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Ukraine Military and Wartime Law

Edited by Ganna Sobko

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Legal Foundations of the Application of Combat Immunity in Ukraine, the United Kingdom, and the U.S. of America: A Comparative Legal Analysis

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Abstract. The article analyzes the administrative and legal aspects of the application of the combat immunity institution to exempt military personnel from legal liability for offenses committed in Ukraine, the United Kingdom, and the United States of America. Based on the study of court cases heard by the courts of these countries, legal norms contained in national legislation are identified, which determine the grounds and conditions for applying combat immunity. The history of the implementation of this legal institution, its normative consolidation, and practical application in armed conflict conditions are examined. The main issues and legal conflicts related to the application of combat immunity in the national legislation of the analyzed countries are identified. Suggestions are made on improving the administrative and legal mechanism for applying the combat immunity institution in Ukraine, taking into account international experience.

Keywords: combat immunity, armed conflict, war crimes, military law, exemption of military personnel from legal liability, law of armed conflict, armed forces, Russo-Ukrainian war.

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Introduction

The Verkhovna Rada of Ukraine has legally defined that the temporary occupation of certain territories of Ukraine by the Russian Federation began on February 19, 2014. Consequently, our country has been in a state of war for 11 years. Throughout this period, especially after February 24, 2022, the Armed Forces of Ukraine and other security and defense sector entities have been actively engaged in combat, while commanders have made management decisions aimed at fulfilling combat tasks, which in some cases could have conflicted with the current legislation of Ukraine.

One of the key issues in conducting military operations to defend Ukraine's sovereignty against the aggressor has been the prosecution of military commanders for decisions they made under combat conditions. This issue has led to a reduction in initiative and effectiveness in decisions made by military commanders while carrying out combat orders, highlighting the need to introduce the institution of combat immunity into national legislation. This article is dedicated to a comparative analysis of the legal norms regulating the application of combat immunity in Ukraine, the United Kingdom, and the United States.

Methodology

The following methods were used in the course of the research:

- Comparative legal method – for comparing domestic legislation on the legal regulation of combat immunity in Ukraine with legal norms in the United Kingdom and the United States.
- Expert evaluations – analysis and incorporation of the opinions of scholars, lawyers, and experts on the norms regarding the application of combat immunity to assess the problematic issues of its application.
- System analysis – examining the studied norms as part of judicial practice when making decisions regarding the application of combat immunity to military personnel and the exemption of commanders from liability.
- Empirical method – for collecting facts regarding the application of combat immunity, their initial generalization, subsequent description of research data, systematization, and classification.
- Formal-legal method – when studying legislative acts regulating the application of combat immunity.

Results

The Verkhovna Rada of Ukraine has legislatively defined that the temporary occupation of certain territories of Ukraine by the Russian Federation began on February 19, 2014, (Verkhovna Rada of Ukraine, 2014) and, accordingly, our country has been in a state of war for 11 years. As is well known, throughout this period, especially after February 24, 2022, the Armed Forces of Ukraine and other entities of the security and defense sector have been actively engaged in combat operations in Eastern Ukraine. Commanders at various levels made management decisions aimed at fulfilling combat tasks, which at times could have contradicted the current legislation of Ukraine. As a result, a number of commanders were held accountable for various offenses, including criminal liability. The reason for this was the absence, in Ukraine's national legislation at the time, of the legal concept of «combat immunity» and the legal mechanism for exemption from responsibility for violations of legal norms protected by law, for individuals who intentionally violated them in the course of fulfilling a combat order.

A vivid example of criminal liability for issuing an order under combat conditions is the court proceedings in the criminal case against Deputy Commander of the Anti-Terrorist Operation (ATO), General Viktor Nazarov, who was accused of committing a crime under Part 3 of Article 425 of the Criminal Code of Ukraine (Negligent Attitude Toward Military Service). General Nazarov gave the order for the aircraft with a parachute assault unit to take off to the city of Luhansk to carry out a combat mission aimed at de-occupying the city. On June 14, 2014, during the approach for landing at Luhansk Airport, the Ukrainian Il-76 aircraft was shot down by Russian military forces. As a result of General Viktor Nazarov's decision, 9 crew members and 40 military personnel from the combined parachute assault company were killed.

The judicial investigation lasted until mid-2021. According to the decision of the first-instance court, the defendant, Viktor Nazarov, was found guilty of committing the crime and sentenced to 7 years of imprisonment. In other words, the head of the military command body was convicted for a decision aimed at the effective execution of a combat mission, made based on the planning of military operations in combat conditions and under tight time constraints. Although all participants in the court session were convinced that General Nazarov had made a lawful and correct decision, directed at fulfilling the combat task, at that time,

there were no legal norms in Ukraine's criminal legislation that could have exempted him from criminal liability.

After 6 years of pre-trial investigations and court proceedings in various instances, on May 21, 2021, the Cassation Criminal Court within the Supreme Court, following the review of the case concerning Viktor Mykolayovych Nazarov, canceled the previously made judicial decisions and closed the criminal proceedings due to the absence of a criminal offense in Nazarov's actions. (Verkhovna Rada of Ukraine, 2021) The Supreme Court overturned the seven-year prison sentence for General Viktor Nazarov in this case and closed the case due to the absence of any criminal wrongdoing. In this way, in 2021, the Supreme Court, by applying criminal law institutions, specifically emphasized that according to Article 42 of the Criminal Code of Ukraine, an act (action or inaction) that caused harm to legally protected interests is not considered a criminal offense if it was committed under conditions of justified risk to achieve a significant socially useful goal. At the same time, the risk is considered justified if the goal could not have been achieved in that situation without the action (inaction) associated with the risk, and the person who allowed the risk reasonably believed that the measures they took were sufficient to prevent harm to legally protected interests.

In our opinion, the Supreme Court, in its decision, effectively arrived at the legal concept of applying combat immunity. However, it was only with the onset of Russia's full-scale invasion of Ukraine that the Ukrainian Parliament made the necessary amendments to the Law of Ukraine «On Defense of Ukraine,» by supplementing it with the definition of «combat immunity.» The basis for introducing this new legal mechanism for exemption from legal liability was the fact that, in February 2022, nearly all of Ukraine's population took up arms to defend its independence. The civilian population began to engage in active armed resistance against the Russian occupation forces, during which numerous violations of established legal norms occurred.

Considering the above, we can assert that, in the context of warfare, the introduction of combat immunity was the correct, logical, and effective decision, which allows us to predict the absence of such unfounded cases in the future, as the criteria for reasonable caution and justified risk during wartime are much broader. However, we cannot ignore the other negative consequences caused by the existence of such criminal cases in society. For example, the prolonged inves-

tigation and prosecution of combat commanders for decisions made under combat necessity lead to a decrease in initiative and the effectiveness of decisions made by other officers due to the threat of criminal liability, unfulfilled aspirations of the relatives of the deceased in their pursuit of what they believe to be justice, and much more. At the same time, combat immunity does not mean unconditional exemption from responsibility; it only pertains to adherence to certain criteria, the development of which remains the responsibility of the judicial system.

According to Article 1 of the Law of Ukraine «On the Defense of Ukraine,» combat immunity is the exemption of military command, military personnel, special police forces of the National Police of Ukraine, volunteers of the Territorial Defense Forces of the Armed Forces of Ukraine, law enforcement officers participating in the defense of Ukraine, individuals defined by the Law of Ukraine «On Ensuring the Participation of Civilians in the Defense of Ukraine,» from liability, including criminal liability, for the loss of personnel, military equipment, or other military property, the consequences of the use of armed and other force during the repulsion of armed aggression against Ukraine or the liquidation (neutralization) of an armed conflict, or the performance of other defense tasks using any kind of weaponry. This immunity applies to situations where the occurrence of these consequences, considering reasonable caution, could not have been predicted when planning and carrying out such actions (tasks), or which are covered by justified risk, except in cases of violation of the laws and customs of war or the use of armed force defined by international agreements, the binding nature of which has been approved by the Verkhovna Rada of Ukraine. (Verkhovna Rada of Ukraine, 1991)

The necessity of introducing legal norms that define the permissible limits of violations of Ukrainian legislation, and most importantly, the conditions and categories of persons who may be exempt from legal liability for offenses committed, was prompted by the rapid development of events during the defense of Ukraine's sovereignty in the context of the Russo-Ukrainian war. In this regard, we note several circumstances that encouraged the Ukrainian authorities to introduce the institution of combat immunity into the Ukrainian legal system. Among them, the key ones are:

1) Numerous instances of harm caused to interests protected by domestic legislation during the use of armed or other force;

2) Fears among military personnel and others regarding possible criminal and other legal liability for certain damages;
3) The difficulty of planning combat operations under conditions of limited information and tight deadlines for decision-making, as well as the frequent necessity for military personnel to show initiative and make urgent decisions to carry out combat tasks in a combat environment;
4) Actions of military personnel during combat operations often bordered on committing a range of military crimes (Baulin, 2023).

Considering this, it can be argued that the Ukrainian authorities, in the context of active hostilities by the Russian Armed Forces at the beginning of the full-scale invasion, sought to resolve the criminal-legal issues arising during the armed resistance of the Ukrainian people in the shortest possible time. Thus, with the Law of Ukraine «On Amendments to the Criminal Code of Ukraine and Other Laws of Ukraine Regarding the Determination of Circumstances That Exclude Criminal Illegality of an Act and Ensure Combat Immunity in Conditions of Martial Law» dated March 15, 2022, No. 2124-IX, Section VIII of the Criminal Code of Ukraine was supplemented by Article 43-1 «Execution of the Duty to Defend the Homeland, Independence, and Territorial Integrity of Ukraine». (Verkhovna Rada of Ukraine, 2022a)

Part 1 of this article stipulates: An act (action or inaction) committed in conditions of martial law or during an armed conflict aimed at repelling and deterring the armed aggression of the Russian Federation or the aggression of another country is not considered a criminal offense, if it causes harm to the life or health of a person carrying out such aggression or causes harm to the protected interests, in the absence of signs of torture or the use of methods of warfare prohibited by international law, or other violations of the laws and customs of war as specified in international treaties to which the Verkhovna Rada of Ukraine has given its consent for binding force. (Verkhovna Rada of Ukraine, 2001)

That is, in Ukraine, in the spring of 2022, a new type of exemption from criminal liability was introduced. At the same time, the circumstance (combat immunity) that excludes criminal liability is not provided by the provisions of the Criminal Code of Ukraine, but by Article 1 of the Law of Ukraine «On the Defense of Ukraine,» which is a certain legal innovation and goes beyond the scope of criminal legislation.

Also, a mandatory condition for the application of Article 43-1 of the Criminal Code of Ukraine, as defined by the provisions of the Criminal Code of Ukraine, is the presence of a state of martial law or a period of armed conflict. At the same time, this legislative act does not formulate these conditions but refers to paragraph 3 of Article 9 of the Law of Ukraine «On the Legal Regime of Martial Law» dated May 12, 2015, No. 389-VIII, which stipulates that in conditions of martial law, a person authorized to perform the functions of the state or local government is not held liable, including criminal liability, for decisions, actions, or inactions whose negative consequences could not be predicted or are covered by justified risk, provided that such actions (inactions) were necessary to repel armed aggression against Ukraine or to eliminate (neutralize) an armed conflict. (Verkhovna Rada of Ukraine, 2015)

Considering the provisions of the aforementioned legislative acts, we can outline the circle of subjects to whom the norms of Article 43-1 of the Criminal Code of Ukraine apply, i.e., those who are not subject to criminal liability due to the application of the legal norms of combat immunity. Thus, these subjects include:

- Officials of military command bodies;
- Military personnel;
- Police officers of the special purpose police of the National Police of Ukraine;
- Volunteers of the Territorial Defense Forces of the Armed Forces of Ukraine;
- Law enforcement officers who, according to their powers, participate in the defense of Ukraine;
- Civilian individuals (citizens of Ukraine, foreigners, and stateless persons lawfully present on the territory of Ukraine) as defined by the Law of Ukraine «On Ensuring the Participation of Civilian Individuals in the Defense of Ukraine» (Verkhovna Rada of Ukraine, 2022b);
- Individuals authorized to perform state or local government functions.

At the same time, part 3 of Article 43-1 of the Criminal Code of Ukraine defines a list of offenses for which the individuals mentioned above are not subject to criminal liability, namely:

- The use of weapons (armament), combat ammunition, or explosive substances against individuals who are conducting armed aggression against Ukraine;
- The damage or destruction of property in connection with this. (Verkhovna Rada of Ukraine, 2001)

The key legal fact here is that individuals who commit these offenses are not exempt from criminal liability, but rather, they are not subject to criminal liability. In other words, we can assert that the commission of the above-mentioned unlawful actions, if carried out in the conditions of martial law or during an armed conflict and aimed at repelling and deterring armed aggression by the Russian Federation or another country's aggression, is not considered a criminal offense, as stipulated by Article 11 of the Criminal Code of Ukraine. Therefore, under no circumstances should an investigator, detective, or prosecutor initiate pre-trial investigations into such facts based on Article 214 of the Criminal Procedure Code of Ukraine. (Verkhovna Rada of Ukraine, 2012) However, despite active combat and the limited number of investigators at the State Bureau of Investigations, the application of the legal mechanism of combat immunity provided by Article 43-1 of the Criminal Code of Ukraine occurs through the release from criminal liability of military personnel via a court decision, following a pre-trial investigation.

For a comprehensive and objective investigation of this issue, we decided to explore the application of combat immunity in other democratic countries. The concept of combat immunity, in one form or another, exists in the legal systems of various countries and indicates that military leadership is not held accountable for actions taken in a combat environment or during military operations. However, the basis for its application is a thorough analysis and determination of the circumstances under which a particular decision was made. (Behunets, 2023) At the same time, we can assert that our analysis of judicial decisions in partner countries regarding the application of combat immunity shows the ambiguity of the legal norms regulating the introduction of the combat immunity institute in these countries.

The analysis of case law in the United Kingdom points to the diversity of judicial interpretation of legal norms concerning the application of combat immunity. Evidence of this can be seen in the cases: *Smith v. Ministry of Defence*, *Ellis v. Ministry of Defence*, and *Allbutt v. Ministry of Defence*, which were opened as a result of lawsuits concerning the deaths and serious injuries of British servicemen during military operations in Iraq. In these legal proceedings, the plaintiffs' claims were related to negligence by commanders, while the defendant, the Ministry of Defence, argued that all claims should be dismissed based on the application of combat immunity norms. The Ministry of Defence referred to the doctrine of combat immunity, which has a sufficiently broad jurisdiction to

cover all actions or omissions by commanders that allegedly led to the death and injury of subordinates during combat operations, and whose foundation rests on the principle that state interests should prevail over individual interests. Consequently, the application of this doctrine should result in the complete exclusion of any responsibility for negligence by commanders in the course of military operations from judicial jurisdiction.

In this case, the judge made a nuanced decision. While he believed that the doctrine of combat immunity should be interpreted narrowly, he partially dismissed the plaintiffs' claims on the grounds that they did not fall under the jurisdiction of the United Kingdom when the soldiers died. However, he upheld the claim regarding the Ministry of Defence's obligation to compensate for the material damages claimed by the plaintiffs. (United Kingdom Supreme Court, 2013)

A completely different decision was made by the court in the case of Richard Mulcahy v. the Ministry of Defence of the United Kingdom. Applying the doctrine of combat immunity, the Court of Appeal ruled that during combat missions and operations, the Armed Forces are not obligated to exercise excessive caution regarding potential losses and injuries among servicemen, and it fully dismissed the claim. (England and Wales Court of Appeal, 1996)

An interesting legal innovation in the UK legislation is the mechanism that grants the Secretary of State for Defence the power to establish combat immunity for servicemen of the Armed Forces through their decision when national security is threatened and during military operations outside the United Kingdom. This applies in cases where the responsibility of military personnel for the death, injury, or harm caused to another person during combat missions and guard duties is to be waived. (Law "On Judicial Cases (Armed Forces)", 1987)

At the legislative level, it is stipulated that the State is not liable for the death or injury of military personnel caused by the peculiarities of the terrain, natural conditions, as well as the condition of aircraft, ships, or military equipment used under special conditions (Law «On Crown Court Jurisdiction», 1947). When applying the aforementioned provisions, only the court can determine the conditions under which immunity does not apply to military personnel. The principle of combat immunity is that military personnel who are directly involved in combat operations (fights) cannot be held liable under general law for negligence, actions, or inactions. This approach is confirmed by the majority of judicial deci-

sions and national legislation of the United Kingdom.

Thus, we can conclude that according to the criminal law doctrine of the United Kingdom, military personnel of the British Army are entitled to combat immunity, which protects this category of individuals from liability for offenses that may lead to negative legal consequences during combat operations. This principle stipulates that holding military personnel accountable for decisions or mistakes made during combat is incorrect, unjust, and unreasonable. At the same time, we can note that the legal mechanism for applying the combat immunity institution in the legislation of the United Kingdom is not flawless. As mentioned above, in certain court cases, the courts claim that the Ministry of Defence of the United Kingdom failed to provide military personnel with the appropriate military equipment that could have prevented their injuries and deaths, and they do not apply the principle of combat immunity. In other cases, it is stated that the damage caused to military personnel occurred due to the conduct of combat operations, and the guilty parties are released from liability, citing the doctrine of combat immunity.

To support our conclusions, Martin Molloy, a special advisor to the Ministry of Defence of the United Kingdom, in his speech at a scientific-practical conference in Ukraine on the application of legal norms of combat immunity, stated that the United Kingdom has not yet been able to regulate the application of combat immunity for military personnel serving within the country, including due to the ongoing internal conflict in Northern Ireland. The legal framework of the United Kingdom provides for a separate system of legal responsibility for military personnel. Legal responsibility for military personnel is part of the general legal responsibility system in the United Kingdom. In the case of a crime committed by a military member, the corresponding investigation is conducted by military justice authorities. (Defense Strategy Center, 2021)

The concept of combat immunity is applied somewhat differently in the United States. Until 1946, any lawsuits against the federal government without its consent were prohibited by the doctrine of sovereign immunity in the U.S. However, this legal position was changed by the Federal Tort Claims Act (FTCA), which can be considered similar to the «Crown Proceedings Act of 1947» in the United Kingdom. The FTCA abolished sovereign immunity in relation to the federal government in most cases. However, according to 28 U.S.C.A. §2680(j),

the sovereign immunity of the federal government is not waived in connection with «any claims arising out of the combat activities of the armed forces or naval forces or the Coast Guard during wartime.». (Federal Law "On Tort Claims")

Another exception, which pertains to «injuries sustained during service,» was introduced through case law and is known in the U.S. as the Feres Doctrine (Feres v United States, 340 U.S. 135 (S.Ct. 1950)) (Speiser et al., 2010). The justification for the Feres Doctrine is quite critical and substantial, particularly regarding military disciplinary structures. According to the Feres Doctrine, the plaintiff cannot demand a civilian court to reconsider military decisions made by commanders if the injured party is a service member (U.S. Supreme Court, 1977), and the plaintiff's claim for damages cannot be upheld. The Feres Doctrine stipulates that a lawsuit cannot be allowed to potentially undermine the foundation of military discipline.

Another case, Chappell v Wallace, involved U.S. Navy service members filing a lawsuit for damages against senior officers, claiming that they were discriminated against due to their race during the assignment of duties and imposition of penalties, violating their constitutional rights. The court dismissed the claim on the grounds that the contested actions were military decisions that were not subject to review, and the defendants were entitled to immunity. Citing the Feres Doctrine, the court ruled that service members could not file claims for damages against senior commanders for alleged wrongdoings. According to U.S. law, the necessity for military commanders to make clear and decisive decisions about their subordinates, as well as the need for the unchallenged actions of the subordinates, cannot be undermined by judicial review within the legal protection that imposes personal responsibility on officers for those they command. Given this, we can state that within the U.S. judicial system, two subsystems coexist: one for civilians and another for service members. (U.S. Supreme Court, 1983)

The «Randulich Rule» also operates in the U.S., which is based on judicial practice in the country. The case concerns the responsibility of commanders for mistakes made during wartime. The tribunal concluded that the decision made by Randulich could be incorrect, but not criminal. As stated in the ruling, «the circumstances under which the commander made the decision justify the necessity of the conclusion made.» The Randulich case serves as the foundation for the general standard regarding commanders' responsibility for decisions made

during combat operations. (Furman, 2022)

The legislative foundation for the provisions of combat immunity is Article 2680 (J) of the U.S. Code, which defines the immunity of the U.S. Government from any claims related to the combat actions of the Army, Navy, and Coast Guard during wartime (U.S. Code, 2023). The main principles of implementing the combat immunity mechanism and addressing the issue of holding commanders and military personnel accountable in the U.S. are contained in the special instruction «Law of Armed Conflict Deskbook» (2024) and in the «Operational Law» handbook (Military Legal Resources, 2022), as well as in judicial decisions. The legal norms outlined in these documents require a thorough analysis and study of all the circumstances under which a commander acted when making the corresponding decision and the regulatory legal documents they followed.

Considering the judicial practice and national legislation of the United States, we can assert that the actions of commanders in the U.S. Army and the decisions they made under combat conditions for applying combat immunity norms are evaluated exclusively based on the information available at the time of making those decisions. At the same time, the U.S. Senate has determined that any decisions made by commanders, military personnel, or other individuals responsible for planning and carrying out military operations (combat actions) must be reviewed exclusively by the court based on information that was reasonably available to the accused at the time of planning, authorizing, and executing military operations. The court should not consider information that became known and accessible after the operation took place.

Therefore, the institution of combat immunity in the United Kingdom and the United States is much more developed than in Ukraine. There is a solid explanation for this, which lies in the time frame of its introduction and, accordingly, in its legal support. However, after examining the legal mechanisms for the implementation of combat immunity in the aforementioned countries, we can note the lack of a unified approach in their national legislation for applying the norms and principles of combat immunity to commanders and military personnel who have committed offenses during combat operations. At the same time, in our opinion, the principle of its application is quite important, when the interests of the state should prevail over the interests of the individual. This principle is crucial for commanders and military personnel when making managerial decisions in com-

bat zones, i.e., under combat conditions. It is important for them to know that their command decisions, aimed at effectively carrying out the assigned combat task, will not lead to legal consequences.

When studying the legal mechanism for the application of combat immunity norms in Ukraine, which has been at war for over 10 years, we note that it is still underdeveloped. At the same time, the use of experience from its application in partner countries also has certain specifics due to the lack of a unified legal approach. In our opinion, the development of the combat immunity institution in Ukraine and its adaptation to the realities of the Russo-Ukrainian war will provide a strong impetus for the introduction of new legal innovations into the established mechanisms of combat immunity application in partner countries.

Based on the results of our research, we propose developing the necessary regulatory and legal framework for the application of the norms of Article 43-1 of the Criminal Code of Ukraine, both with and without the opening of criminal proceedings. This article clearly defines that actions (acts or omissions) that harm the life or health of a person committing aggression, or cause harm to protected interests, committed under martial law or during an armed conflict and aimed at repelling and deterring armed aggression by the Russian Federation or any other country, are not considered criminal offenses (Verkhovna Rada of Ukraine, 2001). Therefore, criminal procedural legislation of Ukraine does not apply to such actions.

Analysis

Analyzing the legal foundations for the application of combat immunity, it can be noted that its introduction in Ukraine was driven by the practical need to protect military commanders and service members from legal prosecution for actions taken during the execution of combat orders. The case of General Nazarov demonstrates the legal uncertainty that existed in Ukrainian legislation until 2022, when there was essentially no legal mechanism in the criminal law of Ukraine for exemption from criminal liability for offenses committed in combat conditions while defending the national sovereignty of Ukraine.

However, despite the introduction of the institution of combat immunity in domestic legislation, one unresolved legal issue remains: for individuals who committed offenses in the conditions of combat operations, the norms of criminal

procedural law are applied to exempt them from criminal liability, even though the act in question, according to criminal law, is not considered a criminal offense. This legal conflict requires further in-depth academic research.

The comparison with the legal systems of the United Kingdom and the United States reveals similar legal mechanisms regulating military responsibility in combat conditions. In the United Kingdom, the principles of command responsibility and military immunity are enshrined in both national and international law. In the United States, there is the Feres Doctrine, which limits the ability of military personnel to file claims against the state for harm incurred during the performance of their duties. Therefore, the introduction of combat immunity in Ukraine represents a logical and evolutionary step in its legal system, aligning with international standards.

Discussion

The introduction of combat immunity in Ukraine marks a significant step in the evolution of military law. This decision helps to enhance trust among military commanders and provides legal guarantees for carrying out combat missions without the risk of unjustified criminal prosecution. However, there are certain challenges related to the potential misuse of such immunity. An important task is the development of control mechanisms to prevent impunity for crimes that violate international humanitarian law.

One limitation of this study is the insufficient empirical base regarding the application of combat immunity in Ukraine, as this legal mechanism is still in its early stages. Future research may focus on analyzing judicial practices following its introduction and examining specific cases where combat immunity was applied or, conversely, was not recognized by the judicial authorities.

Thus, combat immunity is a crucial element of legal protection for military personnel, but its effectiveness will depend on the application of the law and a proper balance between safeguarding service members and adhering to international humanitarian law.

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