussed below.

The criminal justice system (and justice system in general) has floated (or it is floating) out from the deepest crisis caused by external war-concerned factors what has become possible due to its virtual character (use of the electronic services for participants of court proceedings and their representatives as well as distance character of court sessions).

Research of crime rates in war-time Ukraine shapes a difficult task for many reasons. Movement of big masses of population abroad and within the country, disorganization of the police forces on the first stages of Russian invasion, intentional sabotage or reluctance in registering crimes by the police officers and other factors distort the real picture or crime trends of the first seven months of 2022.

Nevertheless, it could be presumed with a high level of accuracy that Russian invasion led to a partial decrease in criminality due to simplified (from the point of view of long-term crime prevention) additional control measures introduced by authorities (closing public places, curfews, abolition of transport connection for long periods, the police and military block-posts, prohibition of sale of alcohol etc.).

Any further analysis of general crime rates in wartime (and post-war, as we hope) Ukraine should bear that Ukraine is a country filled with weapons and explosives in which much more people know how to use these weapons and explosives. Therefore, violent property crime and organized crime could pose a risk for stability of social relations in Ukraine as well as in any postwar country.

Human trafficking will also pose a more serious problem for Ukraine and its border states. It is expected that economic factors will lead to impoverishment of population which could more easily become victims of human trafficking.

As far as issues of the prison and probation system is concerned, the 2022 Russian invasion has underlined to which extent the rehabilitative component of the prison policy is sensitive and

could be easily removed (shortened) due to conditions of the war-time routine in favor of punitive philosophy covered with slogans of control and national safety.

Keywords: the 2022 Russian invasion to Ukraine, criminal justice system, distance justice, Code of Criminal Procedure of Ukraine, prison system, human rights, crime rates, property crimes, crimes against human life and health, crime committed with firearms, prison riots.

Introduction

The 2022 Russian military invasion to Ukraine became the event that significantly changed the European political landscape as well as impacted economic and cultural life in all European countries and the EU in general in context of perspectives of the EU – Ukraine relations.

From the beginning of the European integration of Ukraine, the EU had been permanently interested in having clear picture *inter alia* on two issues: firstly, what was the situation with crime in Ukraine (especially organized crime), and, secondly, to which extent criminality in Ukraine could affect the crime rates in the EU member-states.

In 1996, when the Action Plan for Ukraine was signed, those actions and strategies that Ukraine would have to implement were defined as “*the battle against organized crime and money laundering*” which would have “*to be the subject of intense cooperation between the Community and its member States and Ukraine*”. It was stressed that the Union would have to “*be very concerned at the development in Ukraine of organized crime and the weakening of government institutions due to the development of a black economy and the power of clans on the administration and the economy*”. The same was to be said about “*control of illegal migration ... and the fight against drugs*).

In 2022, as soon as Ukraine was proclaimed as “*one of us*” and declared “*wanted in the EU*”, the ‘big family’ obviously has received more grounds to demand from Ukraine more concrete explanations on the subject of criminality in this ‘new member of the family’, where the Ukrainian crime rates have and will have a bigger importance in the light of mass social and political transformations caused by a new wave of Russian military invasion where forced mass migration of Ukrainian refugees laid in the center of these transformations.

Finally, the problem of the criminality and crime rates in Ukraine have become more an issue after the European Parliament’s resolution have called on the Heads of the EU states or governments to grant the EU candidate status to Ukraine “*without delay*”.

Therefore, this research aims at: 1) investigation how the Ukrainian criminal justice system stood up before the threats of the new wave of Russian military invasion; and 2) investigation of the contemporary situation with the Ukrainian criminal justice system with corresponding analysis of crime rates.

Questionable Human Rights

All aspects of life in the contemporary Ukrainian society have become affected by wartime including criminal justice system and its elements. A traditional burden of protection human rights imposed on the Ukrainian criminal justice system according to the European Convention of Human Rights (*hereafter – ECHR*) has become obviously impossible to comply with in frontline areas.

Therefore, the first step in the sphere in criminal justice (and justice in general) was expectedly concerned with *derogation* of Ukraine from its obligations under the European Convention on Human Rights what had been done on March 2, 2022.

The same steps have been taken on the national level (martial provision of the Code of Criminal Procedure (*hereafter – the CCP*), for example) that are discussed below.

Distance Justice

One of the essential achievements of the Ukrainian justice system shaped and implemented before the 2022 Russian invasion was the system of “Electronic Court”, which allowed lawyers and all interested parties participate in civil, commercial and administrative proceedings on-line from their homes or offices.

As far as criminal justice is concerned, there were some restrictions in the CCP, which granted a right to parties and their representatives participate to participate *on-line* in distance criminal proceedings only from premises of other courts under authorization of an officer of the court. This course was maintained due to several decisions of the Supreme Court passed in January 2022 refereeing to declared needs of protection of the rights of defendants although it was more than arguable.

The 2022 Russian invasion and corresponding military actions immediately brought changes to possibilities of distance criminal justice proceedings and removed the resistance of some judges to conduct public hearings in criminal cases on-line not from the authorized premises of other courts, especially after several incidents of aiming of missiles into buildings of some courts.

As a result, the “*Electronic Court*” system has become a very powerful and effective tool that had allowed the Ukrainian judiciary kept afloat in these more than difficult times.

The same could be said about ordinary people who were allowed to be in close touch with the judiciary even during evacuation and abroad.

The same could be said about other criminal justice agencies which mostly re-shaped their activities and interactions with suspects, defendants, victims and witnesses using electronic mail, as well as accepting all applications and claims by email signed with electronic keys.

The Wartime Criminal Procedure

In 2014, due to the first wave of Russian military invasion to Ukraine, the CCP was supplemented by Chapter IX-1.

According to the Law dated August 12, 2014 (№1631-VII) “*On Amendments to the Code of Criminal Procedure of Ukraine Regarding the Special Regime of Pretrial Investigation in Conditions of Military, State of Emergency, or in the Area of an Anti-Terrorist Operation*”, in areas where a state of war or emergency or an anti-terrorist operation is in effect, the powers of the investigating judge, as defined by the CCP, as well as regarding the selection of a preventive measure for a period of up to 30 days, were given to prosecutors. However, this applied to criminal proceedings only in relation to an exclusive list of crimes.

After the new wave of Russian invasion, the name and provisions of mentioned CCP section was changed several more times. At present, Section IX-1 of the CCP is defined as “*Special regime of pretrial investigation, judicial proceedings under the conditions of martial state*” and contains Article 615 with the provisions related to the martial state.

The most important changes are the following.

It is obvious, that the war conditions have made difficult or even impossible using of witnesses during the police searches of property. Instead of using witnesses for a search, the CCP prescribes that the search is allowed without witnesses but with compulsory nonstop videorecording of such an action.

The CCP also says that if there is no objective possibility of further conduct, completion of the pretrial investigation and application to the court with an indictment, the term of the pretrial investigation can be stopped by a prosecutor.

Investigation officers have received the powers of arrest a person without a decision of the judge or the head of the prosecutor’s office if there were reasonable circumstances to believe that an escape of a suspect is possible. The period of detention of a person without a decision the judge or head of the prosecutor’s office during martial law may not exceed two hundred and sixteen hours from the moment of detention. A person detained without a decision of the judge or the head of the prosecutor’s office under martial law must be released or brought to the investigating judge, the court or the head of the prosecutor’s office for consideration of a request for a preventive measure against him or her.

In case of impossibility of holding a preparatory court session, the preventive measure in the form of detention chosen during the pretrial investigation is considered to be extended until the relevant issue is resolved in the preparatory court session, but no longer than two months.

In the case of the expiration of the court decision on detention and the impossibility of consideration by the court of the issue of extending the period of detention, the selected preventive measure in the form of detention is considered extended until the relevant issue is resolved by the court, but for no more than two months.

If there are objective circumstances that make it impossible to deliver a written notice of suspicion to the detained person within the time limits (normally – 24 hours), under martial law the deadline for serving a written notice of suspicion to the detained person may be extended up to 72 hours. If a person is not served with a notice of suspicion within seventy-two hours from the moment of his detention, such a person is subject to immediate release.

In criminal proceedings, in which no person was notified of the suspicion on the date of the introduction of martial law, the period from the specified date to the date of termination or cancellation of martial law is not included in the general periods of procedural terms.

Testimony obtained during the interrogation of a witness or victim conducted under martial law, may be used as evidence in court only if the course and results such an interrogation was recorded using available technical means of video recording.

Testimony obtained during the interrogation of a suspect conducted under martial law, may be used as evidence in court only if a defense attorney participated in such interrogation, and the course and results of the interrogation were recorded using available technical means of video recording.

Copies of materials of criminal proceedings, in which pre-trial investigation is carried out under martial law, must be kept in electronic form by the investigator or prosecutor.

Right to Freedom in the Hands of Prosecutors

As it was stressed above, one of the most controversial changes brought to the Ukrainian criminal justice system under martial law was giving the powers of investigating judges to prosecutors. Article 615 of the CCP says if there is no objective possibility for the investigating judge to exercise the powers of choosing a preventive measure in the form of detention of a suspect for a period of up to 30 days (*list of crimes is provided by the law*), if the delay in choosing a preventive measure can lead to the loss of traces of a criminal offense or the escape of a suspect, such powers are exercised by the head of the prosecutor's office or his/her deputies.

The idea was more than understandable and accepted in areas located directly on the frontline or near the frontline. Nevertheless, in Kyiv, even after Russians troops were knocked out from the neighborhoods of the capital, investigatory judges did not fulfill their duties for a big enough period and, consequently, these powers were taken by prosecutors. Unlimited use of imprisonment – very often without proper grounds – has showed the extreme importance of the judicial control over deprivation of freedom on pre-trial stage of criminal proceedings in democratic society; the prosecutors, in contrast, showed the danger of the strategy *'it is much easier to close him/her rather than have any troubles in the case of escape in these unstable times'*.

Crime Rates

According to the Ministry of Internal Affairs of Ukraine, there was a decrease in the level of criminality what was influenced by the decision of the Parliament to strengthen responsibility for property crimes under martial law (now for such crimes one can receive from 10 to 15 years in prison), as well as the presence of the police or military block-posts on the roads and the introduction of a curfew.

Here, we can draw some conclusions from the crime rates in Ukraine for the first six months of 2022 as compared with the same period of 2021 or even of the previous 9 – 10 years.

Compared to the first half of 2021, in the first six months of 2022 the number of registered crimes decreased from 189,900 to 163,400 (by 14%).

At the same time, the number of crimes in which persons were suspects were detected decreased from 86.6 thousand to 53.4 thousand (by 38%)

The number of indictments sent to the court decreased from 72.3 thousand to 40.4 thousand (by 44%).

What is important is the fact that during this time, the number of investigators and prosecutors practically did not change (except for the temporarily occupied territories):

The figure 1 shows that the new Russian invasion "cut" the number of crimes in March 2022 what can be explained both by breakdown of the normal routine even of criminals as well as obvious impossibility of registering all crimes.

It should be also noted that the police and military block-posts and curfews indeed shortened the number of possibilities where people used to commit illegal acts as the Ministry of Internal Affairs had stated. A factor of reducing of both potential criminals and victims also should be taken into consideration as soon as many million Ukrainians left the country (*Figure 1*).

In the first half of 2022, we can observe more than a significant decrease (almost twice) in the number of indictments sent to courts against the background of a relatively insignificant (by 1/7) decrease in the number of recorded offenses. Therefore, it could be concluded that the new wave of Russian invasion seriously undermined the criminal justice system of Ukraine when the general number of crimes changed insignificantly in the light of more than substantive reduce of persons who had been detected as criminals.

On the other hand, after the 2022 Russian invasion more than 5,2 million refugees left Ukraine. Therefore, mention above numbers should reflect the reduce of the Ukrainian population after the beginning of the War.

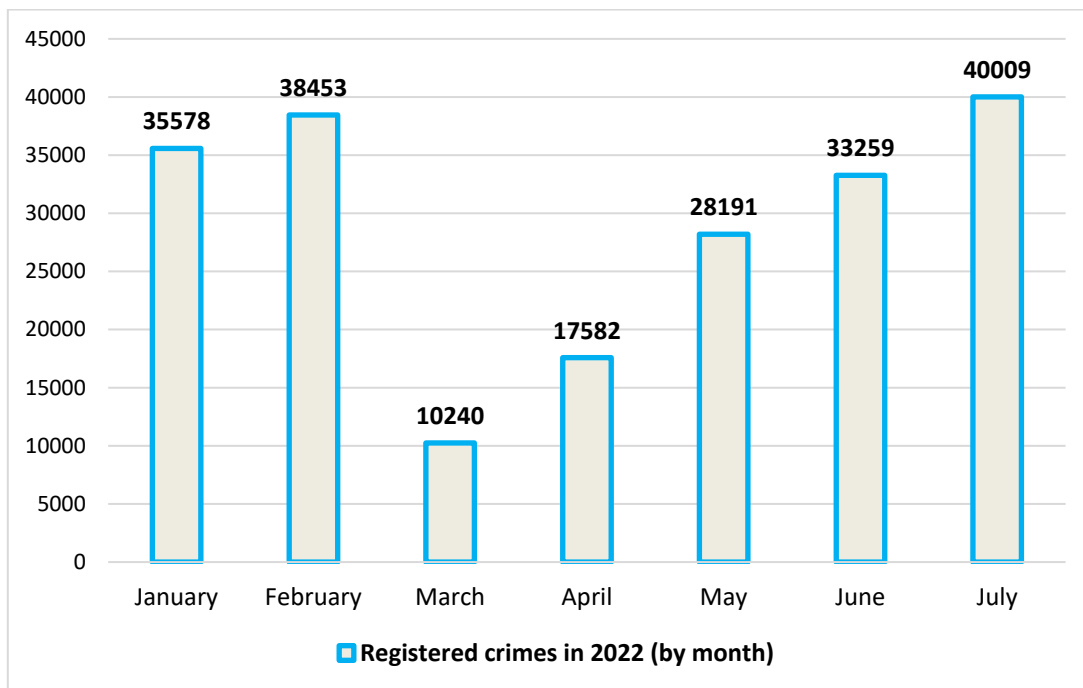


Figure 1. Number of registered crimes in 2022 (by month)

The number of crimes *against judiciary and justice* reduced from 4.6 thousand to 2.1 thousand (a decrease of 54%) where the number of indictments in such cases sent to court decreased by 47%. The decrease was largely due to Article 382 of the Criminal Code (intentional non-execution of a court decision) – 709 in 2022 against 1,931 in 2021 what could be easily explained that in the first weeks of the War a few people were seriously concerned with the execution of court decision in the lite of absolutely instability.

The number of offenses *against human life and health* remained approximately at the same level – 21.7 thousand against 20.5 thousand in 2022. However, the number of intentional homicides (Article 115 of the Criminal Code) has increased significantly – from 3,051 crimes registered in 2021 to 9,293 in 2022. Probably, these statistics also included homicides committed by the 2022 Russian military against the civilian population of Ukraine.

The Figure 2 presents the number of crimes against human life and health registered in the first six months of 2022: again, we can observe how the War “cut” the number of crimes against human life and health in March 2022 because of the mentioned above reasons. As a result, in July 2022 the number of crimes against human life and health, previously dropped in March 2022, has reached the level of January (*Figure 2*).

A special attention should be paid to the statistics on intentional homicides where, as it was stressed earlier, number of homicides committed by Russian soldiers was incorporated into general number of all crimes of the same type.

The figure below presents the number of registered intentional homicides registered in the first six months in 2021 and 2022 (*Figure 3*).

At the same time, having approximately the same number of suspects for the first half of each year, we can point at the fact that in the first half of 2021 the 5th criminal was detected having committed this gravy crime. In contrast, in 2022 only the 15th criminal was identified what indicates the weakness of the national criminal justice system in the wartime.

As far as interaction between victims and law-enforcement bodies is concerned, after Russian military invasion, Ukrainians applied to the law enforcement agencies with claims of minor injuries much less – 7,364 in 2022 against 12,981 in 2021, about domestic violence – 773 in 2022 against 1,508 in 2021. These aspects can also be explained that people in general understood the priorities of the law-enforcement system in the wartime where the police officers will be reasonable expected to sabotage registering such minor cases.

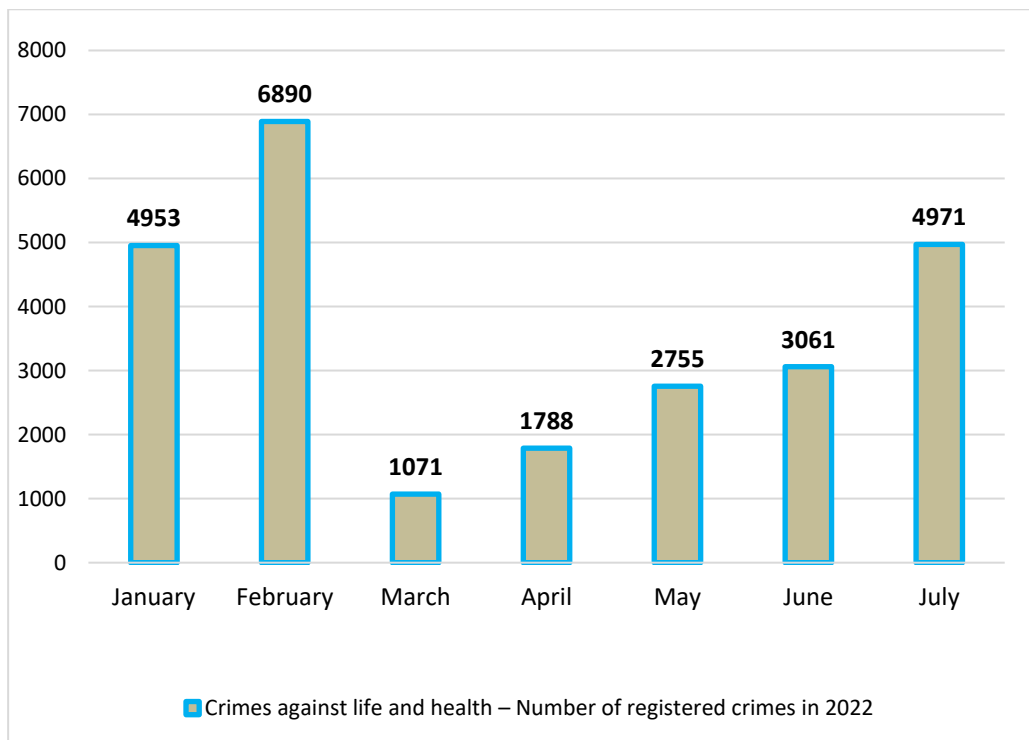


Figure 2. Crimes against human life and health in 2022 (by month)

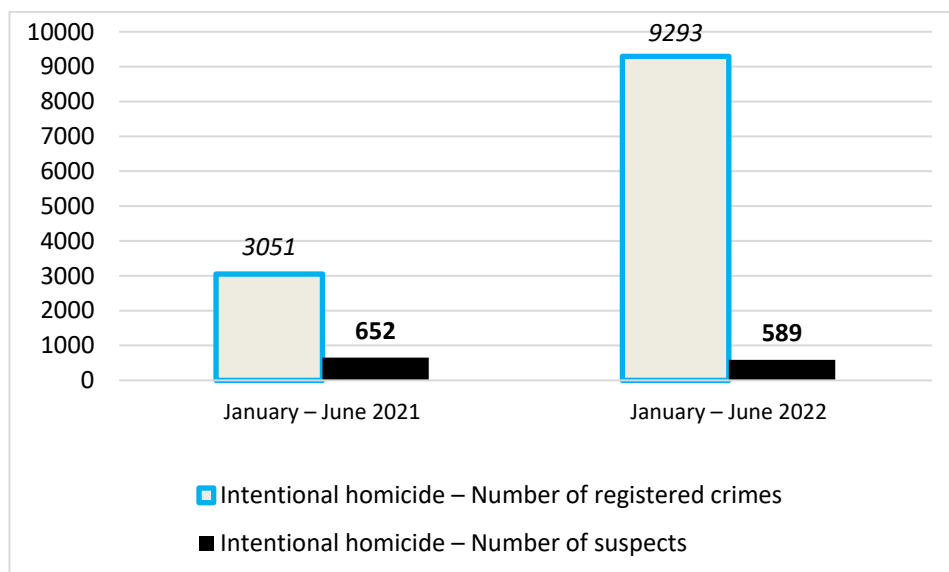


Figure 3. Intentional homicides (six months of 2021 and 2022)

At the same time, the number of crimes *against the will, honor and dignity of a person* has increased significantly – from 451 offenses to 1.5 thousand. There is an increase of 3.3 times, but at the same time the number of criminal proceedings sent to court with an indictment did not increase, but on the contrary decreased by 2.5 times. The increase is explained with a broader use of Article 146-1 of the Criminal Code – “*Forcible disappearance*”. In 2022 first (six months), 1219 offenses were recorded, compared to 25 in 2021. Here, we are presuming the facts of the disappearance of missing people during the war, and in the vast majority of cases the perpetrators will not be detected and punished.

Offenses against of Military Service (Military Crimes)

Expectedly, the number of offenses *against of military service (military crimes)* also increased significantly – from 1.6 thousand to 4.4 thousand (increase by 270%, but the number of indictments sent to courts increased by only 22%). Unfortunately, the increase was due to Article 407 (“*Abandoning a military unit or place of service*”), Article 408 (“*Desertion*”) and Article 402 of the Criminal Code (“*Disobedience*”).

The figure below presents the number of crimes *against military service* registered during six months in 2021 and 2022. It shows that increasing of the personnel of the Military Forces of Ukraine expectedly led to increasing of crimes committed by Ukrainian officers and soldiers (*Figure 4*).

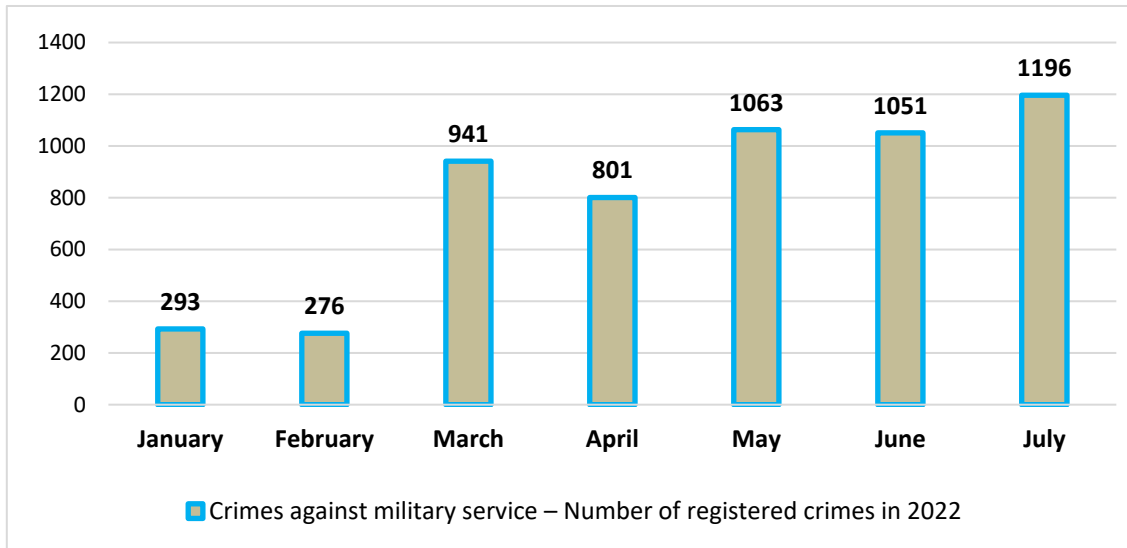


Figure 4. Crimes against military service in 2022 (by month)

The figure below presents the number of crimes against military service registered during six months in 2021 and 2022 (*Figure 5*).

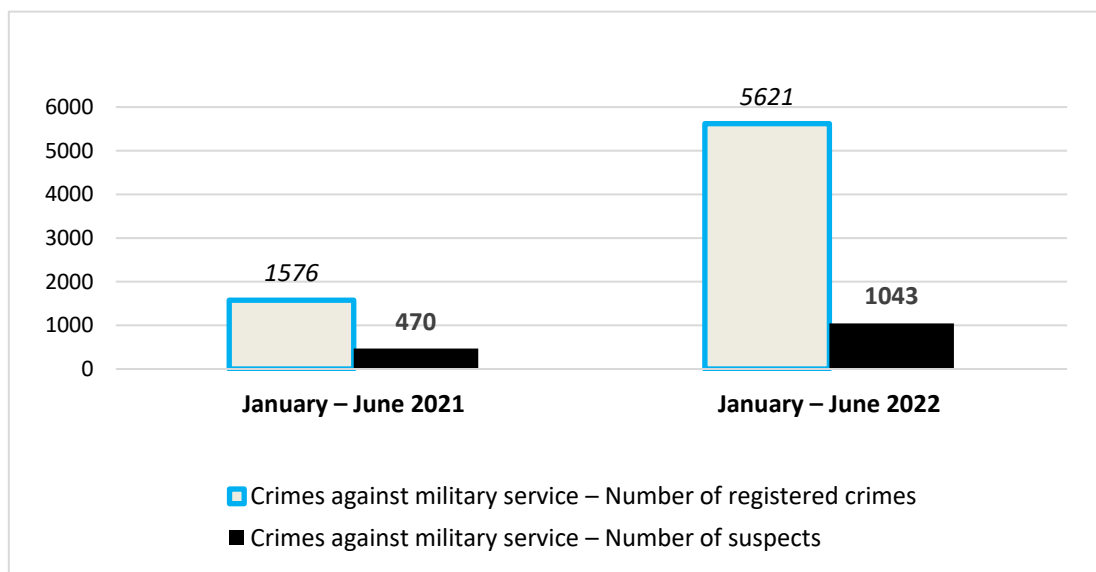


Figure 5. Crimes against military service (six months of 2021 and 2022)

A special stress is paid to number of crimes in the form of *absence without leave from a military unit or place of service*.

The main conclusion is that the number of registered crimes has increased (although not significantly, see data, for example, of 2015) parallel to the decrease of identified suspects (*Figure 6*).

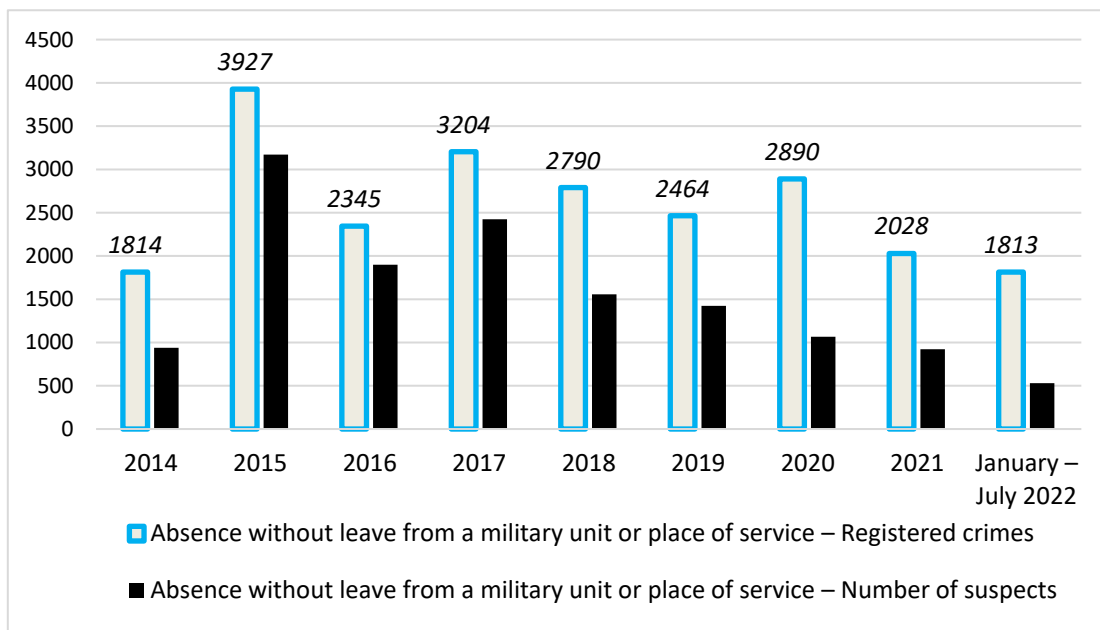


Figure 6. Absence without leave from a military unit (2014 – 2022)

Partly the same could be said about more grave crime – *desertion*: in 2014 a ratio between registered crimes and suspects was 1,4 and 1,1 in 2015. As far as the first six months of 2022 is concerned, the same ratio is 12 (*Figure 7*).

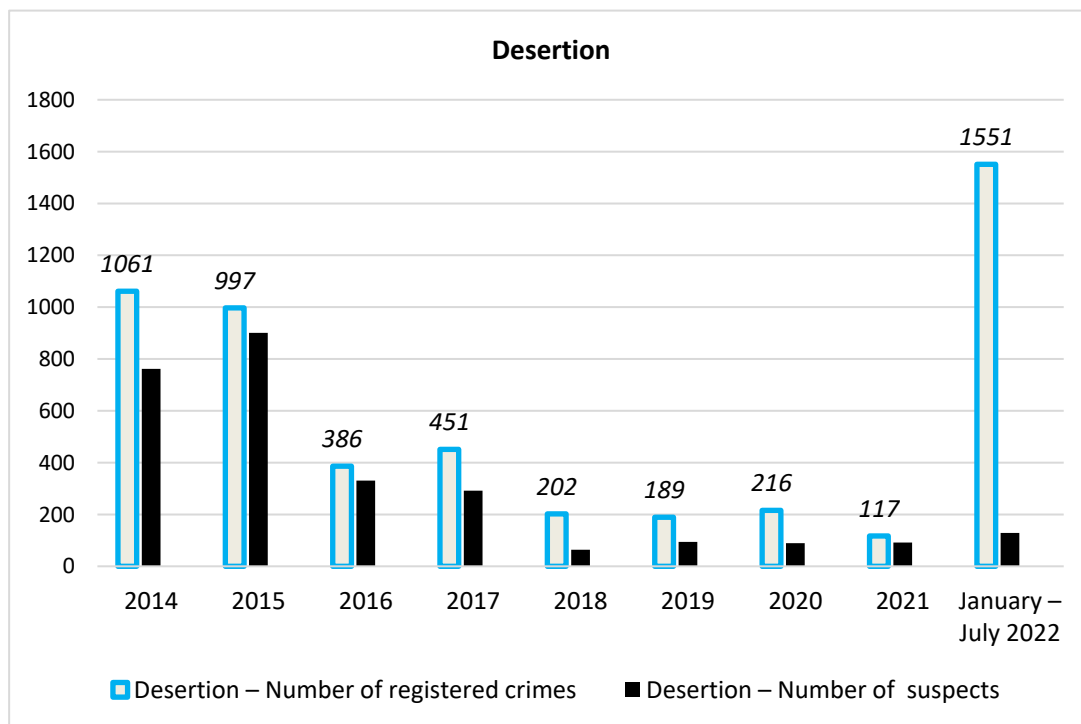


Figure 7. Desertion (2014 – 2022)

No fewer interesting conclusions could be drawn from the use of Article 426-1 of the Criminal Code (*Excess of power or official authority by a military official*). In the period of the first seven months of 2015, 22 crimes were registered with 1 suspect (42 crimes with 9 suspects for the whole 2015), in 2022 we can observe increasing distance between number of crimes and number of suspects (*Figure 8*).

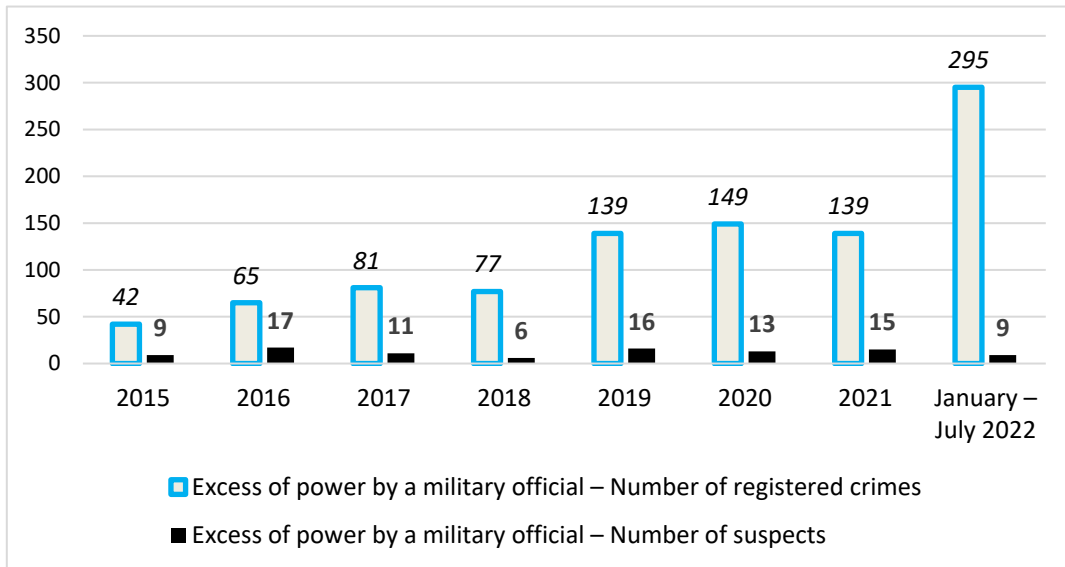


Figure 8. Excess of power by a military official (2015 – 2022)

Property Crimes

While talking about *property crimes* in wartime Ukraine, the first hypothesis appears that the absence of the well and properly organized policing would lead to serious increase of property crimes.

Nevertheless, the number of recorded offenses against property has significantly decreased – from 93,000 in the first half of 2021 to 49,200 in the first half of 2022 (by 47% less). This number should be analyzed together with the fact that the number of indictments in property crimes sent to court decreased by 56%.

The figure 9 below presents the number of crimes against property registered every month in 2022 (*Figure 9*).

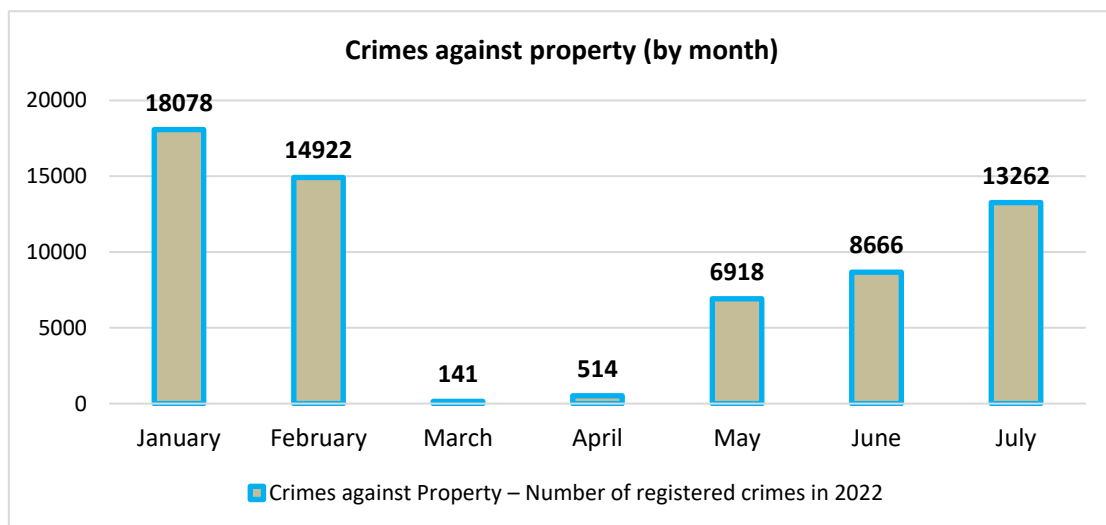


Figure 9. Crimes against property in 2022 (by month)

The figure below presents the number of *crimes against property* registered every month in 2021 and 2022 (Figure 10).

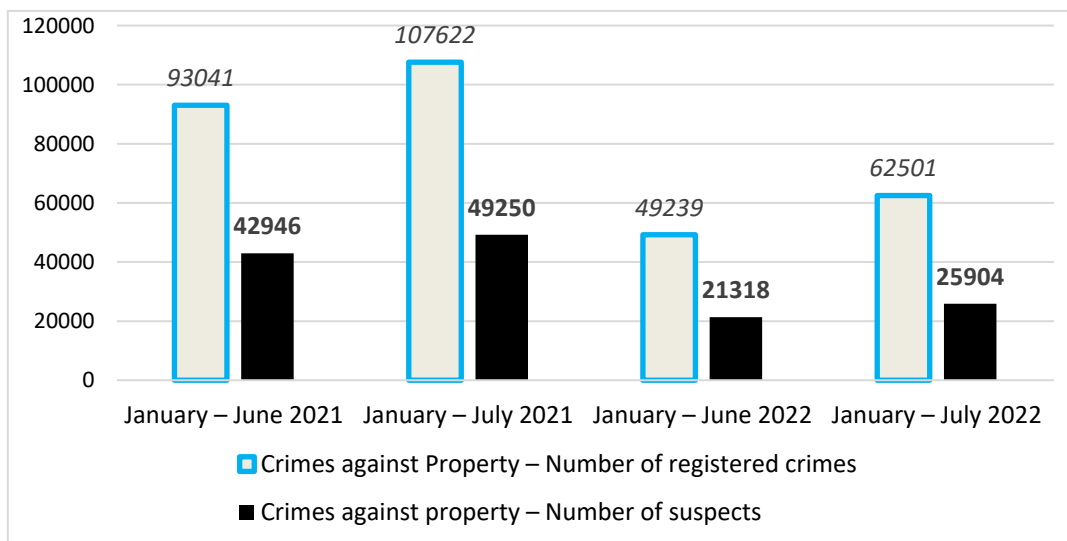


Figure 10. Crimes against property (by month)

The figure below presents the number of *thefts* registered in the first six months in 2021 and 2022 (Figure 11).

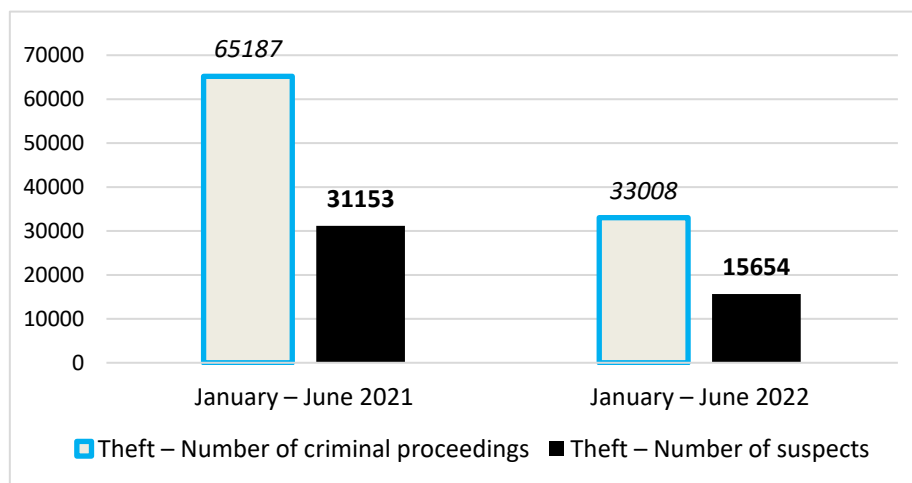


Figure 11. Theft (six months of 2021 and 2022)

The next figure presents the number of aggravated robberies registered for the first six months in 2021 and 2022 (Figure 12):

As far as the crime of *marauding* is concerned, it is considered not as a crime against property but as one against military service although the Article stresses directly on the property issues.

According to Article 432 of the Criminal Code (Marauding), theft on the battlefield of things belonging to the killed or wounded become punishable by imprisonment for a term of 5 to 10 years according to the Law No. 2117-IX dated 03.03.2022 (previously, the minimum level of punishment was 3 years of imprisonment).

On the opinion of the Committee of the Ukrainian Parliament on law-enforcement issues “*during the discussion of the draft law, [members of the Parliament’s Committee] emphasized that the proposed changes will allow establishing a fair punishment for persons who use the helpless state of residents of certain territories during hostilities for robbery and aggravated robbery, as well as appropriate other people’s property on the battlefield, using tragic circumstances for their own profit*”.

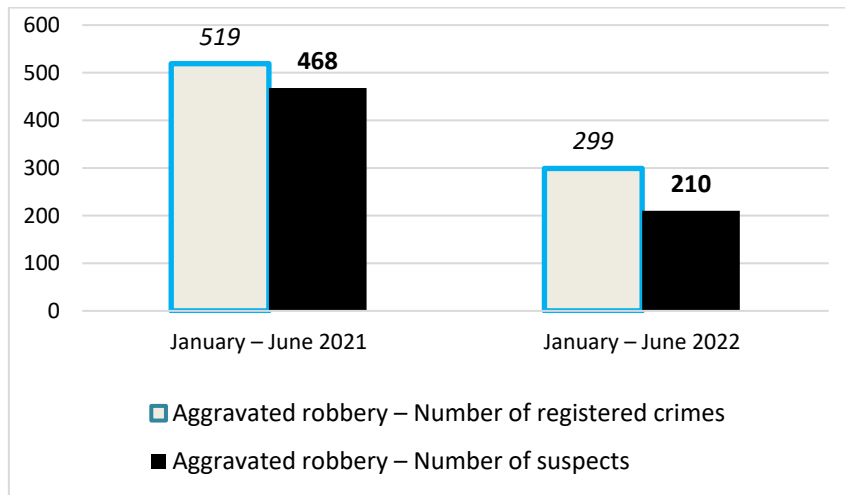


Figure 12. Aggravated robbery (six months of 2021 and 2022)

In the explanatory note to the Draft Law, the Committee explained that “*marauding is an unacceptable phenomenon in a civilized country, and the effective fight against its manifestations is one of the urgent tasks of the state*”.

Nevertheless, the reality was far from the official notes and declarations: only one crime of marauding was registered in 2014 and one crime in 2022. Moreover, on both cases, suspects were not detected. In 2013, 2015 – 2021 no crimes of marauding were registered at all.

Crimes Committed with Firearms

While analyzing *crimes committed with firearms*, it could be expected that crime rates resulted from illegal use of firearms would extremely be rising after February 2022.

Nevertheless, the official crime statistics from the Office of General Prosecutor partly refutes such a presumption (*Figure 13*).

Yes, it is obvious that the number of crimes with weapons has seriously risen for the seven months of 2022 comparing even with the whole year of 2021. On the other hand, the Ukrainian history knows examples when number of crimes with weapons was higher even in peacetime (2014, 2015). Additionally, it should be noted that in 2022 alongside with increasing of number of crimes committed with weapons the number of suspects in the same criminal proceedings decreased (*Figure 13*).

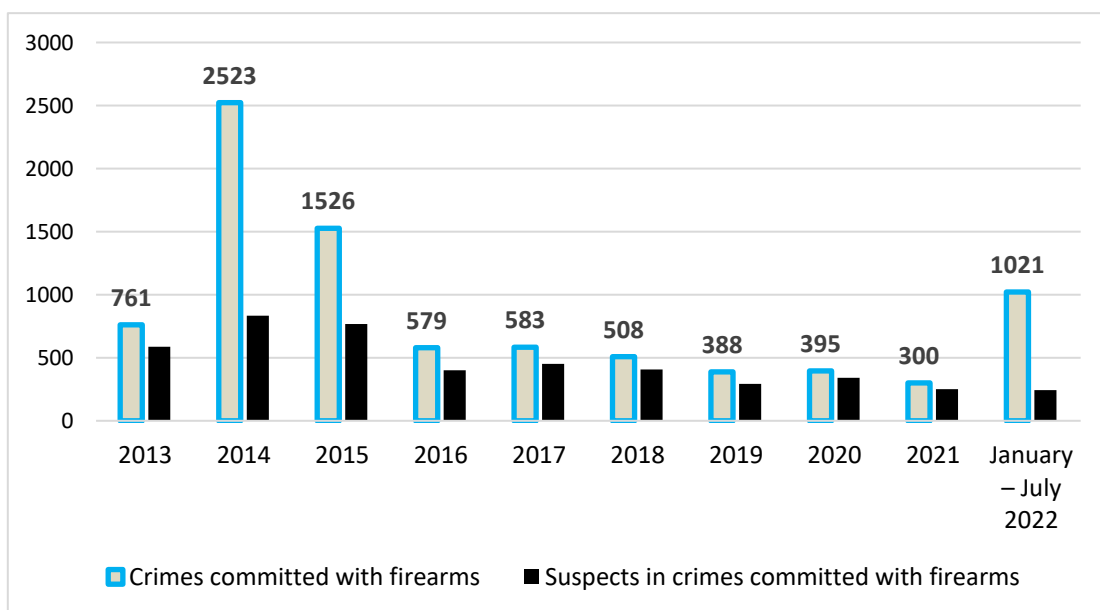


Figure 13. Crimes committed with firearms (2013 – 2022)

Official statistics from the Office of General Prosecutor does not prove the hypothesis that “saturation” of the Ukrainian society with firearms during the first days of Russian invasion lead to increase of number of crimes concerned with illegal use of firearms (*Figure 13*).

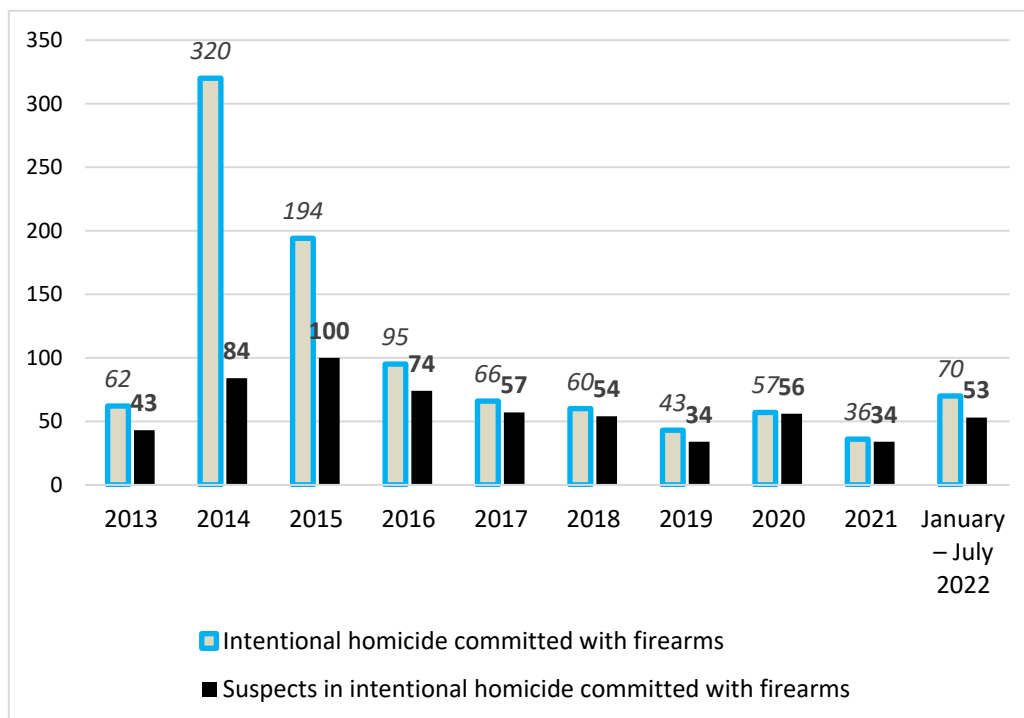


Figure 14. Intentional homicides committed with firearms (2013 – 2022)

The same could be said about intentional serious bodily harm committed with firearms. Yes, the data shows that seven months of 2022 have brought bigger number of such crimes. On other hand, data of 2014 and 2015 shows the same numbers even in the absence of the 2022 Russian military invasion. Moreover, in the general structure of crime statistics these number are not sufficient for making conclusions (*Figure 14, 15, 16, 17, 18, 19, 20*).

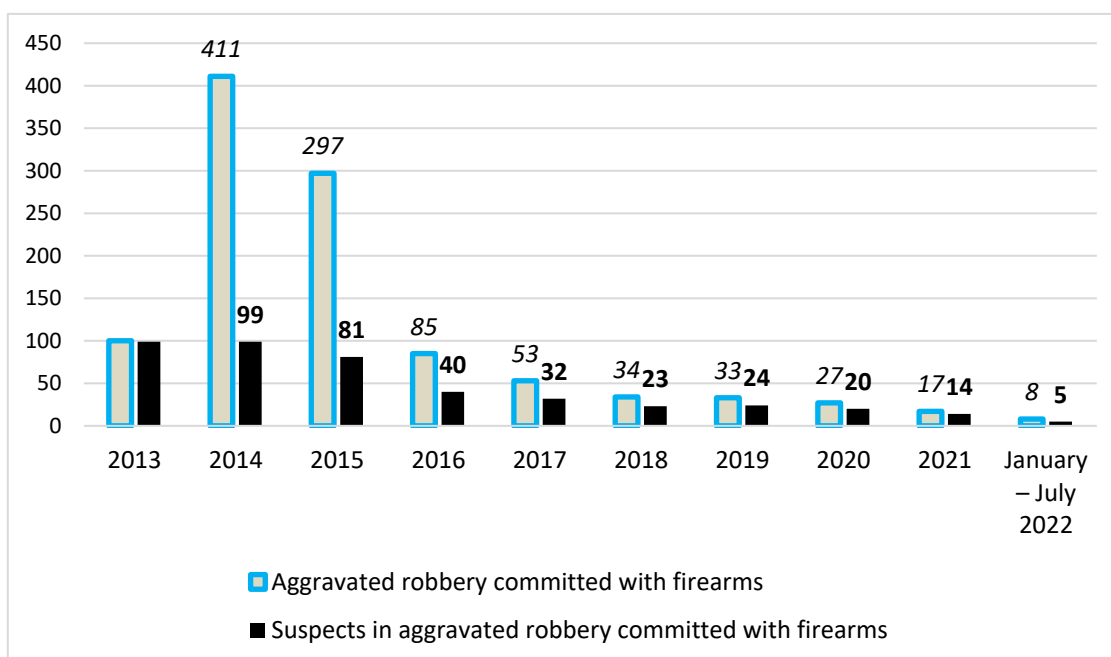


Figure 15. Aggravated robberies committed with firearms (2013 – 2022)

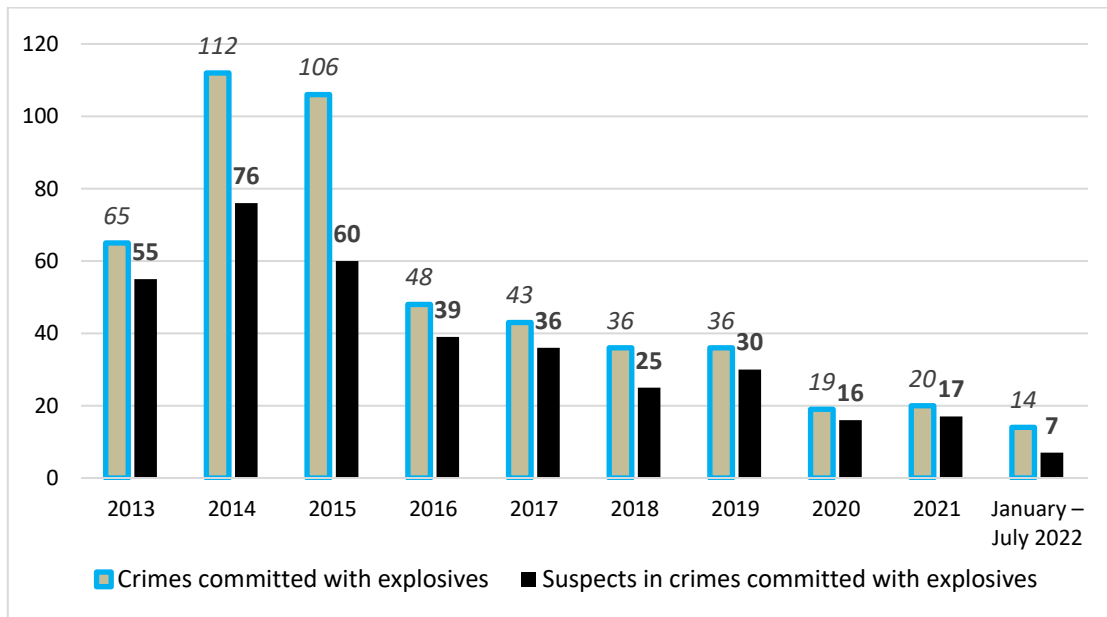


Figure 16. Crimes committed with explosives (2013 – 2022)

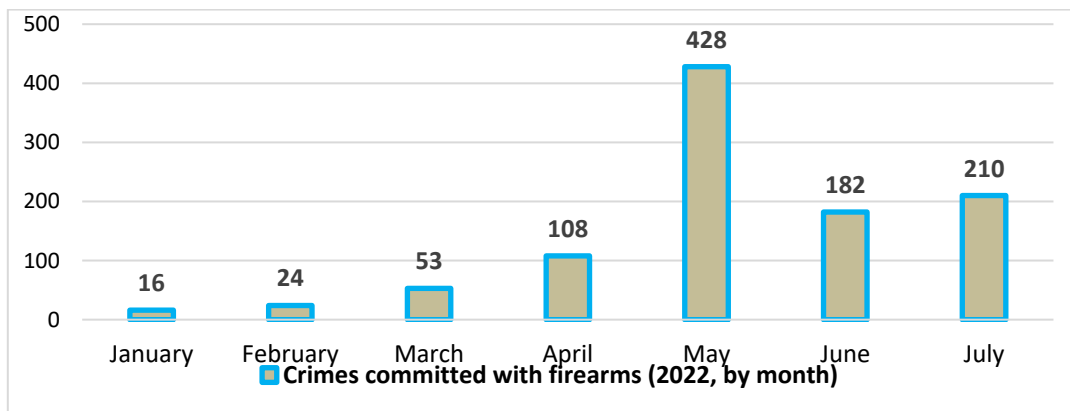


Figure 17. Crimes committed with firearms in 2022 (by month)

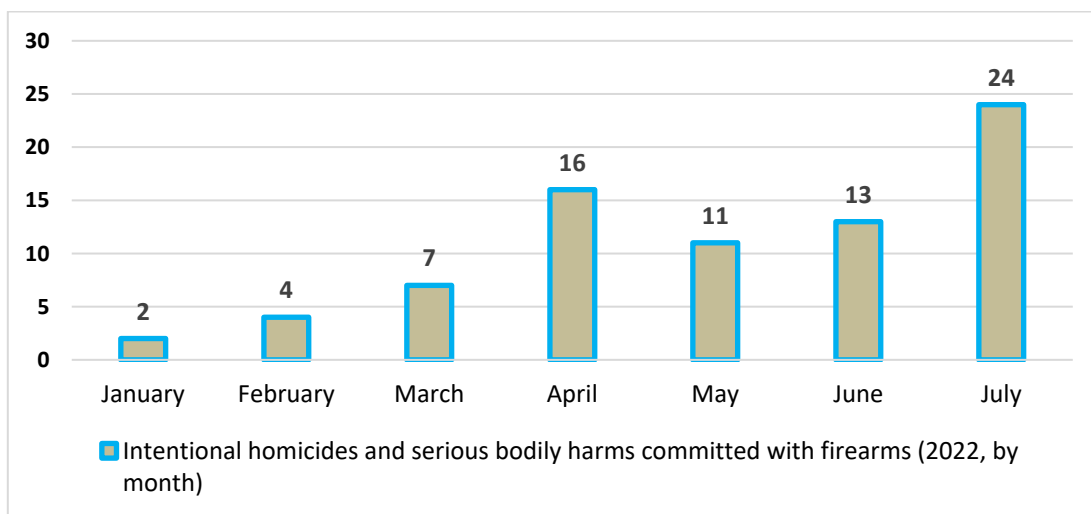


Figure 18. Intentional homicides and serious bodily harms committed with firearms (2022, by month)

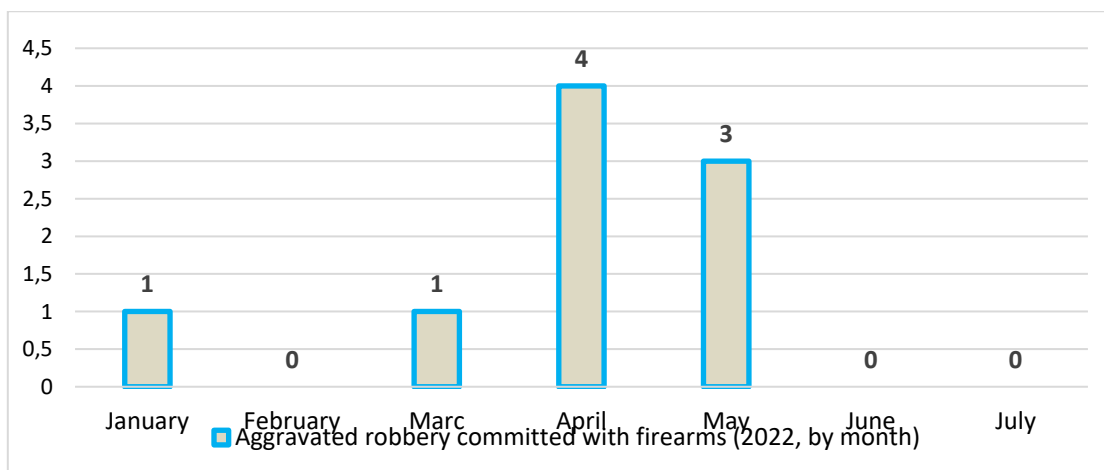


Figure 19. Aggravated robberies committed with firearms (2022, by month)

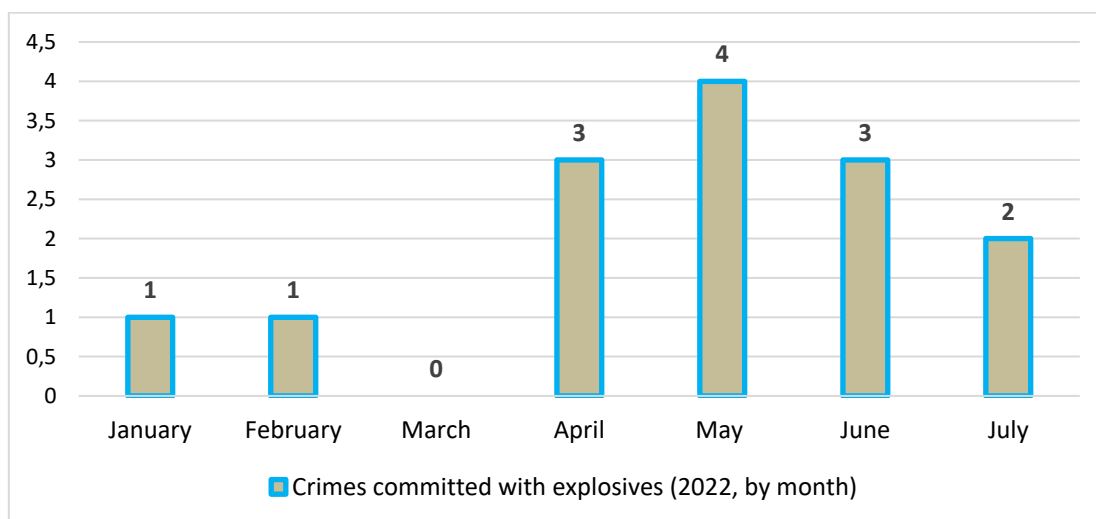


Figure 20. Crimes committed with explosives in 2022 (by month)

The Prison System and Probation

The Ukrainian prison system appears not to be ready to the 2022 Russian invasion; prison administrations affected by the war have not been ready to face military aggression.

Thus, the evacuation of prisoners led to violations, torture, inhuman treatment and violation of private and family life due to tensions between staff and prisoners.

For example, in the middle of March 2022, up to 400 convicts from the Orihivska Correctional Colony № 88 (Zaporizhzhia region) were evacuated to the central Ukraine – to Kropyvnytska Correctional Colony № 6 where one of the serious incidents took place. From the words of convicts, they have been beaten by prison officers for no reasons. On opinion of prison administration, evacuated convicts had in possession a big number of forbidden things like self-made knives, sell-phones, charging devices, syringes and drug. Trying to conduct a search and to remove forbidden things from prisoners, prison officers met a resistance that led to use of physical force and restraints against prisoners.

In addition, when Russian forces captured any Ukrainian prison, they usually demanded Ukrainian prison forces to collaborate. In case of disobedience, the officers faced threats of torture or even death. However, if they collaborated, they were accused of treason from Ukrainian authorities. In the middle of 2018, there was a case where Ukrainian partisans exploded a car with a former Ukrainian prison officer who agreed to collaborate with the occupants.

Another trap consisted of the unknown legal status of Ukrainian prison officers. They had been suspended of all powers but – paradoxically – in the meantime were asked to continue executing their duties. No legal status meant no legal guarantees.

Nevertheless, the Ukrainian prison system did not face the increased number of prison riots and other forms of illegal actions aimed at disorganization of corrections in 2022: one crime of mentioned type was registered in February 2022 and one crime was registered in July 2022 where no suspects were found in both cases (*Figure 21*).

A comparative analysis of numbers of this type of crime committed in previous years can prove that enough restrictive measures implemented by prison administration during the wartime led to decrease of any similar illegal actions (*Figure 21*).

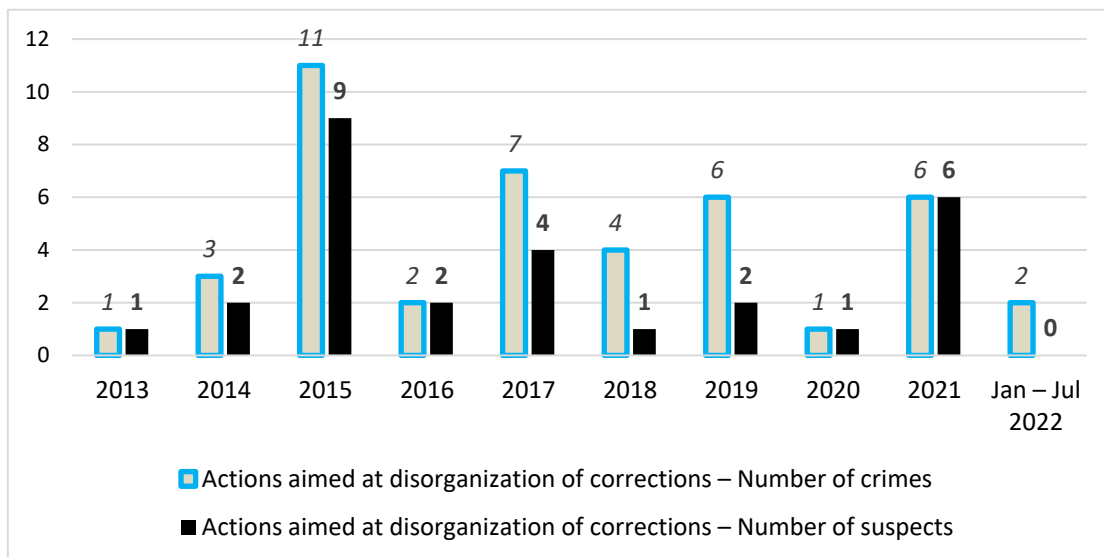


Figure 21. Actions aimed at disorganization of corrections (2013 – 2022)

It sounds surprisingly but one of the acts of disobedience with the prison rules that took place in Polytska Correctional Colony № 76 was conducted in the beginning of July 2022 not by prisoners but by prison officers. Moreover, much more surprisingly is the fact that in the end of July 2022 the same prison was affected by a riot conducted by more than sixty inmates who burnt the majority of premises of the prison.

Obviously, the chaos of the first days of Russian invasion affected the prison system to a large extent what caused the bigger number of escapes of prisoners from different types of prison establishments (*Figure 22*).

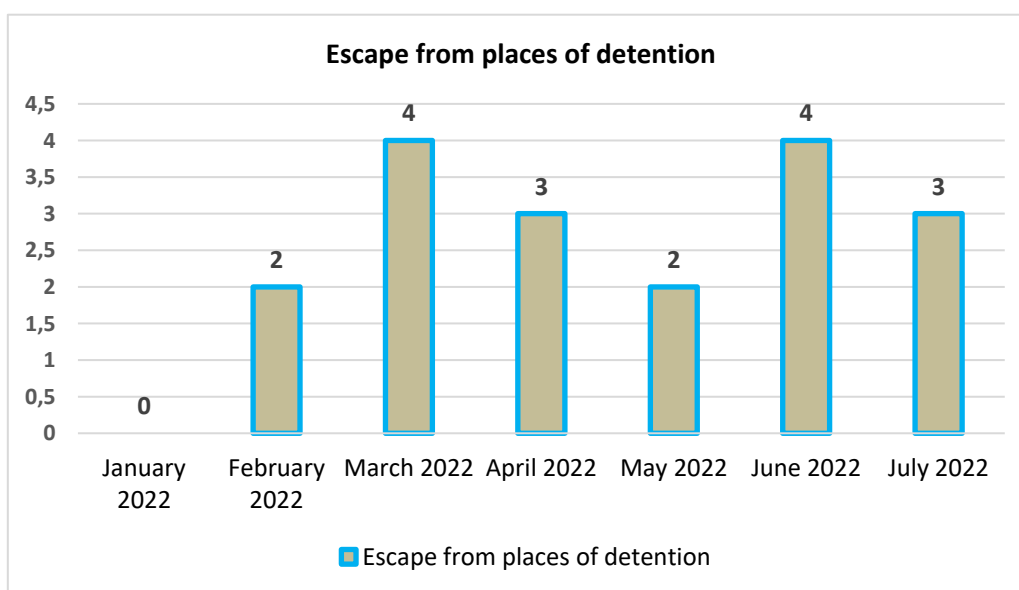


Figure 22. Escape from places of detention in 2022 (by month)

The number of escaped prisoners for the first seventh months of 2022 is bigger than in previous years but not yet so sufficient as compared with 2013 – 2018 (Figure 23).

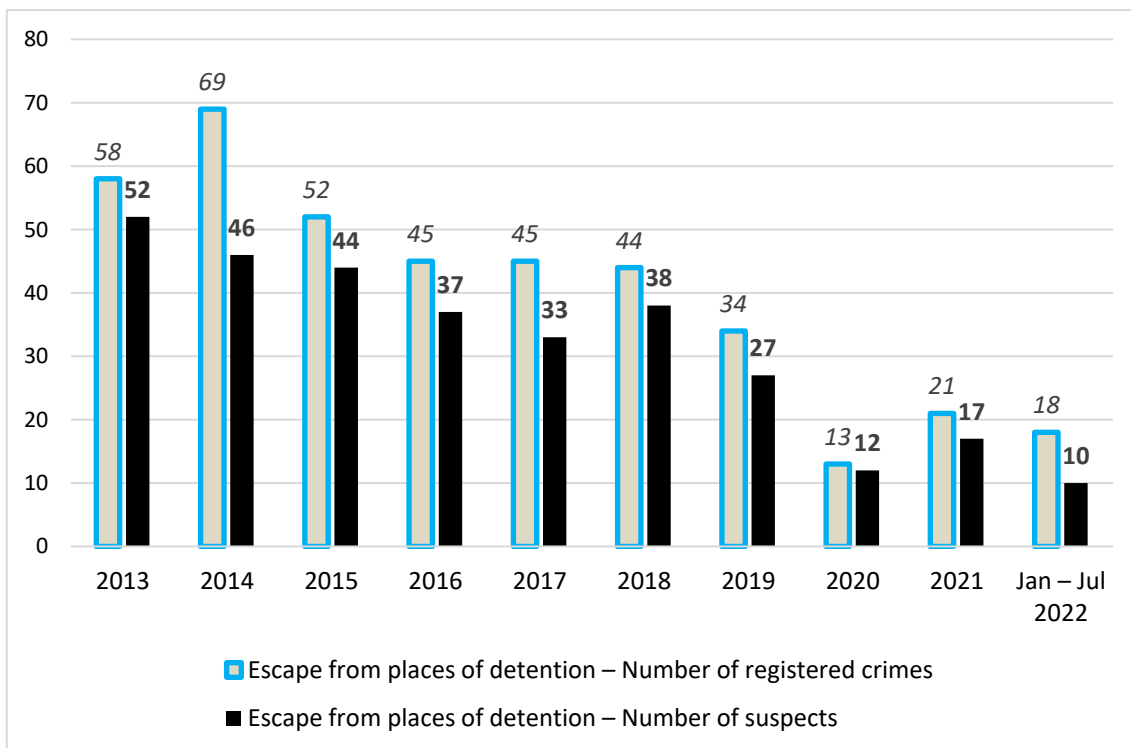


Figure 23. Escape from places of detention (2013 – 2022)

Probation service

The figure below presents the number of avoidances of community punishments registered every month (January – July) in 2022: (Figure 24).

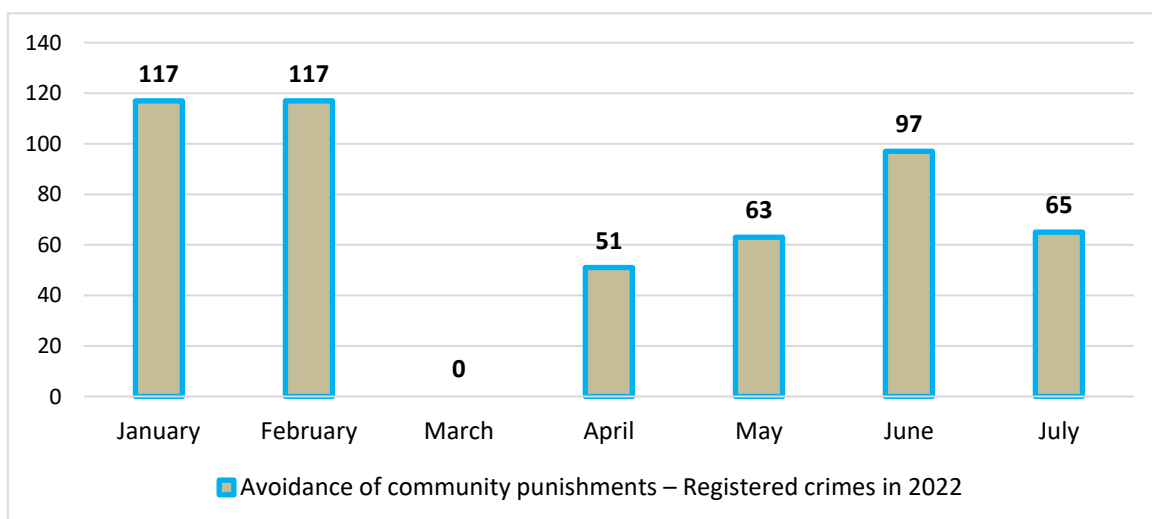


Figure 24. Avoidance of community punishments in 2022 (by month)

The figure below presents the number of avoidances of community punishments registered every month in 2021 and 2022 (Figure 25).

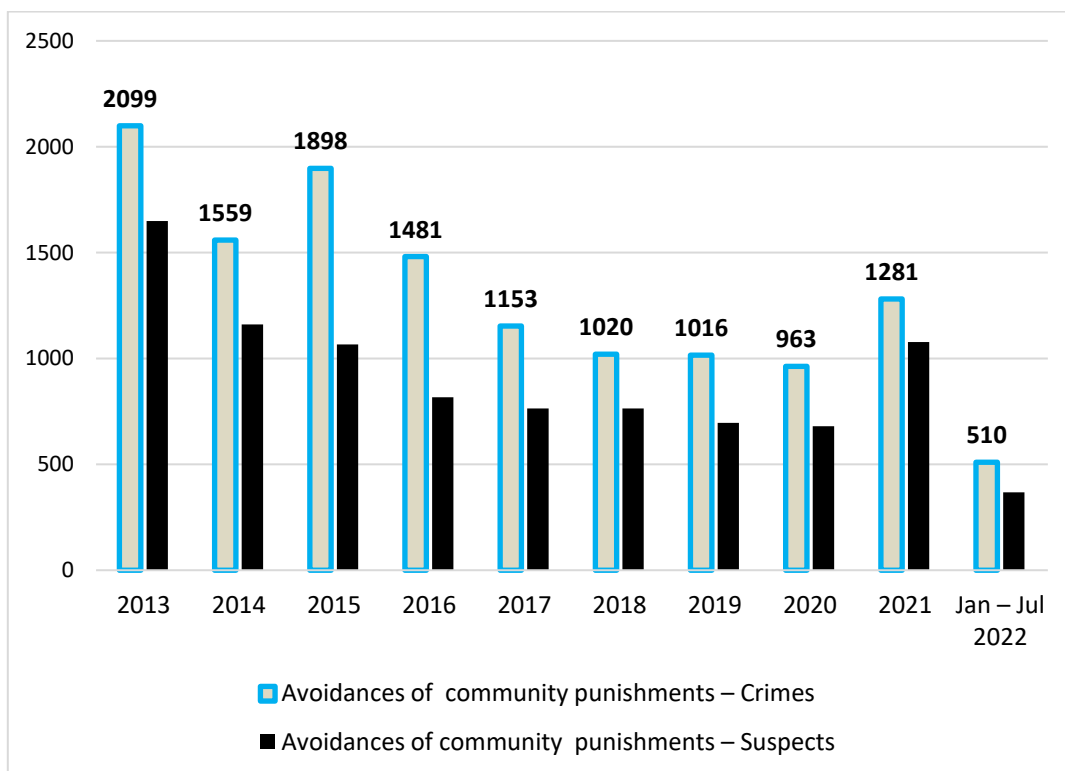


Figure 25. Avoidance of community punishments in 2013 – 2022

Mission of the Prison Service

One of the grounded achievements of the pre-war Ukrainian prison system was significant change of its focus – from punishment to rehabilitation.

The Ukrainian prison system has been developing the rehabilitative orientation since 1991 with prominent results based on the more than serious decrease of prison population and corresponding incarceration rate.

Unfortunately, the War has changed the focus from rehabilitation to control.

On one hand, all ties between national and international NGOs, governmental actors and volunteers in the sphere of offender rehabilitation had been weakened or broken. On the other one, evacuation of big masses of prisoners from prisons located on the front line to new prisons obviously led to new checks, searches, control measures and, consequently, to new priorities of prison administration focused on control rather on rehabilitation.

Suspects and offenders as a last reserve

During the first weeks of the War, it was obvious that the Government could not control the situation for 100% and was looking for all possible resources to save the situation in the country where patriotic feelings were allowed to be presented on the streets. After unlimited giving weapons to all people on the streets on their demand, the Government went further and decided to give weapons to offenders – both pre-trial suspects and sentenced offenders.

For the first six weeks of the War the President of Ukraine pardoned 363 sentenced offenders who declared wish to fight against Russians. Nevertheless, in the light of the situation, which was becoming more stable and optimistic, such an initiative seems to be shortened and finally closed.

In the middle of March 2022, the Parliament adopted the amendments to the CCP (Article 616) which allowed temporary release of suspects from pre-trial investigation or trial in custody, except for those who are suspected of committing crimes against the foundations of national security of Ukraine, as well as some other crimes (intentional homicide, illegal deprivation of liberty or kidnapping of a person, enforced disappearance, taking hostages, sex crimes, robbery, extortion, participation a criminal organization, establishing or spreading criminal influence, gangsterism and some other crimes against public safety). A temporary release to a suspect or a defendant can be granted by the investigating judge after consideration of the request of the prosecutor.

Finally, the suspect or the accused, in respect of whom the preventive measure in the form of custody has been canceled, must immediately, no later than 24 hours, appear at the appropriate territorial center of recruitment.

At the moment, there is no information in open sources concerning the examples of release of suspects, defendants and sentenced offenders from prisons which can be explained with the absence of preconditions for such actions: empty space is filled with volunteers from free society and professional soldiers.

Human Trafficking: “New Markets, New Perspectives”

According to general stereotypes (which are not far from the reality), Ukraine has traditional been used as a transit country for the aims of human trafficking. In its recent judgment of 16 February 2021 in «*V.C.L. and A.N. v. the United Kingdom*» (applications nos. 77587/12 and 74603/12), the European Court of Human Rights pointed at the similarities in the route to the United Kingdom taken by the victims of human trafficking where Ukraine is defined as a transit country to Poland, the Czech Republic, Germany, and France.

What is stressed in declarations and notes of many political leaders from the EU, Ukraine, and other Europeans states that Russian invasion to Ukraine has given the future of many Ukrainian women and children in hands of criminal elements as a consequence of the chaos in Ukraine that took place in the first period of the War. Indeed, the author’s personal sources prove that some humanistic initiatives of the NGO’s and individuals on bringing of refugees to new homes in the states of Western Europe were halted because new “opportunities” of sheltering were proposed by persons who can be arguably suspected in human trafficking and forced labour.

On the other hand, in academic sources, the authors rightly assert that shaped in mass-media imagination about ‘innocent victim’ of human trafficking in fact does not meet the reality. Moreover, Russian invasions to Ukraine has moved the concept of ‘innocent victim’ of human trafficking far from the reality.

It is generally accepted that human trafficking is mostly an organized crime activity which demands cooperation among different persons in different states. With the beginning of the 2022 Russian invasion, dealing alongside with controlling of the wave of refugees, the Ukrainian government restricted movement of males to neighbor states where males were mostly involved in this crime activity (Figure 26, Figure 27).

On the other hand, a new slave market was opened on the East of Ukraine and in all occupied territories under the control of the Russian authorities. There is mass evidence of capturing of civilians and military men with further informal demands of big sum of money for each person (up to 30 thousand US dollars) with corresponding formal letters from Russian officials that “*N. resisted to the Special Military Operation conducted by the Military Forces of the Russian Federation in Ukraine. Therefore, N. will be deprived of freedom on unpredictable period until the Special Military Operation ends*”.

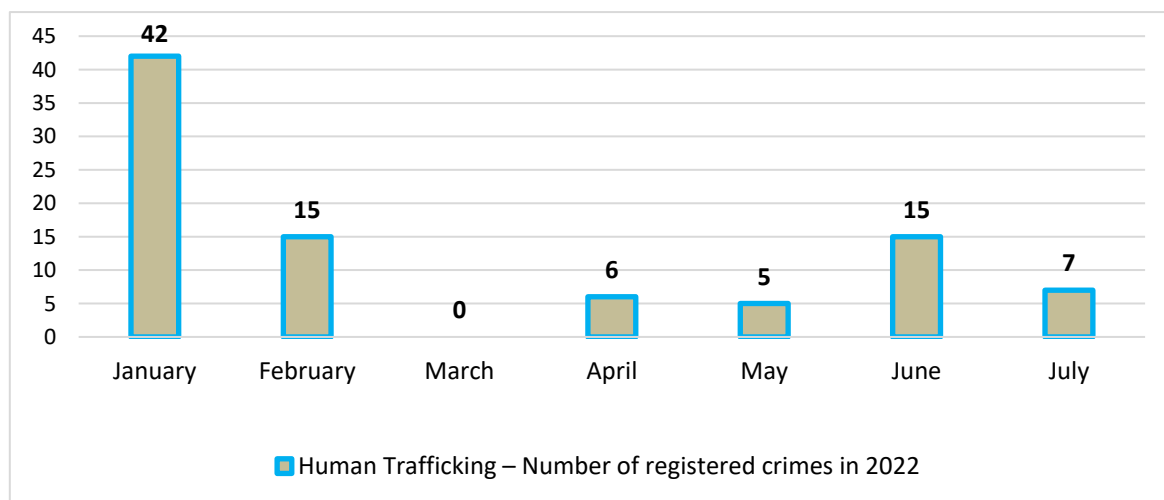


Figure 26. Human trafficking in 2022 (by month)

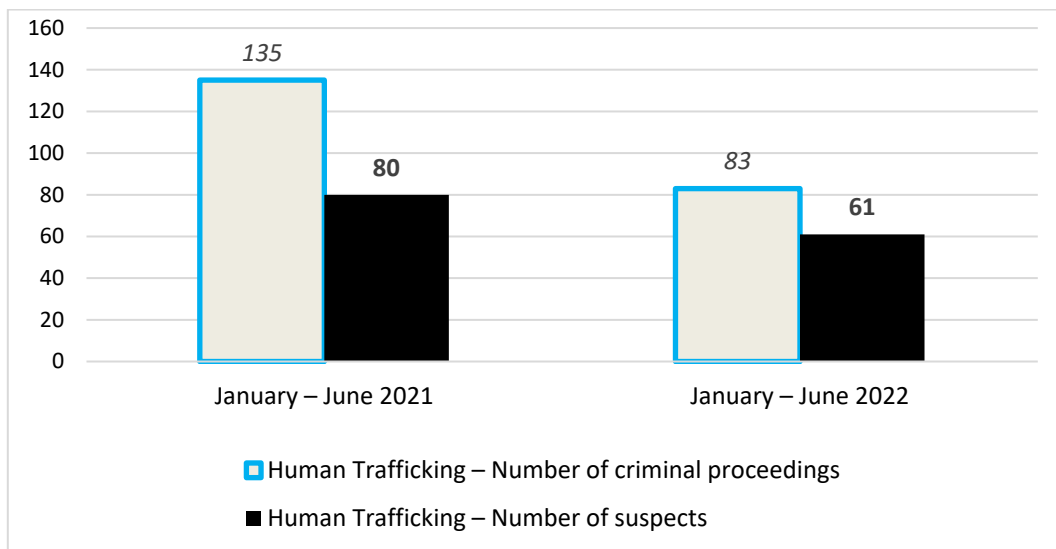


Figure 27. Human trafficking in 2021 – 2022

Conclusions

Having summarized up presented above ideas, we have come to the following conclusions that reflect the state of things within the wartime Ukrainian criminal justice system.

The criminal justice system (and justice system in general) has floated (or is floating) out from the deepest crisis caused by external war-concerned factors what has become possible due to its virtual character (use of the electronic services for participants of court proceedings and their representatives as well as distance character of court sessions).

Research of crime rates in war-time Ukraine shapes a difficult task for many reasons. Movement of big masses of population abroad and within the country, disorganization of the police forces on the first stages of Russian invasion, intentional sabotage or reluctance in registering crimes by the police officers and other factors distort the real picture or crime trends of the first seven months of 2022.

Nevertheless, it could be presumed with a high level of accuracy that Russian invasion led to a partial decrease in criminality due to simplified (from the point of view of long-term crime prevention) additional control measures introduced by authorities (closing public places, curfews, abolition of transport connection for long periods, the police and military block-posts, prohibition of sale of alcohol etc.).

Any further analysis of general crime rates in wartime (and post-war, as we hope) Ukraine should bear that Ukraine is a country filled with weapons and explosives in which much more people know how to use these weapons and explosives. Therefore, violent property crime and organized crime could pose a risk for stability of social relations in Ukraine as well as in any postwar country.

Human trafficking will also pose a more serious problem for Ukraine and its border states. It is expected that economic factors will lead to impoverishment of population which could more easily become victims of human trafficking.

As far as issues of the prison and probation system are concerned, the 2022 Russian invasion has underlined to which extent the rehabilitative component of the prison policy is sensitive and could be easily removed (shortened) due to conditions of the war-time routine in favor of punitive philosophy covered with slogans of control and national safety.