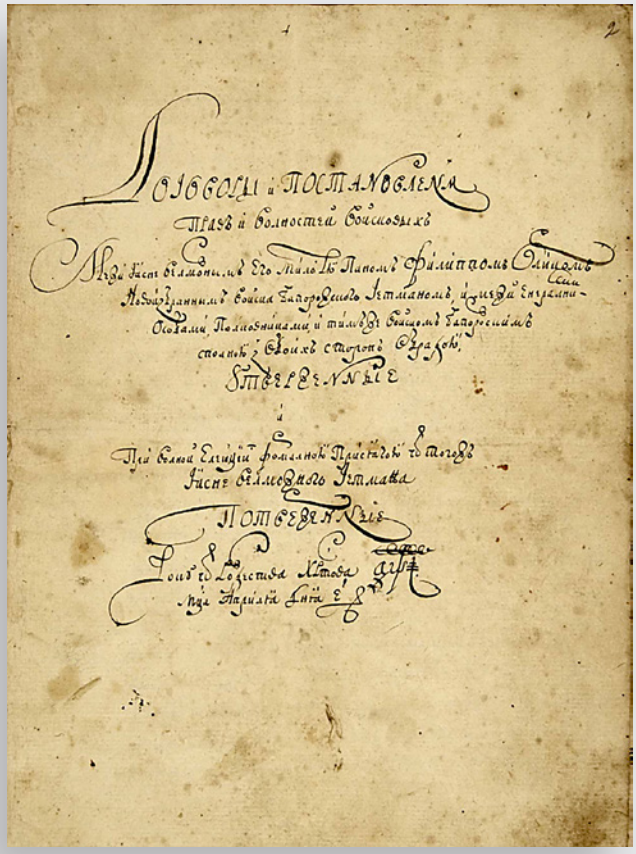
NUOVA ANTOLOGIA MILITARE
RIVISTA INTERDISCIPLINARE DELLA SOCIETÀ ITALIANA DI STORIA MILITARE

NAM Studies & Documents

Special Dossier November 2026
Ukraine Military and Wartime Law (Issue 2)

Edited by Ganna Sobko



Società Italiana di Storia Militare

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Direzione, Via Bosco degli Arvali 24, 00148 Roma

Contatti: direzione@nam-sigm.org ; virgilio.ilari@gmail.com

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(www.societaitalianastoriamilitare@org)

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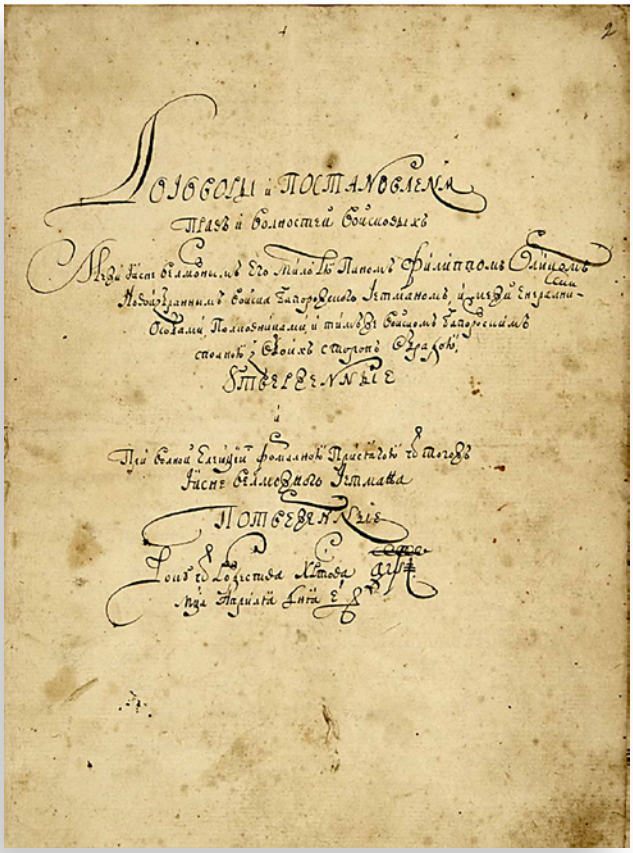
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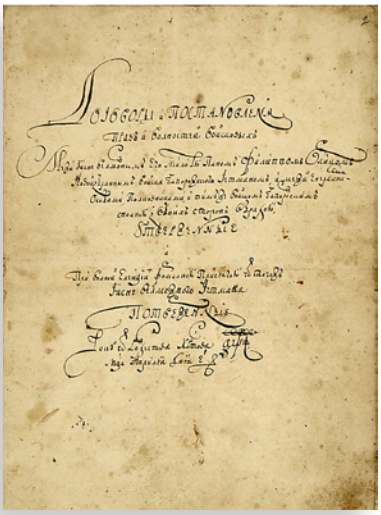
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The first democratic constitution in Europe, written in wartime Ukraine by the hetman in exile Pylyp Orlyk (1672-1742 , in office since 1710 to the death).
Scanned copy of the original Old Ukrainian manuscript of the Pylyp Orlyk's written by Pylyp Orlyk the 5 April 1710 and ratified the 10 May. The manuscript is being sto-red at the Russian State Archive of Ancient Acts (RGADA) in Moscow.
(Wikimedia Commons)

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Introduction

by Ganna Sobko

Within the interdisciplinary scope of *Nuova Antologia Militare*, war is studied not only as the history of military operations, but also as a field that is analysed and regulated by various academic disciplines. Law is one of the oldest of these 'disciplines of war': from Roman law and the medieval doctrine of a just war to the Nuremberg Tribunal, it established what societies consider permissible in war and who was held accountable for it. The special issue "Security and Military Law in Wartime Ukraine" continues this tradition by examining the largest armed aggression in Europe since 1945. The start of the full-scale invasion of Ukraine in February 2022 proved to be a test not only for the Armed Forces of Ukraine but also a test of the entire legal system's ability to function under extreme pressure, whilst remaining true to its fundamental obligations. Today, security is understood not merely as defence and public order but as the resilience of military, social, economic and international institutions, at the heart of which lies military law.

Despite its interdisciplinary focus, this special issue is united by a common question: how can a state at war adapt its legal framework to the needs of defence, whilst upholding the rule of law, accountability and the protection of individual rights? This question arises most acutely where decisions are taken by a person bearing arms or acting on orders. A commander operates under time constraints and with limited information, yet the law demands more of them than of anyone else. Two articles in this issue examine this duality from opposing perspectives. A study of the doctrine of command responsibility, tracing it from Nuremberg and Tokyo, argues that the inaction of a commander who fails to prevent crimes committed by subordinates, fails to stop them and fails to bring the perpetrators to justice should constitute a separate offence under Ukrainian criminal law.

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The article on combat immunity, by contrast, seeks to define the boundary beyond which a decision made in good faith in a military context should not form the basis for criminal prosecution. It highlights contradictions between the Criminal Code and the Law "On the Defence of Ukraine", draws on the US experience and proposes that the issue of immunity be considered by the competent authority even before proceedings are initiated. Taken together, these two articles demonstrate that accountability for unlawful acts and the protection of decisions taken in good faith are complementary requirements for a robust system of military justice.

A common feature of most of the articles is that, whilst the relevant rules largely exist, they do not function as they should. Research into the safeguards for the rights of serving military personnel and veterans highlights the fragmented nature of the legislation, the limited coverage of new categories of defenders, and the gradual replacement of preventive safeguards by judicial protection. The article on inter-ministerial coordination in veterans' policy explains why this is the case: powers are divided between ministries and local authorities, and there is no legally designated coordinator, which is why delays and inaction are structural in nature. A similar conclusion emerges from the article on the transformation of civil legislation: the amendments to the Civil Code of Ukraine for 2022-2026, in particular the extension of limitation periods, the protection of bona fide purchasers and mechanisms for compensation for damages, are significant but do not yet form a coherent system. For a military organisation, this is not merely an academic nuance, as the state's ability to fulfil its obligations towards those who are fighting is crucial to its capacity to continue fighting.

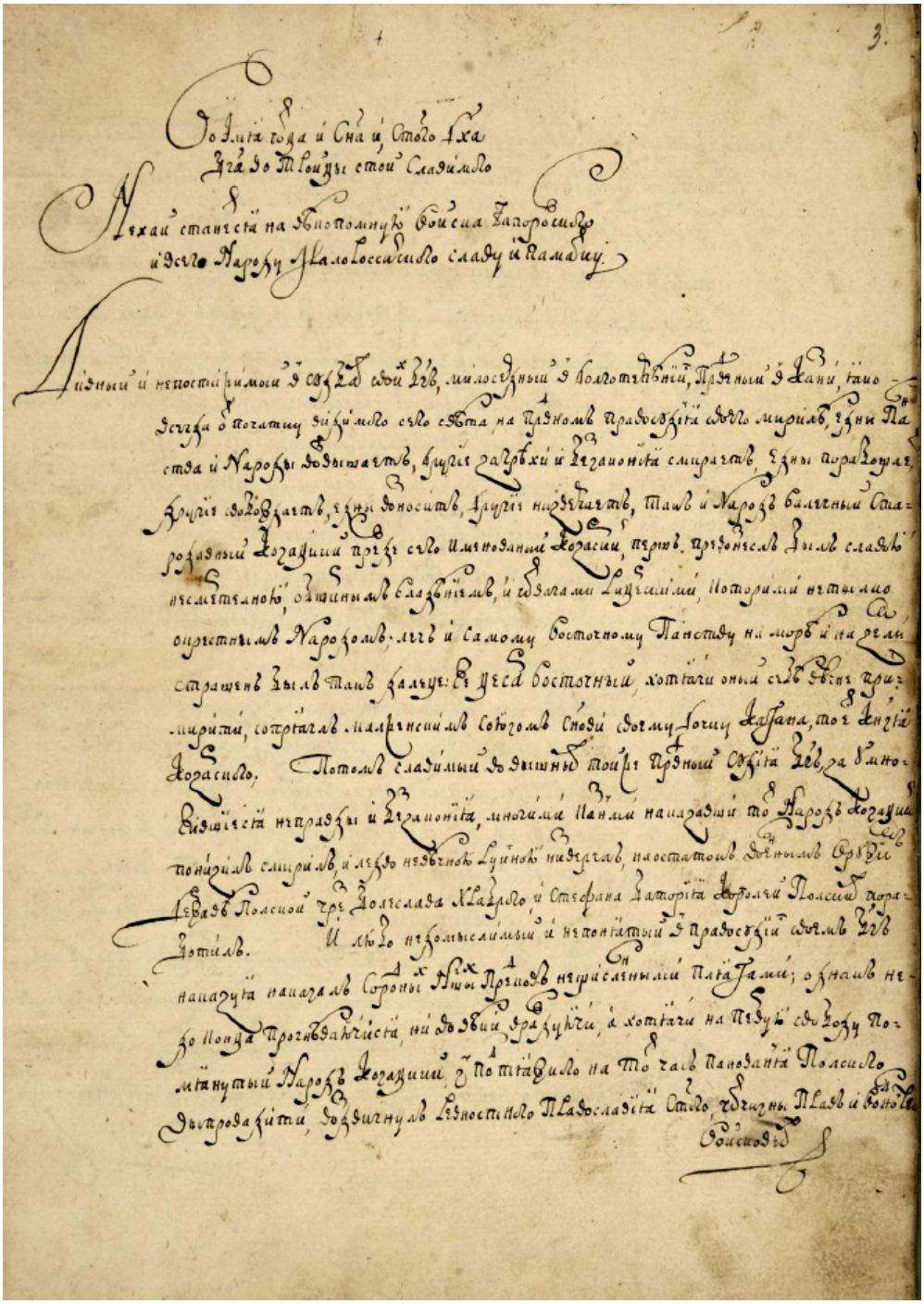
Wartime calls for exceptions, and this raises the question of where to draw the line. An article on the regulatory framework for economic sovereignty examines temporary tax and regulatory exceptions, the protection of critical infrastructure, sanctions and trade diversification as elements of strategic resilience. A comparative study of martial law in several countries poses the question directly: does this regime ensure public order? The answer is ambiguous, which is precisely why judicial oversight and international monitoring prove to be the main safeguards against the excessive expansion of emergency powers. Both articles serve as a reminder that an exception is justified only as long as there remains a way back to the normal rule of law.

War does not end at the front line, and the question of its legal consequences

extends beyond the borders of a single state. This article on frozen Russian assets begins with a practical question and leads to a fundamental one: does international law provide mechanisms to compensate for damage caused by aggression when there is no explicit provision for confiscation? The author proposes a multi-tiered compensation mechanism involving an international commission for the examination of claims, linked to a Register of Damages. The answer will determine not only the fate of specific assets, but also whether aggression will prove legally and economically costly.

These articles collectively highlight three overarching themes. The first highlights the gap between the law and its implementation: whether the issue concerns benefits for veterans, the treatment of commanders or the fulfilment of international obligations, the authors consistently note that the problem lies not so much in the absence of rules as in their fragmentary nature and the weak institutional capacity to ensure their enforcement. The second theme concerns the need for adaptation to wartime conditions to remain accountable: extraordinary measures, however necessary they may be, require clear boundaries, judicial oversight and a realistic path back to the normal legal order. The third theme is the close intertwining of national and international law: Ukraine is implementing the standards of international humanitarian law and European administrative practice, whilst its own experience, in turn, raises new questions for international law.

The authors are involved in the legal system they are analysing, which renders their work both relevant and practically oriented. We hope that this issue will be of use to academics and practitioners in military and international law, as well as to specialists from other countries who may one day face similar issues. Yet, as Ukrainians, we wish that under such circumstances no nation will ever have to analyse its own military experience.



Interdepartmental Coordination in the State Veteran Policy: Public Mechanisms and European standards

by Nataliia Lytvyn[1], Anatolii Berlach[2], Lesya Maliuha[3], Myroslava Kokoshko[4], Alona Shevtsova[5]

Abstract. This article undertakes a public law perspective to interagency coordination in the execution of state veterans' policy, considering the regulatory novelties of 2024-2026 and the European standards of good administration. The study, conducted in January-February 2026 based on a targeted normative sample (32 acts of 2024-2026), 54 decisions of the Supreme Court of Ukraine (2024-2025), 14 judgments of the European Court of Human Rights, and 11 EU legal acts), combines doctrinal interpretation with case law analysis of judicial legal positions and comparative assessment of administrative models of coordination. The findings indicate that powers distribution between the Ministry of Defence, the Ministry of Veterans Affairs, the Ministry of Health, the Ministry of Social Policy, and local self-government bodies constitutes a configuration of competences of a fragmented character, devoid of a legally constructed coordinating competence. No single procedural coordinator, obligatory exchange of information between agencies, and without a clearly designated responsibility, can produce every overlap and missing link. The identified conflict types include recurring instances of

1 Department of Service and Medical Law, Educational and Scientific Institute of Law, Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine, https://orcid.org/0000-0003-4199-1413, Lna_70@ukr.net.

2 Department of Service and Medical Law, Educational and Scientific Institute of Law, Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine, https://orcid.org/0000-0003-0986-4764, bai89@ukr.net.

3 Educational and Research Institute of Humanities, National Academy of the Security Service of Ukraine, 03022, 22 Mykhailo Maksymovych Str., Kyiv, Ukraine, https://orcid.org/0000-0002-7656-6284, lesya_maluga@ukr.net.

4 Department of Service and Medical Law, Educational and Scientific Institute of Law Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine, https://orcid.org/0000-0002-5753-9061, Myroslava.kokoshko@gmail.com.

5 Department of Global and National Security, Educational and Scientific Institute of Public Administration and Civil Service, Taras Shevchenko National University of Kyiv, 02000, 20 Anton Tsedik Str., Kyiv, Ukraine, https://orcid.org/0009-0002-5334-1215, ferzemmat@gmail.com.

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non-action and delays in matters concerning status, payments, and rehabilitation, indicating coordination difficulties rather than isolated administrative issues. The contrast with Euro-tests indicates only partial non-conformity with requirements, community, and electronic communication. Authors propose an institutional design providing for a single procedure coordinator with authority and regulatory function, mandatory electronic sharing, and concentration of responsibility for the administrative outcome with a view to enabling legal certainty and scaling back public law disputes.

Keywords: access to justice, administrative procedures, health care, public authority interaction, public policy, rehabilitation, veterans' social protection.

Introduction

The problem in question in the fragmentation of the institutions responsible for the implementation of state veterans' policy so that rather than a clearly designated power for all matters related to the bestowal of status, the organization of medical and psychological rehabilitation and social support, and the implementation of payments, the various decision powers of these issues are divided among several central executive authorities and local self-government bodies without a properly institutionalized coordination. This problem becomes particularly acute under wartime conditions, when the growing number of veterans increases the volume and complexity of administrative procedures related to status recognition, rehabilitation, social support, and payments. The resulting administrative burden involves multiple public authorities whose decisions are often interdependent and must be taken within limited timeframes. Under such conditions, fragmented procedures and insufficient information exchange may cause delays and duplication and make coordinated decision-making particularly important for the effective realization of veterans' rights.

No system of inherent internal harmonization exists for decision making, with the result that procedural gaps, duplications, uncertainty of responsibility and repeated conflict in public law disputes indicates not simple isolated managerial mistakes, but a real thoroughgoing systematic defect in the legal design of interagency interaction, since in the absence of a clear coordinating entity and clearly harmonized administrative rights, without guaranteed information exchange the principles of good administration, of an effective legal remedy and the positive

obligations of the state become impossible. For this reason, such a comprehensive and pure public law consideration of the matters contemplated in this study is necessary.

What the authors are analyzing here is not a more or less ingenious managerial or organizational fixing of interagency coordination, but a legislative allocation of administrative competence in a multifactor public law. The problem, therefore, is not that an extremely adjudicative division of labor may operate more efficiently if only legibly managed architecture were to be invented, but that there is no visible normatively regulated procedural coordination competence that would bind administrative actors to the same administrative decision, without infringing upon each sector in law-cum-competence giver's material competence. Thus, the authors are trying to work with a doctrinal reconstruction of competence, rather than administrative reform in the managerial sense.

The purpose of the study is to conduct a comprehensive doctrinal public law analysis of interagency coordination in the implementation of state veterans' policy, with a focus on the configuration of procedural coordination competence, identification of structural causes of public law disputes, and assessment of the compliance of the existing model with European standards of good administration and effective legal remedies, followed by the formulation of a doctrinally grounded model of procedural coordination and legally defined responsibility.

To achieve this purpose, the following tasks are pursued: to analyze the distribution of competences between specialized executive authorities and local self-government bodies in the field of veterans' policy and to identify overlaps, conflicts, and structural gaps in the normative delineation of powers; to examine instruments of interagency coordination not merely as organizational tools but as elements of administrative competence, including administrative procedures, coordination bodies, interagency arrangements, and information exchange mechanisms; to identify typological categories of public law disputes involving veterans and to establish their causal connection with defects in the configuration of competences; to assess the compliance of the existing coordination model with European standards of good administration, effective legal remedies, and the positive obligations of the state; to substantiate a doctrinally grounded model of procedural coordination that determines the legal nature of the coordinating entity, classifies its powers (informational, organizational, regulatory, or authoritative)

within the system of administrative competence, and specifies the juridical form of responsibility for the administrative outcome.

For the purposes of this study, a procedural coordinator is understood as a public authority or institutional actor legally designated to ensure procedural coherence between bodies exercising different areas of competence in the implementation of veterans' policy. Such a coordinator does not replace the substantive competence of the participating authorities but ensures the alignment of administrative actions, information exchange, and the consistent progression of decisions concerning the same administrative matter. A coordination mechanism, in turn, refers to the set of institutional, procedural, and informational arrangements through which the actions of different public authorities and local self-government bodies are aligned. Thus, the procedural coordinator represents the actor entrusted with coordination, whereas the coordination mechanism constitutes the broader legal and institutional framework through which such coordination is carried out.

Literature review

In the existing literature, interagency coordination in the field of veterans' policy is conceptualized primarily as procedural consistency of public administration rather than as a set of programmatic measures. In the comparative legal dimension, it has been shown that in Europe a common procedural core of administrative law is emerging, where procedures, decision-making standards, and guarantees for the individual reduce fragmentation of competences and ensure predictability of actions of public authorities, which directly correlates with the task of assessing coordination as a legal mechanism (Della Cananea & Parona, 2024). In a related dimension, the principle of good administrative governance is reconsidered under conditions of digitalization of the public sector: it is emphasized that large-scale digital effects may not eliminate but reproduce institutional failures due to data incompatibility, different decision-making algorithms, and a "gap" between departmental procedures, which makes informational interoperability and procedural control a critical condition for effective coordination (Sanchez-Graells, 2024). The judicial legal perspective stresses that the sharing of functions between the tiers of government and the plurality of bodies will always raise issues of responsibility and effective remedy; the role of public authorities

consistent with the standards of the European Court of Human Rights brings to life the need to devise institutional design to secure effective remedy for violations, and not to place the consequences of incompatibility on the applicant (Saul, 2024).

The administrative and managerial block of research views coordination as governing administrative capacity and the quality of implementation of policy: it has been shown that effectiveness of implementation is determined by how harmonized the procedures are, the ability of bodies to act together, and ana organizational mechanisms capable of reducing "losses at the interfaces" between institutions, something that is particularly important for policies that have a complex architecture of powers (Bachtler et al., 2024). At the level of the evidentiary basis of decisions, a synthesis of studies shows that the use of information in public administration is determined by the access to data, but also rules of access, institutional incentives and regimes of interpretation: these factors often explaining why interagency decisions become incompatible or contradictory, something that bears directly on the requirement to analyze information exchange as an instrument of coordination (Cantarelli et al., 2023; Pavlovskyi et al., 2024).

In addition, coordination related to provision of public services is measured through the quality of interaction between bodies, consistency of procedures, clarity of responsibility, and stability of outcomes for the recipient; it is stated that failings happen in cases of fuzziness of boundaries of competences, weak coordination on their edges, which underpins methodologically the assigning of responsibility to institutional inconsistency for a commonality of disputes (Kårvedt, 2024). Crisis research complements this by showing that coordination structures are not automatic: they require institutionalization through formalized rules, stable protocols, and established channels of exchange; otherwise, coordination remains situational and procedurally weak, which is relevant for assessing the effectiveness of interagency arrangements and coordination councils (Frykmer & Becker, 2024). In the sector of integrated services for health care and social protection, it has been shown that effective coordination depends on knowledge management, harmonized service pathways for recipients, and interorganizational interoperability, that is, on parameters that are directly embedded in administrative procedures and determine the real accessibility of services (Hujala & Laihonen, 2023; Nekhai et al., 2024).

The veterans' segment of the literature provides applied indicators that coordination has measurable characteristics and is manifested in access to comprehensive assistance. A study of receipt of coordination among high-risk veterans shows that the intensity and nature of coordination are associated with organizational factors and the configuration of services; that is, coordination is a product of institutional decisions and procedural settings rather than merely individual efforts (Govier et al., 2024). A qualitative analysis of veterans' perceptions of coordination between state and external providers records that the greatest problems are concentrated in the "transition zones" between institutions, where responsibility becomes diffuse and access to services depends on the individual's ability to navigate the system, which conceptually supports an association between recurring disputes and institutional inconsistency rather than attributing them solely to errors of individual bodies (Miller et al., 2020).

Despite the existence of studies in the fields of public administration, integrated services, and the protection of veterans' rights, many fundamental "white spots" remain in the academic discourse. First, interagency coordination is predominantly considered as a managerial or organizational category, whereas its public law nature, procedural instruments, and limits of competences remain insufficiently conceptualized. Second, there is no systematic analysis of the regulatory novelties of 2024-2026 through the prism of conflicts of powers between specialized bodies and their impact on veterans' access to rehabilitation, social support, and payments. Third, public law disputes involving veterans are studied fragmentarily, without establishing a causal link between their occurrence and the structural inconsistency of competences.

Finally, in the national context, the issue of compliance of the current coordination model with European standards of good administration, effective legal remedies, and the positive obligations of the state remains insufficiently developed, which prevents the formation of a coherent model of institutional interaction in the field of veterans' policy. Moreover, the legal nature of a potential coordinating entity, the typology of its powers (informational, organizational, regulatory, or authoritative), and the juridical meaning of "concentration of responsibility" for the administrative outcome have not been doctrinally clarified in existing research.

Methods

The study was conducted in January-February 2026 and implemented in the format of a sequential three-level analytical procedure. At the first stage, a normative sample was formed through the web portal of the Verkhovna Rada of Ukraine using filters by the time frame of 2024-2026 and keywords related to veterans' policy, rehabilitation, social payments, and interagency coordination. The basic acts for analysis were those defining the status of veterans and guarantees of their social protection, in particular the Law of Ukraine No. 3551-XII "On the Status of War Veterans and Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1992) and the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991). The object of analysis at the normative stage was not the content of social guarantees as such, but the configuration of administrative competences and the distribution of procedural authority among public bodies, including the presence or absence of a legally defined coordination competence.

The normative sample also included acts regulating the competence of central executive authorities (Verkhovna Rada of Ukraine, 2011), administrative services (Verkhovna Rada of Ukraine, 2012), social services (Verkhovna Rada of Ukraine, 2019), rehabilitation in the field of health care (Verkhovna Rada of Ukraine, 2020), as well as the powers of local self-government bodies (Verkhovna Rada of Ukraine, 1997). Special procedural aspects of granting the status of combatant and social adaptation were analyzed, taking into account the resolutions of the Cabinet of Ministers of Ukraine (Cabinet of Ministers of Ukraine, 2014, 2025). The analysis included acts that define the competence of public authorities or establish coordination mechanisms; acts of a general nature that do not contain specific provisions on the implementation of veterans' policy or coordination mechanisms were excluded.

Structural analysis was carried out according to formalized criteria: overlap of competences was recorded in cases of simultaneous assignment of functionally identical powers to different bodies without defining a coordinating entity or priority of decisions; duplication was established through repeated normative consolidation of identical powers in different acts; a procedural gap was determined by the absence of a normatively established algorithm for information transfer, approval of decisions, or distribution of responsibility between bodies.

In addition, competences were classified according to their juridical nature (authoritative, regulatory, organizational, informational, or service-oriented), which allowed the identification of situations where coordination was proclaimed at the declarative level but lacked a legally defined authoritative basis. At the second stage, a judicial sample was formed. The search for relevant case law was conducted in the Unified State Register of Court Decisions with a focus on legal positions regarding social payments, inaction of public authorities, and the implementation of guarantees for veterans, with reference to individual Supreme Court decisions and relevant case-law reviews of the Administrative Cassation Court (Supreme Court of Ukraine, 2023, 2024). The sample included final decisions of 2024–2025 containing a formulated legal position on the merits of the dispute; procedural decisions were excluded.

The search for case law of the European Court of Human Rights was carried out in the HUDOC database, using keywords related to the positive obligations of the state and the effectiveness of legal remedies. The sample included judgments in which standards of access to justice and effective legal remedies were formulated (European Court of Human Rights, 1979, 2000), as well as standards of the state's positive obligations in the field of human rights protection (European Court of Human Rights, 1998a, 1998b, 2004). The analysis of judicial materials was conducted at the level of the legal positions of the courts. Particular attention was paid to how courts conceptualized responsibility in multi-actor administrative structures and whether judicial reasoning implicitly reconstructed a unified bearer of administrative competence despite the fragmented normative framework. The analysis further examined whether such judicial reconstruction concerned legal liability of a specific authority, procedural responsibility within administrative proceedings, or systemic responsibility of the state as a single public power bearer.

At the third stage, a comparative sample of European Union law documents was formed through the EUR-Lex system. For the assessment of administrative coordination models, norms on administrative cooperation (European Parliament & Council of the European Union, 2012b), the functioning of the Single Digital Gateway (European Parliament & Council of the European Union, 2018), and requirements for personal data protection in interagency information exchange processes (European Parliament & Council of the European Union, 2016) were used. Conceptual reference points of the principle of good administration were taken into account in light of the provisions of the Charter of Fundamental Rights

of the European Union (European Parliament & Council of the European Union, 2012a), the European Code of Good Administrative Behaviour (European Ombudsman, 2002), and explanations of the European Commission regarding good administration. Institutional examples of coordination models were analyzed through the functioning of IMI (European Commission, 2008) and the "one-stop shop" principle (European Commission, 2021).

The methodology is based on the doctrinal interpretation of administrative competence, the analysis of judicial legal positions as indicators of structural flaws in the delegation of powers, and the comparison of legal models of coordination contained in EU law. It does not address management efficiency but focuses on the normative configuration of competence and responsibility within a multi-actor administrative network. The sample was targeted and non-random and was formed in accordance with the object and purpose of the study. The normative sample comprised 32 legal acts, including regulatory developments of 2024–2026 and relevant system-forming legislation. The judicial sample included 54 decisions of the Supreme Court of Ukraine from 2024–2025 and 14 judgments of the European Court of Human Rights. The comparative sample comprised 11 EU legal documents addressing or illustrating models of interagency coordination.

Sources of the base are official electronic resources: the web portal of the Verkhovna Rada of Ukraine, the Unified State Register of Court Decisions, the HUDOC database, and the EUR-Lex system. The systematization of the material was carried out through the formation of analytical tables of power distribution, matrices of administrative procedure compliance, and a classification of judicial positions, which provides for the verifiability and reproducibility of the research procedure.

Results

The analysis of the normative sample (32 acts for the years 2024-2026 at a baseline, taking into account basic system-forming laws) revealed that the model of distribution of powers in the field of state veterans' policy has a multi-level and fragmented structure. From the standpoint of administrative law, it is not a managerial distribution of functions, but a fragmented structure of administrative competence, a supra-subject distribution of subject-matter powers in relation to different public authorities without designing a coordinating competence as an

independent legal element. Its core consists of regulations on the status of veterans and guarantees of their social protection, primarily the Law of Ukraine No. 3551-XII "On the Status of War Veterans and Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1992) and the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991).

The first of these acts regulates, among others, the scope of social guarantees, types of benefits, compensations, and payments, and obliges the state to ensure the realization of the relevant rights of veterans (Verkhovna Rada of Ukraine, 1992). The second establishes guarantees for servicemen and members of their families (medical support, social guarantees, rehabilitation) (Verkhovna Rada of Ukraine, 1991). None of these laws normatively constructs coordination as an administrative competence; that is, they do not single out authority as charged to ensure procedural unity, settle conflicts of jurisdiction, or assume responsibility for the final administrative outcome.

The competences framework of central executive authorities is defined in the Law of Ukraine No. 3166-VI "On Central Executive Authorities" (Verkhovna Rada of Ukraine, 2011), that adopt general principles of delimitation of powers but not a legal mechanism to resolve horizontal overlaps of competences of bodies situated in the same policy field. A similar situation is for the Law of Ukraine No. 5203-VI "On Administrative Services" (Verkhovna Rada of Ukraine, 2012) that defines the procedure of the provision of administrative services but does not attribute to coordination a legally binding competence nor obliges integrated interagency decision-making in complex multi-actor procedures.

The Law of Ukraine No. 2671-VIII "On Social Services" (Verkhovna Rada of Ukraine, 2019) and the Law of Ukraine No. 1053-IX "On Rehabilitation in the Field of Health Care" (Verkhovna Rada of Ukraine, 2020) refer to separate sectoral segments of regulation. The first one pertains to social support, while the second one pertains to medical and psychological rehabilitation. Sectoral competence is allocated by these acts from the standpoint of doctrine. However, these acts do not create regions of a supra-sectoral coordinating competence - permission domain, enabling coordination of the overlapping overlaps of subject-matter powers. As a consequence, the competencies of the Ministry of Health, the Ministry of Social Policy, and other bodies are functionally aligned, but not legally integrated.

The powers of bodies of local self-government are defined by the Law of

Ukraine No. 280/97-VR "On Local Self-government in Ukraine" (Verkhovna Rada of Ukraine, 1997), which provides for participation in the implementation of State and local programs of social protection. The vertical "flows" between central executive authorities and local self-government bodies take place not through a coordinated administrative procedure: there is no clearly defined leading authority. The distribution of powers therefore "functions" as parallel competences, rather than as parts of a general procedural competence.

A separate procedural dimension is written in subordinate acts of the Cabinet of Ministers of Ukraine. Resolution No. 413 regulates the procedure for granting the status of a combatant (Cabinet of Ministers of Ukraine, 2014), whereas Resolution No. 126 defines the procedure for social and professional adaptation of persons discharged from military service, war veterans, and members of their families (Cabinet of Ministers of Ukraine, 2025). The analysis showed that both acts establish procedures requiring the participation of several bodies, yet do not contain a clear definition of a coordinating entity. The systematization of the provisions of the normative sample makes it possible to present the structural configuration of the distribution of powers among key public authorities in the field of implementation of state veterans' policy (Table 1).

Table 1. Normative Structure of the Distribution of Powers in the Field of Veterans' Policy

Authority	Normative Basis	Main Powers
Ministry of Defence	Verkhovna Rada of Ukraine (1991)	Medical support for servicemen, participation in the preparation of documents regarding status
Ministry of Veterans Affairs	Verkhovna Rada of Ukraine (1992); Cabinet of Ministers of Ukraine (2025)	Formation and implementation of veterans' policy, adaptation, and support
Ministry of Health	Verkhovna Rada of Ukraine (2020)	Medical and psychological rehabilitation
Ministry of Social Policy	Verkhovna Rada of Ukraine (2019)	Social services, payments, support

Structural analysis revealed three main overlapping areas. The Law of Ukraine No. 1053-IX "On Rehabilitation in the Field of Health Care" (Verkhovna Rada of

Ukraine, 2020) places responsibility for the organization of rehabilitation on the health care system. At the same time, Resolution No. 126 (Cabinet of Ministers of Ukraine, 2025) proposes the social and professional adaptation of veterans, involving other executive authorities. The overlap consists of the fact that psychological rehabilitation is simultaneously classified as a medical service (Ministry of Health) and as an element of social adaptation (Ministry of Veterans Affairs, Ministry of Social Policy). In such a case, the coordinating entity is not normatively defined. The Law of Ukraine No. 2671-VIII "On Social Services" (Verkhovna Rada of Ukraine, 2019) establishes a system of social support, whereas the Law of Ukraine No. 3551-XII "On the Status of War Veterans and Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1992) defines guarantees that require support. The normative framework does not contain a provision on the integration of support procedures and status-related decisions, which creates a situation in which a veteran is forced to interact with several bodies in parallel.

Resolution No. 413 (Cabinet of Ministers of Ukraine, 2014) defines the procedure for obtaining status as a prerequisite for social guarantees in realization (Verkhovna Rada of Ukraine, 1992). According to judicial practice, uncoordinated authorities in confirming statuses lead to payment disputes (Supreme Court of Ukraine, 2020, 2023). The structural analysis of the normative sample indicates that overlaps of competence can be regarded not merely as isolated conflicts but as recurring patterns in the distribution of competences that may affect the effective implementation of veterans' rights (Table 2).

Table 2. Typology of Overlaps of Powers

Sphere	Involved Authorities	Type of Overlap	Consequence
Rehabilitation	Ministry of Health, Ministry of Veterans Affairs	Functional	Absence of a coordinator
Support	Ministry of Social Policy, Local Self-Government Bodies	Procedural	Parallel procedures
Payments	Ministry of Veterans Affairs, other authorities	Status-related	Delay in the implementation of guarantees

Source: compiled by the authors based on Verkhovna Rada of Ukraine (1992, 2019, 2020) and the Cabinet of Ministers of Ukraine (2014, 2025)

A procedural gap within the framework of the study was recorded where the normative structure did not contain a clearly defined and mandatory algorithm of interaction between public authorities, in particular with regard to the transfer of information, approval of decisions, or delineation of responsibility for the final administrative outcome. This concerns not the formal existence of a power, but the absence of a procedural link between the entities participating in the implementation of a veteran's right. A dogmatic and hermeneutic analysis of the Procedure for Granting the Status of a Combatant, approved by a resolution of the Cabinet of Ministers of Ukraine (Cabinet of Ministers of Ukraine, 2014), demonstrated that the procedure provides for the participation of several subjects of public authority, yet does not construct coordination as an autonomous procedural competence. Although different bodies are entrusted with verifying documents and adopting decisions within their respective spheres, the regulation does not establish an imperative legal obligation of interagency interaction, nor does it define a subject empowered to ensure procedural unity.

The normative model easily shifts the responsibility for inputting documents and ensuring they are available to end-users to the applicant or to ad hoc commissions, but does not create a binding obligation to cooperate electronically between key competent authorities. From an administrative law standpoint, this represents not so much technical fragmentation as the failure to establish a coordinating competence to align parallel subject-matter powers. This will lead to dispersion of procedures and increase the risk of litigation over inaction, delay, or misexercised authority. A similar defect is also present in the Resolution No. 126 (Cabinet of Ministers of Ukraine, 2025). The document specifies a variety of subjects that can be responsible, but does not indicate a principal responsible authority with a mandate to coordinate, and does not explain whether the coordination will be characterized by the exercise of the authority of a necessarily authoritative and regulatory form, or will instead remain "purely" organizational. The division of functions is not accompanied by a concentration of responsibility for procedure. As a consequence, those accountable for the outcome of the administrative operation cannot be selected easily, which in turn makes it more difficult to determine who is legally responsible in the instance of any failure to meet a deadline or unlawful omission.

The Law of Ukraine No. 5203-VI "On Administrative Services" (Verkhovna Rada of Ukraine, 2012), providing in its general principles for the services, does

not introduce an obligation to integrate complex procedures with multiple actors within a single administrative competence. The absence of a commandment or a rule of a concentration of procedures in one legally responsible authority means the coordination remains facultative and not built into the system of competence. In doctrinal terms, that means procedure integration is not built as a duty for the administration but left to the discretion of the arrangement.

When comparing this normative allocation of competence with the European framework used in this study as a comparative benchmark, differences can be identified in relation to the principle of good administration, as reflected in Article 41 of the Charter of Fundamental Rights of the European Union (European Parliament & Council of the European Union, 2012a) and further elucidated in explanations from the European Commission. Such a principle is not to be understood as a mere formal allocation of competence, but requires structuring administrative procedures in a way that achieves legal certainty, procedural coherence, and avoids excessive administrative burden for the individual. Coordination is thus conceived in EU law as part of legally structured administrative accountability, rather than as a management technique. For the purposes of this study, Article 41 of the EU Charter, the IMI framework, and the one-stop-shop model are used as comparative benchmarks and functional reference models for assessing procedural coherence, information exchange, and the concentration of administrative responsibility. They are not treated as rules directly binding Ukraine in the same manner as they apply within the EU legal framework.

The Ukrainian model is distinguished by the lack of a normatively regulated mechanism for electronic interaction, which differs from the administrative cooperation mechanism implemented through the Internal Market Information System (IMI), established under Regulation (EU) No. 1024/2012 (European Parliament & Council of the European Union, 2012b) and described through practical mechanisms by the European Commission (European Commission, 2008). IMI establishes coordination as a structured and legally regulated obligation of competent authorities to exchange information within a centralized electronic environment, ensuring traceability and a common understanding of responsibilities.Similarly, the one-stop shop principle applied in EU law (European Commission, 2021) is based on the concentration of administrative procedures within a single contact point, which eliminates the need for an individual to apply repeatedly to different authorities. The Ukrainian normative model in the field of veterans' policy does

not reproduce this structure at an imperative level, indicating the existence of a recurring procedural gap rather than an isolated deficiency. The results of the structural and procedural analysis of the normative sample made it possible to identify recurring deficiencies in the current model of interagency interaction in the field of veterans' policy (Table 3).

Table 3. Procedural Gaps in the Normative Model

Criterion	**Presence of Normative Regulation**	**Identified Defect**
Coordinating entity	Not defined	Absence of a decision-making center
Information exchange	Partial	No mandatory electronic mechanism
Responsibility	Fragmentary	Unclear distribution of responsibility
Single administrative window	Absent	Parallel procedures

Source: compiled by the authors based on Verkhovna Rada of Ukraine (2012), Cabinet of Ministers of Ukraine (2014, 2025), European Parliament and Council of the European Union (2012a, 2012b), and European Commission (2008, 2021)

The generalization of the results of the normative analysis provides grounds to assert that the current model of implementation of state veterans' policy is based on a dispersed distribution of powers among several public authorities without a proper procedural center of coordination. Competences in the field of medical and psychological rehabilitation, social support, and the provision of payments are assigned to different authorities in such a way that their interaction lacks an imperatively established algorithm, and responsibility for the final administrative outcome remains diffuse. Normative provisions formally define the circle of entities, yet do not ensure an integrated mechanism of interagency information exchange and approval of decisions, which complicates the practical implementation of guarantees provided for by legislation on the status of veterans and their social protection (Verkhovna Rada of Ukraine, 1992, 2019, 2020; Cabinet of Ministers of Ukraine, 2014, 2025). This identified arrangement of powers discloses in the authors' rehabilitation and social support model a tendency toward duplication of function and toward the absence of a coordinator with process competencies to integrate the actions of other authorities. The respective author-

ities coordinate with one another via declarative rather than instrumental means: that is, interagency cooperation in such instances is proclaimed to be a direction of state policy, but is not instrumentally supported by normative detail.

The judicial sample, consisting of 54 decisions of the Supreme Court from 2024-2025 and 14 judgments of the European Court of Human Rights, made it possible to establish that public law disputes involving veterans do not have a random or purely individual character. They form recurring typological groups that reflect deficiencies in the normative and institutional model of interagency interaction. The analysis was conducted at the level of legal positions formulated in the judgments, with a focus on the causal link between the nature of the dispute and the distribution of powers in the field of veterans' policy. Within the sample, it was established that disputes are concentrated around three main blocks: granting and confirmation of status, implementation of social guarantees and payments, as well as provision of medical and psychological rehabilitation. These blocks correlate with the normative segments defined in the Law of Ukraine No. 3551-XII "On the Status of War Veterans and Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1992), the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991), as well as subordinate acts regulating procedural aspects of granting status and adaptation (Cabinet of Ministers of Ukraine, 2014, 2025). The systematization of disputes by subject of appeal made it possible to develop the typology presented in Table 4

Table 4. Typology of Public Law Disputes in the Field of Implementation of Veterans' Policy

Category of Dispute	Subject of Appeal	Institutional Cause
Status disputes	Refusal or delay in granting status	Absence of a coordinated interagency verification mechanism
Social and payment disputes	Non-payment or underpayment of guarantees	Dispersion of responsibility among authorities
Rehabilitation disputes	Failure to provide or delay in medical/psychological services	Undefined coordinator in the field of rehabilitation
Disputes concerning inaction	Failure to act within the established time limit	Procedural gaps and absence of centralized control

Source: compiled by the authors based on the Supreme Court of Ukraine (2020, 2023, 2024)

In a case concerning the passivity of a public authority in the domain of social payments (Supreme Court, 2023), the Supreme Court of Ukraine found that a state body cannot invoke the internal procedural confusion or interagency misunderstanding as grounds to refrain from granting a legislatively sanctioned right. The Court's reasoning clearly drew a boundary between internal administration and the subjective public right of a veteran, stating that operational shortcomings of competence allocation cannot lessen the force of rights guaranteed by law. In a similar vein, in another model case regarding the annual one-time single monetary assistance due by May 5th (Supreme Court of Ukraine, 2020), the Court spelled out the following categorical principle: Social benefits prescribed by law must be implemented fully regardless of budgetary, organizational, or interagency considerations. The decision emphasized that the involvement of several different authorities in accruals and payments does not exonerate the State from the obligation to comply with legal deadlines and amounts. In administrative law, the authors have here a reflection of the unity of public authority as the arbiter of obligation.

The analysis of the generalization of the judicial practice (Supreme Court of Ukraine, 2024) reinforces the authors' argument. In the analyzed case law, conflicts concerning the delimitation of competences between the Ministry of Veterans Affairs, social protection authorities, and other bodies of financial execution were identified. But the courts consistently find the state liable as a single subject of public authority, although it is in fact divided into several bodies with different administrative competencies. This judicial construction fills in nicely the lack of a regulatory category of coordinating competence. The procedure for recognizing the status of a combatant is regulated by a special resolution (Cabinet of Ministers of Ukraine, 2014). The analysis of case law shows that a recurring source of disputes relates to documentary confirmation, where public authorities participate in evidence collection and confirmation. In the absence of an obligatory electronic interagency information exchange, it is the applicant who de facto carries out the role of intermediary between authorities. Such a configuration contradicts the doctrinal logic of administrative procedure, where the intercom is supposed to be the burden of the administration, not the individual.

Similarly, since the obligations of the Supreme Court of Ukraine were indicative of other legal positions, it is not possible to transfer the obligation of collecting and verifying the evidence required for status determination to the applicant.

This approach further accorded with the principle of effective access to justice that the Court developed in the case of "Airey v. Ireland" (European Court of Human Rights, 1979). The Court remarked that it was inadequate for the formal possibility of applying for the protection of rights to exist without real guarantees of a safeguard thereafter. In the cases of "Osman v. the United Kingdom" (European Court of Human Rights, 1998b) and "L.C.B v. the United Kingdom" (European Court of Human Rights, 1998a), the European Court of Human Rights has spelt out the criteria of the positive obligations of the state in securing effective protection of Rights. So understood in the field of veterans' policy, they imply not merely formal legislative declarations of entitlement, but also institutional and procedural arrangements assuring that entitlements will not merely be constitutionally declared but practically honored.

In the case of "Kudła v. Poland" (European Court of Human Rights, 2000), the requirement of an effective remedy, as a rule, was reiterated. It follows that delays in effecting payments or complying with an administrative decision due to inconsistency between public authorities engaged a state's responsibility under this standard (at para 157). In the case of "Öneryıldız v. Turkey" (European Court of Human Rights, 2004), the Convention Court underlined that the State was impersonally responsible for the orderly organization of activities of the authorities and that such organization had to be compatible with obligations under the Convention. The upshot is that too much of the public law litigation in the veterans' policy area stems less from isolated, individual errors but rather from the fragmentation of competences and lack of reactivity. Parallel procedures, the absence of a normatively specified coordinating competence, and the diffusion of procedural responsibility create recurring conditions for disputes that are subsequently resolved through judicial proceedings. The practice of the Court thereby cancels "viscera" of and repairs a default in style to the legal matter of interagency coordination, although it does not destroy the source of the default. In summary, public law disputes in the field of veterans' policy perform the function of an indicator of institutional inconsistency. Judicial practice demonstrates that courts compensate for defects of the coordination model by placing responsibility on the state as a whole. However, such a compensatory function of the judiciary does not replace the need for normative reconstruction of interagency interaction mechanisms, which will be the subject of further analysis in the context of European standards of administrative effectiveness.

The assessment of the compliance of the national model of interagency coordination in the field of veterans' policy with European standards was carried out according to the criteria defined in the research methodology: the presence of a centralized coordinating entity, a procedural decision-making center, a normatively established mechanism of information exchange, clearly defined responsibility, and the concentration of administrative services within a single administrative window. The guiding reference points for such an assessment were the principle of good administration enshrined in the Charter of Fundamental Rights of the European Union (European Parliament & Council of the European Union, 2012a), the provisions of the European Code of Good Administrative Behavior (European Ombudsman, 2002), the European Commission's explanations regarding good administration, as well as normative models of administrative cooperation implemented through IMI (European Commission, 2008; European Parliament & Council of the European Union, 2012b) and the one-stop shop principle (European Commission, 2021). The principle of good administration in the EU legal order implies that the administration should act not only lawfully, but also effectively, coherently, and in good time: under the Charter (European Parliament & Council of the European Union, 2012a), every person has the right to have his or her affairs handled impartially, fairly, and within a reasonable time. In the veterans' policy context, this means that there is a model of organization that reduces duplication of processes and removes parallel paths of administration.

The analysis of the current normative framework of Ukraine demonstrated that the procedure for granting the status of a combatant (Cabinet of Ministers of Ukraine, 2014) and the procedure for social and professional adaptation (Cabinet of Ministers of Ukraine, 2025) do not provide for an integrated procedural center responsible for coordinating the actions of all involved authorities. The absence of such a center differs from the European comparative model of procedural administrative unity used in this study as a reference point, according to which responsibility for the outcome is concentrated in a designated entity. Table 5 presents a comparison of the key European comparative benchmarks and their reflection in the Ukrainian modelThe results of the study show that Ukraine's legal and economic framework during martial law creates grounds for ensuring economic sovereignty, in particular through national interests and security. A comparative analysis indicates similarities with other countries at war, but legal and economic adjustments are needed to effectively address the challenges.

Table 5. Criteria of the European Standard of Good Administration and the Ukrainian Coordination Model

Criterion	European Comparative Benchmark	Ukrainian Model
Centralized coordinator	Mandatory responsible entity	Not defined
Single procedural center	Integrated procedure	Distributed among authorities
Electronic information exchange	Systemic and mandatory	Partial, fragmented
Concentration of services	One-stop shop	Absent

Source: compiled by the authors based on European Parliament and Council of the European Union (2012a, 2012b), European Commission (2008, 2021), and Cabinet of Ministers of Ukraine (2014, 2025)

The comparison presented in Table 5 demonstrates differences between the Ukrainian model and the European comparative benchmarks with regard to procedural coordination, information exchange, and the concentration of administrative responsibility. Regulation (EU) No. 1024/2012 (European Parliament & Council of the European Union, 2012b) introduced the IMI system as a centralized electronic tool for inter-agency communication and cross-border information exchange. Within the EU framework, it establishes structured obligations for competent authorities to exchange information through a common electronic environment, within defined procedural parameters and responsibilities.

Comparative analysis showed that the Ukrainian model lacks a normative requirement to use a single electronic mechanism for data exchange between the Ministry of Defence, the Ministry of Veterans Affairs, the Ministry of Health, the Ministry of Social Policy, and local self-government bodies. As a result, information interaction has a facultative character, which differs from the integrated administrative cooperation model used in this study as a comparative benchmark. The one-stop-shop concept (European Commission, 2021) provides for the concentration of administrative procedures within a single contact point. In EU law, it is complemented by requirements for the protection of personal data in information exchange processes (European Parliament & Council of the European

Union, 2016). The Law of Ukraine No. 5203-VI "On Administrative Services" (Verkhovna Rada of Ukraine, 2012) does not provide a unified single-window mechanism specifically for veterans' services at the administrative level. Consequently, a veteran may have to approach different authorities through parallel administrative procedures. This differs from the functional logic of the one-stop-shop model, which is aimed at reducing administrative burdens and simplifying administrative procedures.

From the perspective of administrative law, coordination should be conceived not as an organizational task, but as an independent administrative power to fulfil a legal nature. This prescribes the presence of a legislative assignment with the consequent power to demand information, fix inviolable procedural time frames, resolve jurisdictional disputes, and undertake procedural responsibility for the final administrative outcome. In other words, authors classify the coordinator's powers as authoritative (power to demand information), regulatory (power to establish frames of procedure), and procedural (which assures the unity of the administrative act). Without this legal qualification, coordination would be formal rather than normative.

Taking these structural defects into account, the authors sketched an institutional model of interagency coordination, oriented towards the concentration of procedural responsibility, obligatory digital interagency exchange, and the union of administrative procedures in a unique service space. In this construction, the Ministry of Veterans Affairs is the procedural coordinator with normatively established competences to initiate, require, and tempo-periodically align the behavior of other authorities, while information interaction takes place through a mandatory electronic mechanism functionally equivalent to the IMI. Administrative actions with regard to status, reparation, social support, and payments are concentrated in an integrated one-stop shop format, and responsibility for the outcome of the procedure is attributed to the coordinating body, guaranteeing predictability, functional unity of the procedure, and compliance with standards of good administration. Such concentration of responsibility should be understood primarily as procedural administrative responsibility within the framework of the respective administrative proceeding, without excluding disciplinary or budgetary liability where applicable. The legal attribution of responsibility must therefore be normatively fixed and linked to the coordinating competence. Table 6 presents the structural model of the proposed coordination system

Table 6. Institutional Model of Interagency Coordination in the Field ùof Veterans' Policy

Element	Normative Basis	Function
Coordinator	Special statutory provision	Centralized management of the procedure
Digital platform	Subordinate act of the Cabinet of Ministers	Mandatory information exchange
Single window	Law on Administrative Services (amendments)	Concentration of services
Accountability mechanism	Statutory reinforcement	Procedural accountability

Source: compiled by the authors based on European Parliament and Council of the European Union (2012a, 2012b, 2016); European Commission (2008, 2021).

Note: The model was formed on the basis of a comparative analysis of European standards of administrative cooperation.

The proposed model eliminates the identified procedural gaps, concentrates responsibility, and reduces the risk of public law disputes related to inconsistencies of competences. It ensures the implementation of the principle of good administration in its substantive and procedural dimensions and is consistent with the standards of access to an effective legal remedy formulated in the case law of the European Court of Human Rights (1979, 2000). Thus, the conducted study confirmed that the current Ukrainian model of interagency coordination does not fully comply with European standards of administrative effectiveness; however, it can be brought into compliance through institutional reconstruction aimed at the concentration of powers, digitalization of interaction, and clear normative establishment of responsibility.

Discussion

The results prove that the institutional fragmentation of veterans' policy has not only an organizational aspect but also a public law nature. Overlapping competences, procedural gaps, and a lack of a centralized coordinating body point to structural instability in the administrative model, where unity inside an administrative decision is not ensured. This finding supports Kapucu & Hu (2021)

that network governance as a form or mode of coordination "requires clearly defined procedural links and centers or focal points/cadres responsible for certain activities." In their study, they emphasized that network models without any formalized coordination mechanism turn into fragmented structures with blurred boundaries of competences, which directly correlates with defects found by the authors in the Ukrainian model.

In medical and psychological rehabilitation, the gaps coincide with those found by Kochuhur et al. (2023), who dwell at length on the normative inconsistency in regulations about the rehabilitation of servicemen. They emphasized that legal guarantees for rehabilitation are very much real, but that mechanisms to actualize such guarantees within actors in the healthcare system are not always harmonized or coordinated. A similar approach is provided by Kolesnichenko et al. (2024), emphasizing that under martial law conditions, procedural mechanisms of rehabilitation require integrated coordination between sectoral authorities. The results support this thesis and bring it up to interagency interaction as a composite model.

In financial guarantees and social protection, the diffusion of responsibility that the authors found supports the conclusions by Lytvyn et al. (2022) on the mechanism of state financial guarantees in medical services. Even where procedurally coherent responsibilities are clearly assigned among authorities at different levels as a key factor for effective implementation, their actual content remains highly underdeveloped in veterans' policy. Pedersen and Wieser (2024) analyze transnational institutional fragmentation to highlight complexity added to reintegra¬tion due primarily to fragmented mechanisms of support wherein access to veteran service benefits parallels issues concerning legal protec¬tion for veterans. They emphasize that it is the institutional inconsistency and not a lack of resources that becomes the main obstacle to effective reintegration. This, again, is consistent with the authors' conclusion regarding the identified deficiencies in the normative framework.

The research by Lytvyn and Valuev (2024) on the implementation of state policy towards veterans' employment, procedural aspects in practice lag far behind declarative normative provisions, thereby confirming a general trend for institutional discoordination. At the same time, it is also true, as argued by Moreno-Lax (2024), that "strategic informalization" or blurring responsibility may creep in if there exists formal coordination without clear legal frameworks, an argument critically important to the proposed model since the authors intend that recom-

mended acts become imperative norms.

Analysis of the results with reference to European standards leads to the conclusion that the interagency coordination failures have not only national but also comparative dimensions. Zardo et al. (2023) show in their research on governance over public service provision for migrants during COVID-19 in European cities that it is through integrated coordination mechanisms that stability regarding access to services, even during high workloads, can be ensured. They note how competency fragmentation without any defined management center makes administrative procedures unpredictable. This finding correlates directly with what has been found concerning an absent procedural coordinator within veterans' policy. In health care and rehabilitation, a comparison with the work results of Lytvyn et al. (2024) provides that modernization of the health care system in Ukraine faces the problem of normative multi-actor governance without an adequate coordination mechanism. This is parallel to the authors' suggestion for appointing a single procedural coordinator that emphasizes their necessity at managerial links, systematically improved.

Berlach et al. (2025) show a case where there is an officially recognized right but no effective administrative process for public implementation of that right through mental health access. The paper provides further support to their findings in the area of veterans' policy, e.g., institutional inconsistency transforms into public law disputes and delays in the realization of guarantees. Ferguson et al. (2021) present an experience on digital integration of services that centralized information flow management within veteran systems improves not only decision speed but also decision quality at all levels involved; thus, supporting mandatory electronic inter-agency exchanges as part of elements within the proposed institutional model.

Pardalis et al. (2025) reduce to a scientific empirical observation on the effectiveness of one-stop shops that integration into a single administrative environment for procedures reduces the legal uncertainty that service recipients undergo. Similar conclusions are offered by Worapongpat (2025), containing proof that digitally integrated services lay responsibility with authorities for outcomes more firmly than in non-digital environments, as is consistent with the authors' conclusion that personal responsibility should be attached to coordinators. Mutebi et al. (2025) and Sydnes et al. (2025) argue from evidence collected across complex multi-actor environments where coherence between procedures and designation

of center(s) of responsibility are key determinant/element for success/effectiveness; thus, the present study finds shared specificity within the Ukrainian public law context of what appears otherwise a universal coordination problem. Thus, the conducted study is significant not only for improving veterans' policy but also for the development of the theory of interagency coordination in the field of public administration. It demonstrates that the effectiveness of state policy is determined not by the volume of normative guarantees but by the quality of procedural integration and the responsibility of public authorities.

Limitations

The main limitations arise from the normative-analytical character of the study and the lack of empirical sociological and statistical measurements of coordination effectiveness. In particular, the study did not include empirical data collected directly from veterans or representatives of public authorities. In addition, the analysis of normative acts and judicial decisions did not involve an independent second coder or a formal inter-coder reliability procedure. Future perspectives might involve an assessment of the quantitative impact of integrated coordination on the length and quality of administrative procedures, in addition to the possibility of digital indicators of agency interaction in public administration systems.

Conclusion

As a result of the research, the target goal was achieved: a holistic doctrinal and normative evaluation of the model of interagency coordination in the implementation of state veterans' policy was carried out, and the Ukrainian model was assessed against selected European comparative benchmarks of public administration. The analysis of the normative sample comprising 32 legal acts, including regulatory developments of 2024–2026 and relevant system-forming legislation, the judicial sample comprising 54 decisions of the Supreme Court of Ukraine from 2024–2025 and 14 judgments of the European Court of Human Rights, and the comparative sample comprising 11 EU legal documents made it possible to establish that the veterans' policy framework represents an architecture of distributed administrative competences rather than an integrated procedural mechanism.

The lack of a legally established procedural center of responsibility is accompanied by the absence of a normatively defined obligation for mandatory

information exchange between the authorities involved. From the perspective of administrative law, this situation can be understood not merely as a matter of managerial coordination but as a structural deficiency in the distribution of competences, in which the absence of a clearly designated center of procedural responsibility limits the integration of interdependent administrative actions into a coherent decision-making process and complicates the attribution of legal responsibility for the outcome of an administrative procedure. These deficiencies are reflected in procedural gaps concerning rehabilitation, social support, and payments, as illustrated by the identified typology of public law disputes involving inaction of authorities, refusal to grant status, and delays in the implementation of guarantees. Such disputes illustrate how institutional fragmentation may translate into procedural uncertainty and reduced legal certainty, affecting access to an effective remedy and the realization of the positive obligations of the state.

Comparative research on European standards of quality of administration and effective legal protection indicated partial divergence of the Ukrainian model from the comparative benchmarks of centralized procedural coordination, digitalization of administrative communication, and personalized responsibility for administrative outcomes. The research shows that closer alignment with these comparative benchmarks would require not merely managerial adjustment of the way individual administrative affairs are handled but a reconstruction of the public law model of competence: the appointment of "coordination points" and "procedural coordinators" with legally classified powers (informational, regulatory, and coordinating), compulsory electronic inter-agency communication as a legal obligation, and normative consolidation of procedural responsibility for the final administrative decision.

A practical outcome of this study is the construction of an institutional coordination model aimed at achieving greater coherence of competence in interagency processes. The proposed model includes a single procedural "coordinator," a mandatory digital information resource functionally comparable to European administrative cooperation systems, the concentration of services based on the "single-window" principle, and the normative establishment of responsibility for administrative outcomes. Such a model is intended to reduce the conditions that give rise to public law disputes, improve the predictability of administrative procedures, and strengthen legal certainty in the realization of veterans' rights.

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The Doctrine of Command Responsibility: Implementation into Ukrainian Criminal Legislation

by Oleksandr V. Bazov [1], Borys D. Leonov [2], Dmytro S. Melnyk [3], Yurii Yu. Nizovtsev [4], Nataliia M. Varenia [5]

Abstract. This article analyses the doctrine of command responsibility in international humanitarian law and aims to develop proposals for improving Ukrainian criminal legislation concerning omissions by military authorities in cases of serious violations of international humanitarian law. The study employs historical-legal, dogmatic, comparative legal, analysis and synthesis, classification and systematization, and modelling methods. It examines Protocol I Additional to the Geneva Conventions, materials from the International Military Tribunals at Nuremberg and Tokyo, the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, the Rome Statute and relevant international case law. The results demonstrate that command responsibility is firmly grounded in international humanitarian law and that military commanders may incur liability when they fail to prevent, suppress, or punish crimes committed by their subordinates. The analysis identifies the objective and subjective elements of such responsibility, including effective control, the superior-subordinate relationship, the commander's knowledge, and the failure to take necessary and reasonable measures. It also identifies differences in the

1 PhD in Law, Post-Doctoral Researcher, Taras Shevchenko National University of Kyiv, 04119, 36/1 Yurii Illienko Str., Kyiv, Ukraine, https://orcid.org/0000-0001-5763-1653, dr.bazow@gmail.com.

2 Doctor of Law, Professor, Pylyp Orlyk International Classical University, 54000, 2 Kotelna Str., Mykolaiv, Ukraine, https://orcid.org/0000-0002-2488-7377, karchich1979@gmail.com.

3 PhD in Law, Senior Researcher, Interdepartmental Research Center National Security and Defence Council of Ukraine, 01601, 1 Solomyanska Sq., Kyiv, Ukraine, https://orcid.org/0000-0002-1497-950X, Dmetris77@gmail.com.

4 PhD in Law, Chief Forensic Expert, Ukrainian Scientific and Research Institute of Special Equipment and Forensic Expertise of the Security Service of Ukraine, 03113, 3 Vasylenko Str., Kyiv, Ukraine, https://orcid.org/0000-0002-7641-6403, nizovtsev.yurii@gmail.com.

5 PhD in Law, Leading Researcher, National Academy of the Security Service of Ukraine, 03066, 22 Mykhailo Maksymovych Str., Kyiv, Ukraine, https://orcid.org/0000-0002-2797-197X, vareniia@ukr.net.

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standards applicable to military commanders and civilian superiors. The analysis of Articles 86 and 87 of Protocol I and relevant case law supports the view that a commander's omission may constitute a distinct criminal offence. The study concludes that Ukrainian criminal legislation should be supplemented with a specific provision establishing liability for omissions by military commanders in connection with serious violations of international humanitarian law.

Keywords: Command Responsibility, International Humanitarian Law, Judicial Precedent, Superior Responsibility, War Crimes.

Introduction

The doctrine of command responsibility remains a topic of active debate in contemporary legal scholarship. In international humanitarian law (IHL), command responsibility refers to the responsibility of military commanders and civilian superiors for crimes committed by their subordinates where a superior-subordinate relationship exists, the superior exercises effective authority or control over the perpetrators, has the requisite knowledge that such crimes are being committed or are about to be committed, and fails to take necessary and reasonable measures within their power to prevent or suppress the crimes or to submit the matter to the competent authorities for investigation and prosecution. Such international crimes as violations of the laws and customs of war, as well as other war crimes, have occurred with alarming frequency in various parts of the world, as evidenced by events in the former Yugoslavia, Rwanda, Iraq, Kenya, and elsewhere (Cryer et al., 2014).

Regrettably, Ukraine has also been affected by such crimes. The scale of the Russian Federation`s open aggression suggests that the highest levels of its leadership engaged in early planning and preparation for waging an aggressive war. Harm to legally protected values is also inflicted by individuals who execute the criminal orders or directives issued by such leadership. Numerous sources suggest that a significant portion of these crimes has occurred due to omissions or failures by the military command of the aggressor state (Voloshanivska et al., 2024). The number of victims is in the tens of thousands, most of whom are civilians, including women, children, and other vulnerable groups.

The responsibility of Ukrainian military commanders for omissions in connection with crimes committed by their subordinates is addressed in Article 426

of the Criminal Code of Ukraine (hereinafter CCU) (Criminal Code of Ukraine, 2001). Ukrainian legislation on criminal liability for international crimes currently lacks a clear provision addressing omissions by military commanders in relation to violations of the laws and customs of war by their subordinates. The absence of such provisions complicates the prosecution of Russian military commanders for deliberately failing to prevent their subordinates from committing violations of IHL. This situation creates a legal imbalance: while Ukrainian commanders may be held criminally liable for such omissions under domestic law, the existing legal framework significantly complicates the prosecution of Russian commanders for comparable omissions (Global Rights Compliance, 2023).

The current version of Article 438 of the CCU, titled "Violation of the Laws and Customs of War", allows for the prosecution of individuals for "…other violations of the laws and customs of war recognized by international treaties, the binding consent to which has been granted by the Verkhovna Rada of Ukraine". This criminal law provision applies to any other violations outlined in international treaties that are binding on Ukraine (Verkhovna Rada of Ukraine, 2001). One such treaty is the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (hereinafter Protocol I).

Its provisions, specifically Articles 86(2) and 87, establish the responsibility of military commanders for crimes committed by their subordinates if the commanders fail to prevent, stop, or punish such war crimes (Office for the High Commissioner of the Human Rights, 1977). Formally, such passive behaviour, as codified in Protocol I, constitutes elements of a criminal offense under Article 438 of the CCU. However, the absence of a specific legal provision addressing the responsibility of military commanders and other superiors for international crimes committed by their subordinates creates challenges for criminal justice authorities, especially in prosecuting crimes resulting from omissions by military officials during hostilities.

Therefore, there is a need to systematize knowledge on this issue, drawing on the experiences of the International Military Tribunals at Nuremberg and Tokyo, as well as the tribunals for the former Yugoslavia and Rwanda. This would support the improvement of national criminal legislation regarding omissions by military authorities, along with the development of effective mechanisms to prevent and respond to such crimes.

The military aggression of the Russian Federation, the temporary occupation of Ukrainian territory, and the evolving legislative framework in military and criminal law have underscored the importance of examining the institution of command responsibility. These developments highlight the need to incorporate the doctrine of command responsibility into national legislation on criminal liability. Taking the above into account, the purpose of this study is to improve national criminal legislation concerning omissions by military authorities in cases of serious violations of IHL, with a view to developing effective mechanisms for addressing such international crimes.

The scientific novelty of the study is that, under the norms of IHL, an omission by a military commander or other superior within the military hierarchy may, under certain circumstances and depending on the nature of the conduct, constitute a separate serious violation of IHL, namely, a war crime. The authors' proposal to define omissions by military authorities as serious violations of IHL, constituting a separate criminal offence under the CCU, is grounded in the provisions of IHL, particularly Protocol I, supported by the application of relevant technical-legal and special-legal tools, and takes into account national traditions in structuring and systematizing the CCU. In this context, the doctrine of the elements of a crime and the concept of the method of committing a crime are essential for classifying the act in question as a distinct criminal offense under national law.

Methods

The research methods were chosen in accordance with the goals and objectives of the study. The study employed a combination of general scientific and specialized methods, alongside methodological principles and approaches of the general theory of state and law, international criminal law, and criminology. These methods were essential for addressing the research objectives.

The historical and legal method contributed to the study and analysis of the outcomes of the International Military Tribunals at Nuremberg and Tokyo, as well as the tribunals for the former Yugoslavia and Rwanda, along with relevant judicial precedents. Methods of analysis and synthesis were employed to examine the forms of violations of the laws and customs of war. The methods of classification and systematization facilitated the examination of IHL sources and

current academic literature on the issue of command responsibility.

The dogmatic method was applied in interpreting certain provisions of IHL, particularly the concepts of "omissions by military authorities", "military commander", "person acting as a military commander", and "effective command". The comparative legal method enabled the analysis of selected provisions from the criminal legislation of certain foreign countries regarding responsibility for omissions by military authorities, allowing their positive experiences to shape proposals for improving domestic criminal legislation in this area.

The doctrinal assumption method was used to formulate and examine reasoned assumptions concerning the characteristics of command responsibility for serious violations of international humanitarian law, with due consideration of the practice of the International Criminal Court and other international tribunals. The modelling method facilitated the development of a proposed amendment to the CCU concerning the regulation of command responsibility.

The study analyses a range of international regulatory legal instruments that establish liability for international crimes committed during armed conflict, including omissions by military authorities. The empirical sources for the study include judgments and other materials from the International Military Tribunals at Nuremberg and Tokyo, the tribunals for the former Yugoslavia and Rwanda, scholarly works by both domestic and foreign researchers, and summaries of judicial practice on the subject. Using the aforementioned methods and materials, the study conducted a comprehensive analysis of the challenges involved in implementing command responsibility in national criminal legislation.

Results

Legal foundations and development of command responsibility

In contemporary international criminal law, command responsibility is predominantly understood as a mode of liability under which military commanders and civilian superiors may be held responsible for crimes committed by their subordinates when the relevant legal requirements are satisfied. At the same time, certain doctrinal approaches also conceptualize a commander's failure to fulfil the duty to prevent, suppress, or punish crimes committed by subordinates as a distinct criminal offense based on omission (Global Rights Compliance, 2023).

It is in this latter sense that the doctrine of command responsibility gained prominence after World War II through the proceedings of the International Military Tribunals at Nuremberg and Tokyo, as well as through legal precedents set in cases such as Matsui, Yamashita, List, Meyer, and Leeb. These judicial precedents have become a significant source of IHL concerning responsibility for international crimes.

An important source of norms governing command responsibility is Protocol I. In this Protocol, the responsibility of military commanders and civilian superiors for failing to prevent or punish crimes committed by their subordinates is codified in Articles 86 and 87. This form of responsibility has become an established principle of customary IHL. According to Article 86(2) of Protocol I, a military commander may be held responsible for the criminal acts of subordinates under the following conditions: the commander is the actual superior of the subordinate; the superior knew, or had information enabling them to conclude, that a violation of the Conventions was being committed or would be committed; and the commander failed to take feasible measures within their power to prevent or supress the offense. According to Article 87(1) of Protocol I, "The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.". (Office for the High Commissioner for Human Rights, 1977).

To reconcile the principle of discipline in the armed forces and the principle of individual responsibility, Article 43(1) of Protocol I stipulates that "The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict."

The 1990s marked a pivotal phase in the evolution of command responsibility, largely driven by the work of the ad hoc international criminal tribunals. In particular, the principles of command responsibility are set out in the statutes of the International Criminal Tribunal for the Former Yugoslavia (Article 7(3)) (United

Nations Security Council, 1993), the International Criminal Tribunal for Rwanda (Article 6(3)) (United Nations Security Council, 1994), and the Rome Statute of the International Criminal Court (Article 28) (United Nations General Assembly, 1998).

Following the proceedings of the military tribunals for the former Yugoslavia and Rwanda, as well as the International Criminal Court (hereinafter the ICC), key principles of command responsibility were further clarified through landmark cases. Notably, the Čelebići case before the ICTY and the Musema and Bagilishema cases before the ICTR played a central role in shaping the modern interpretation of this doctrine. Equally important is the ICC`s decision in the Bemba case, concerning crimes committed in the Central African Republic. This judgment, alongside those of the ICTY and ICTR, has contributed significantly to the development of key principles of command responsibility, many of which are now recognized as part of customary international law.

Based on the analysis of the aforementioned sources of IHL, several preliminary conclusions can be drawn. Under the doctrine of command responsibility, a commander may be held criminally liable for the deliberate failure to fulfil duties imposed by customary international law. In essence, this liability arises from an intentional omission by military or civilian superiors to prevent or punish crimes committed by their subordinates. IHL imposes a duty on military commanders, or those effectively acting in that capacity, to prevent or suppress crimes committed by their subordinates and to take measures to hold perpetrators accountable. These individuals bear responsibility for failing to maintain discipline within their chain of command. This obligation forms the foundation of the concept of command responsibility and serves as a key criterion for distinguishing it from other forms of liability, such as complicity or indirect perpetration (Zayats et al., 2024).

Under the doctrine of command responsibility, crimes committed by subordinates may be fully or partially attributed to a superior who failed to take necessary measures to prevent or repress them. This principle is reflected in the statutory provisions of various international war tribunals and has been affirmed in numerous judicial precedents, including Matsui, Yamashita, List, Meyer, Leeb, Karadžić, Bagilishema, Čelebići, Mladić, Lubanga, among others.

It should be noted that, unlike in common law systems, such as those of the

United States and the United Kingdom, where judicial precedent is a formal source of law and its binding authority depends on the hierarchical level of the issuing court, international law displays distinct characteristics regarding the authority of decisions rendered by judicial bodies, including international criminal courts (Burdin & Markin, 2025). Since the principle of stare decisis is not formally recognized in international law, judicial decisions are generally regarded as subsidiary means for the determination of legal rules, as reflected in Articles 38(1)(d) and 59 of the Statute of the International Court of Justice (ICJ). Nevertheless, the decisions of the ICJ hold particular significance in both international legal scholarship and state practice. From the perspective of the International Court of Justice itself, the legal principles articulated in its judgments are considered part of international law and are often treated as authoritative, even by states that were not parties to the specific case (Bazov, 2023).

Elements of command responsibility and effective control

According to the sources of IHL, including treaty provisions, customary international law, and relevant case law, which collectively reflect a codification of customary norms, the doctrine of command responsibility is defined by several key objective elements. These include: (1) the accused was a military commander or a civilian superior who exercised effective control over subordinates; (2) the accused had actual authority or control over the individuals who committed the crime(s); (3) the accused knew, or had reason to know, that the subordinates were committing or about to commit such crimes; (4) the accused failed to take necessary and reasonable measures within their power to prevent the commission of the crimes, to repress them, or to submit the matter to the competent authorities for investigation and prosecution; and (5) the crimes were, in fact, committed by subordinates under the effective authority of the accused.

For analytical purposes, the elements of command responsibility may be examined through the distinction between the objective and subjective elements of criminal conduct, commonly described using the concepts of actus reus (the act) and mens rea (the guilty mind) (Ormerod & Laird, 2005). Although these concepts are traditionally associated with common law criminal doctrine, they also provide useful analytical tools for examining the constituent elements of responsibility in international criminal law. In the context of command responsibility, this framework facilitates a structured analysis of both the conduct or omission

attributable to the superior and the requisite mental element.

In the context of command responsibility, the existence of a superior-subordinate relationship is fundamental, and its establishment typically presents little difficulty. International jurisprudence emphasizes that, for a military commander to be held criminally responsible for acts of omission, it is essential that they exercised effective control over their subordinates. This concept refers to the commander's ability to prevent the commission of crimes and to take necessary steps to ensure that perpetrators are brought to justice.

A well-known example is the case of General Iwane Matsui, former commander of the Japanese army in China, who was sentenced to death for atrocities committed by his troops during the capture of Nanking in December 1937, where over 200 000 civilians were killed. Although Matsui neither personally committed the crimes nor issued direct orders to do so, the tribunal found that he possessed sufficient authority to control his forces and failed in his duty to protect the civilian population. A similar charge was brought against Japan`s former Prime Minister, Kōki Hirota, who was also held responsible for failing to prevent or punish the crimes committed under his watch (Petrovic, 2016).

As noted by Petrovic (2016), various factors, determined on a case-by-case basis through the evaluation of relevant evidence, may indicate whether a commander exercised effective control over subordinates. These factors include both formal and practical indicators of authority. Among them are the commander`s official position within the military hierarchy and the actual functions or duties performed; the authority to issue orders, including the ability to command units directly or through subordinate levels; active participation in military operations or planning, etc (International Criminal Tribunal for the former Yugoslavia, 2007).

Thus, effective control may be understood as the material ability of a military commander or civilian superior to prevent or suppress crimes committed by subordinates or to take measures to punish the perpetrators. Its existence must be determined on a case-by-case basis by reference to both de jure authority and de facto control. Key indicators include the superior's position within the hierarchy and the functions actually performed; the authority to issue and enforce orders; the ability to command units directly or through subordinate levels; participation in military operations or planning; and the practical capacity to take preventive,

disciplinary, or punitive measures against subordinates. These indicators should be assessed collectively, since formal rank or significant influence alone does not establish effective control.

In this regard, the ICTY has established that a significant influence over a subordinate, which falls below the threshold of effective control, is insufficient to hold a military commander accountable for command responsibility. Thus, the influence exercised by a military commander must be substantial to prevent a crime or take measures to punish the guilty. In the absence of effective control over a subordinate, the commander cannot be held responsible under command responsibility. Incidentally, this requirement also applies to civilians who possess the necessary degree of control over subordinates. This was affirmed by the International Criminal Tribunal for Rwanda in the Musema and Bagilishema cases (International Criminal Tribunal for Rwanda, 2000, 2001).

As previously mentioned, the "commander-subordinate" relationship is a primary condition for establishing command responsibility. In the first few judicial cases reviewed after World War II, effective control was often assumed based on the commander's position within the military hierarchy. However, these cases were rightly criticized for the court's overly broad interpretation of the mens rea required to hold commanders criminally liable under IHL (Williamson, 2008).

Knowledge and mens rea in international case law

In the Yamashita case, Japanese General Yamashita was sentenced to death on 7 December 1945 by the U.S. Military Commission in Manila for failing to take adequate measures to prevent instances of rape, mass killings, and summary executions of interned civilians and military personnel during the occupation of the Philippines (October 1944-September 1945). The Commission stated: "It would be absurd to consider a commander as a murderer or rapist if the murder or rape was committed by a subordinate soldier under his command". The general was convicted under a strict form of command responsibility, whereby the responsibility for crimes committed by subordinates was linked to the responsibility of the commander who failed to take effective measures to detect and prevent such criminal acts. It was recognized that the general's lack of control over the actions of his subordinates allowed them to commit crimes (U.S. Supreme Court, 1946).

In the List case, the United States Military Tribunal at Nuremberg concluded that the commander of the occupied territory could not have been unaware of the

actions of his subordinates. It should be noted that these judicial precedents have repeatedly come under criticism for the broad formulation of command responsibility (United States Military Tribunal at Nuremberg, 1947). In contrast, the special ad hoc courts of the 1990s applied a different approach, under which the accused's actual knowledge cannot be presumed but must be established through direct or circumstantial evidence.

Knowledge of duty does not arise solely from the status of a military commander. If the evidence is circumstantial, it must support the conclusion from which the only reasonable inference is that the commander had actual knowledge or awareness of the crimes committed by their subordinates (International Criminal Tribunal for the former Yugoslavia, 2004; International Criminal Court, 2009). The subjective element lies in whether the accused knew, or, based on the circumstances prevailing at the time, should have known that his subordinates were committing or were about to commit such crimes (United Nations Security Council, 1993).

This approach involves practical inquiries into the following questions:

1) Did the commanders have actual knowledge that their subordinates were committing international crimes or intended to commit them?
2) Did the commanders possess information of such a nature that, at the very least, would have alerted them to the risk of such violations by their subordinates, indicating the need for further investigation to determine whether such crimes had been committed or were being planned by subordinates?

Therefore, a more demanding approach has been adopted, whereby the formal criterion of the accused's de jure position has been replaced by a criterion that is more sensitive to the factual circumstances. It is considered that the accused knew about the crimes if he possessed general information that could have made him aware of possible crimes committed by his subordinates, or the likelihood of such crimes, and that this information was sufficient to justify further inquiry or investigation (International Criminal Court, 2009).

In the Čelebići case, heard at the ICTY and involving the commission of war crimes at the Čelebići prisoner-of-war camp, the Trial Chamber found Mučić, one of the accused, responsible under the principle of command responsibility, particularly for murder, torture, wilful infliction of great suffering, and inhumane and cruel treatment. The Trial Chamber established that, in addition to direct

evidence that Mučić was aware of the crimes committed at the camp, he also had presumed knowledge, as during his frequent walks, his subordinates would commit violations. Accordingly, the Chamber concluded that the crimes committed at the Čelebići prisoner-of-war camp were so frequent and well-known that Mučić could not possibly have been unaware of them. Despite this, he failed to establish any monitoring or reporting system to keep himself informed of the violations at the camp, nor did he punish anyone for the cruel treatment of prisoners (International Criminal Tribunal for the former Yugoslavia, 1998).

Thus, judicial practice has established the following guideline: at the very least, a commander must have at their disposal sufficiently alarming information about the criminal behaviour of their subordinates, and such information must have been available to the commander. Additionally, the information must clearly indicate that the subordinates have committed or intend to commit crimes (Williamson, 2008). In the absence of such evidence, special ad hoc tribunals reject charges of command responsibility because this requirement cannot be established beyond a reasonable doubt. Specifically, the International Tribunal for the Former Yugoslavia dismissed the presumption of knowledge of duty on the part of individual Serbian commanders. Under this approach, a commander is not held responsible for failing to obtain such information due to inadequate performance of their official duties. Therefore, negligence of duty is not a sufficient basis of command responsibility. This approach stems from the Blaškić case (International Criminal Tribunal for the former Yugoslavia, 2000).

A similar approach was applied in the Bemba case. The fact that a commander knew cannot be presumed but must be established through evidence, as demonstrated in previous cases before the ad hoc tribunals. It is necessary not only to prove that the commander had information about the actions of their subordinates, but also that the commander consciously disregarded such information, in other words, that they deliberately chose not to consider it or to take any action in response. If the evidence does not show that the accused knew that crimes were being committed or planned by their subordinates, the judges must consider whether the evidence demonstrates that the accused should have known (International Criminal Court, 2009).

IHL establishes specific requirements regarding the intent of a military commander in cases of genocide committed by their subordinates. To establish re-

sponsibility for genocide, it is necessary to prove that the military commander had the intent to destroy in whole or in part a national, ethnic, racial, or religious group, as such, in accordance with the definition of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (United Nations General Assembly, 1948).

For those who have committed crimes of genocide or violations of the laws and customs of war, due to the particular nature of these acts, statutes of limitations do not apply. The perpetrators must be punished regardless of the time elapsed since the commission of their crimes. This fully applies to military commanders who failed to take measures to stop such violations. This approach is reflected in the Čelebići judgment, where it was established that the commander knew his subordinates were committing crimes in the territory under his control but did not take measures to stop them, despite having the necessary authority to do so (International Criminal Tribunal for the former Yugoslavia, 2000).

A related approach can be observed in the proceedings concerning Radovan Karadžić, President of Republika Srpska, and Ratko Mladić, commander of the Bosnian Serb Army during the conflict in Bosnia. In 1995, the ICTY confirmed indictments against Karadžić and Mladić alleging, inter alia, criminal responsibility for crimes committed by forces under their authority. These indictments constituted allegations against the accused rather than final judicial findings on their criminal responsibility; subsequent proceedings before the ICTY addressed the evidence and legal basis for such responsibility (International Criminal Tribunal for the former Yugoslavia, 1995).

Furthermore, the legal assessment of a commander's mens rea for acquiescence is based on the specific circumstances of each case and cannot be derived solely from the general context of international crimes. Such acquiescence requires proof with concrete evidence in each criminal case. From the perspective of international tribunals, this approach ensures adherence to the fundamental principles of individual responsibility.

Actus reus and the duties of commanders

After examining mens rea, it is important to delve deeper into another component of the failure to prevent or stop a crime committed by a subordinate, actus reus (the act). In the doctrine of English criminal law, this encompasses the defendant's conduct, its results, and the accompanying circumstances and conditions,

that is, the external elements that are involved in the definition of a specific crime and must be proven (Ormerod & Laird, 2005).

Within the framework of command responsibility, demonstrating the ability to control subordinates' actions is a key issue, as it directly relates to the relationship of subordination. The objective element requires that the accused "did not act", meaning they failed to take necessary and reasonable measures within their power. Within such responsibility, a commander must be held accountable only for failing to take measures that were within the scope of their authority. Such measures vary in different cases, and no standard of conduct for a commander can be formulated abstractly. Failure to fulfil any of the three duties (to prevent a crime, to stop it, or to report it to competent authorities for investigation) constitutes a clear violation, which forms the basis for separate charges. For instance, in the Bemba case, it was established that failure to prevent crimes by subordinates, about which the commander knew or should have known, cannot be compensated for by fulfilling the duty to report these crimes to competent authorities (International Criminal Court, 2009). Therefore, establishing a commander's responsibility requires clarifying each of the three duties, as failure to fulfil any of them entails command responsibility. In IHL, each of these duties involves a specific set of measures:

1) preventing the commission of crimes before they occur (including planning and preparation), for example, by: (1) ensuring that relevant forces act in accordance with applicable legal norms, including issuing orders specifically aimed at preventing crimes; (2) implementing disciplinary measures to prevent the commission of atrocities, such as suspension, expulsion, or reassignment of subordinates prone to violence; (3) protesting against criminal behavior and/or insisting to higher authorities on taking immediate action; (4) delaying military operations or conducting them in a manner to reduce or eliminate the risk of specific crimes (International Criminal Tribunal for the former Yugoslavia, 2006);
2) ceasing (or restraining) the commission of crimes, for example, by: (1) taking measures to prevent ongoing criminal acts; (2) conducting investigations into past crimes; (3) exercising disciplinary powers; or (4) submitting a proposal for punishment to a higher authority or referring the case to a judicial body if the accused does not have the authority to do so independently (International

Criminal Tribunal for the former Yugoslavia, 2015);

3) to punish crimes, at least by investigating possible crimes to establish the facts, and if the commander does not have the authority to impose sanctions, then by referring the case to a competent authority authorized to investigate and prosecute the actions (for example, when commanders do not have the disciplinary authority to adequately punish the corresponding crime) (International Criminal Court, 2009).

Thus, in the context of command responsibility, the first duty is to prevent a crime committed by a subordinate, which requires the military commander to have knowledge of military discipline, norms of IHL, and to take measures aimed at such prevention. The second duty is to stop crimes being committed by a subordinate, which involves interrupting, by various means, the unlawful, socially dangerous act that has already begun but has not yet been completed. The third duty is to punish the guilty or take necessary and reasonable measures to report the crime already committed by a subordinate to the competent investigative authorities.

To determine what constitutes necessary and reasonable measures in this context, the authoritative powers and capabilities of the military leadership must be assessed, taking into account the degree of effective control over their subordinates at the time of such omission. The question of what exactly constitutes necessary and reasonable measures should be evaluated based on the de jure powers of the commander, as well as their de facto ability to take such measures. In this regard, the Tribunal for the former Yugoslavia has established an important principle that command responsibility arises only in the event of a failure to fulfil the duty of supervising subordinates (International Criminal Tribunal for the former Yugoslavia, 2001).

Command responsibility and other forms of criminal liability

It should be recognized that in judicial practice, there are discrepancies in the application of norms regarding command responsibility, which are sometimes evaluated as acts of complicity. For example, the ICC has recorded isolated instances where charges were brought based on facts of command responsibility but justified from the perspective of indirect complicity. Such an approach contradicts the doctrine of command responsibility, although justifications for accusations from this perspective have occurred before, such as in certain cases

heard by the Nuremberg Tribunal. In the Von Leeb Case (the High Command Case), the United States Military Tribunal at Nuremberg concluded that, to hold a commander criminally liable for the actions committed by their subordinates, a causal link is necessary between the subordinate's actions and the failure to act or negligence (United States Military Tribunal at Nuremberg, 1948).

It is worth noting that the modern doctrine of command responsibility does not require a causal link between a commander's omission and the actions of their subordinates. Demanding the establishment of such a causal link between the crime committed by a subordinate and the commander's failure to take preventive or corrective measures contradicts the legal nature of command responsibility. Such a requirement would blur the lines and diminish the distinction between forms of complicity and command responsibility. Unlike command responsibility, the actions of all accomplices are classified on the same basis as those of the commander as a special subject. This distinction has been noted by special military tribunals. Specifically, issuing orders to commit international crimes is one form of primary (direct) responsibility of commanders. In cases where both issuing a criminal order and the omission by military authorities are combined, the guilty party is generally convicted only within the framework of direct responsibility.

International practice indicates that in the event of a conflict between norms regarding command responsibility and direct (primary) responsibility, the latter is given preference. This is because the presence of a causal link between a commander's omission and the actions of subordinates indicates joint command actions by the accused, constituting a more serious form of criminal liability: commanders' participation in international crimes committed by their subordinates. Today, in international judicial processes, the prevailing practice is that when evidence indicates both direct and command responsibility, priority is given to the norm establishing the commander's direct responsibility, and charges of command responsibility are dropped.

This arises from the principle of the inadmissibility of double jeopardy; once criminal actions are qualified as the commission of a crime in complicity, subsequent behaviour no longer constitutes a separate crime. This is evidenced by the case of Blaškić, who was initially convicted under two forms of responsibility (direct and command), which was illogical and inconsistent, since the guilty

person both preplanned the criminal activities of their subordinates and simultaneously failed to take measures to stop their criminal behaviour (International Criminal Tribunal for the former Yugoslavia, 2000).

According to the judicial practice of international war tribunals, abuse of power is recognized as an aggravating circumstance; however, certain difficulties arise when establishing subordinate relationships in cases involving civilian superiors. To this purpose, Article 28 of the Rome Statute of the International Criminal Court distinguishes between the command responsibility of military commanders and that of civilian superiors (United Nations General Assembly, 1998).

These norms establish differences of both an objective and subjective nature. First, with respect to military commanders, the relationship of subordination must be proven, whereas for civilian superiors, the presence of effective control over the actions of subordinates is required (Kostruba et al., 2023). Second, while culpability of military commanders is characterized by the formulation "knew, or owing to the circumstances at the time, should have known that the subordinates were committing or intended to commit such crimes", the culpability of civilian superiors is expressed differently: "knew or consciously disregarded information that clearly indicated that the subordinates were committing or intended to commit such crimes".

In other words, there are differences in the types of intent required depending on the status of the accused. For civilian superiors, such intent can be either direct or indirect, reflecting a more stringent criterion for establishing the guilt ("knew or consciously disregarded information"). A civilian superior is a person who exercises hierarchical authority similar to that of a military commander over certain individuals, necessary for command responsibility, but in areas where a military or similar structure cannot be established. The officiality or legality of the superior`s appointment is not relevant (Triffterer & Ambos, 2016).

The first verdict in the history of the ICC was delivered to the former leader of Congolese rebels, Thomas Lubanga Dyilo, sentencing him to 14 years of imprisonment. In its decision, Pre-Trial Chamber I of the Court, when qualifying the form of the accused's responsibility under Article 25 of the Statute for the war crimes charged, applied the concept of "co-perpetration", which involves the use of the "control over the crime" criterion. This means that all individuals acting together in the execution of a joint plan, regardless of their specific role, are con-

sidered co-perpetrators if their actions or omissions were a "condition sine qua non" (Latin: necessary condition) of the criminal outcome (Bazov, 2023).

Discussion

The analysis of how different countries have implemented the doctrine of command responsibility for international crimes into national criminal legislation merits attention. In particular, the criminal laws of some countries explicitly establish responsibility for the omission by military authorities to act during armed conflict. There is a group of countries that have implemented the doctrine of command responsibility into their national legislation, defining the responsibility of commanders as a distinct element of crimes under their laws. Specifically, this approach is reflected in the criminal legislation of Germany and Canada (Government of Canada, 2000; Bundesregierung, 2002). Additionally, Canada was the first state in the world to adopt legislation necessary to implement the Rome Statute of the ICC.

The responsibility of a commander as a distinct element of a crime is also addressed by the legislator of certain CIS countries. Chapter 51 "Military Crimes and Other Violations of Laws and Customs of War" of the Criminal Code of Kyrgyzstan contains Article 414 "Criminal Omission or Issuing Criminal Orders During Hostilities", which states: "Failure by a commander or other official, during hostilities within the scope of their authority to take all possible measures to prevent or stop the crimes committed by subordinates, as provided for in Articles 410-413 of this Code, is punishable by imprisonment for a term of ten to twelve years. This provision pertains to the failure to stop crimes such as violations of the laws and customs of war, looting, and other breaches of IHL (Ministry of Justice of the Kyrgyz Republic, 2021).

The Azerbaijani legislature also holds a similar position. Article 117, contained in Chapter 17 "War Crimes" of the Criminal Code of the Republic of Azerbaijan, establishes liability for the omission by military authorities during an armed conflict: "117.1 Intentional failure by a commander or official, within the scope of their authority, to utilize all available means to prevent subordinates from committing crimes during an armed conflict, as provided for in Articles 115-116 of this Code" (Milli Mejlis of the Azerbaijani Republic, 1999).

Having examined the norms of IHL and the legislation of various foreign

countries regarding accountability for omissions by military commanders, it is appropriate to proceed to an analysis of the Ukrainian legislation concerning the criminal liability of military personnel, which contains elements of the aforementioned command responsibility. An analysis of the current legislation of Ukraine indicates that the tacit consent of a military commander to criminal acts committed by subordinates can be established in various ways, for example, through the issuance of orders, organization, aiding and abetting, incitement, and approval. An analytical review of the criminal legislation of Ukraine`s criminal legislation reveals that provisions related to command responsibility are contained in Articles 43, 426, 437, and 438 of the CCU (Verkhovna Rada of Ukraine, 2001).

The most important provisions regarding command responsibility are contained in Article 426 of the CCU, which recognizes the omission by military authorities as a criminal offense: "Intentional failure to stop a criminal offense committed by subordinates, or failure by a military officer to report to the pre-trial investigation authority about a subordinate who has committed a criminal offense, as well as other intentional failure by a military officer to perform actions that they are obligated to perform according to their official duties, if it caused significant harm…". A formal analysis of this provision has led some experts to argue that it almost entirely reproduces the elements typical of the omission by military commanders during armed conflict. Therefore, supplementing the criminal law with additional provisions on such omission would be legally redundant (Verkhovna Rada of Ukraine, 2022). However, this conclusion is controversial, as such omission is classified as a crime against the established order of military service, which limits the applicability of this provision in cases involving foreign military commanders. Consequently, significant legal difficulties remain in holding Russian military commanders accountable for omissions committed in Ukraine, specifically failures to prevent, suppress, or punish violations of IHL.

While command responsibility is rooted in customary international law, which is binding on all states, including Ukraine, Ukrainian law currently lacks a direct mechanism to apply this responsibility extraterritorially. Article 438 of the CCU defines a blanket provision establishing liability for violations of the laws and customs of war as defined by international treaties ratified by the Verkhovna Rada of Ukraine. Among such treaties is Protocol I, the provisions of which are considered part of Ukrainian legislation pursuant to Article 9 of the Constitution of Ukraine, which states: "International treaties in force ratified by the Verkhovna

Rada of Ukraine shall be a part of the national legislation of Ukraine" (Verkhovna Rada of Ukraine, 1996).

In accordance with Article 3(5) of the CCU, the laws of Ukraine on criminal liability must correspond to provisions in effective international treaties to which Ukraine has consented. Interpreting Article 438 in this manner could facilitate holding Russian military commanders criminally liable for omissions related to international crimes committed by their subordinates during the aggression, thereby addressing the existing legal difficulties in prosecuting such omissions under Ukrainian criminal law.

In this context, the European Court of Human Rights has confirmed that a criminal conviction based on command responsibility through general domestic prohibitions of war crimes has a sufficiently clear basis in international law due to its status as customary international law, and therefore does not violate the principle of legality (European Court of Human Rights, 2022). International judicial practice regarding command responsibility remains a relevant source for Ukrainian judges in assessing the scope of "omission" by military commanders. But Ukrainian courts face difficulties in interpreting this article. Therefore, there is a need for separate legislative regulation of omissions by military commanders based on Articles 86 and 87 of Protocol I in the context of implementing the doctrine of command responsibility into national criminal legislation.

Conclusion

In contemporary international criminal law, command responsibility is predominantly understood as a mode of liability for crimes committed by subordinates. At the same time, certain doctrinal approaches conceptualize a commander's failure to fulfil the duty to prevent, suppress, or punish crimes committed by subordinates as a distinct criminal offense based on omission. The doctrine of command responsibility became widespread after World War II through the proceedings of the International Military Tribunals at Nuremberg and Tokyo; the tribunals for the former Yugoslavia and Rwanda; the Special Court for Sierra Leone; the Extraordinary Chambers in the Courts of Cambodia; and the permanent ICC, as well as through precedents established in cases such as Matsui, Yamashita, List, Meyer, Leeb, Karadžić, Bagilishema, Čelebići, Mladić, Lubanga.

Articles 86 and 87 of Protocol I, along with other sources of IHL, articulate

the doctrine of command responsibility, according to which military commanders can be held accountable for crimes committed by their subordinates if they fail to fulfil their duty to prevent, stop, or punish the commission of a war crime. A systematic interpretation of Articles 86 and 87 of Protocol I supports the view that an omission by a commander may constitute a separate criminal offense.

Ukraine is a State Party to Protocol I and is therefore obligated to "respect and ensure respect for this Protocol in all circumstances". This obligation requires Ukraine to implement the provisions of Articles 86 and 87 of Protocol I, thereby ensuring the indirect incorporation of the norms of IHL regarding command responsibility into national legislation. In practice, this should be reflected in the amendment and supplementation of the relevant provisions of national criminal law. For the effective application of such norms, it is also advisable to define corresponding sanctions within national legislation.

The legislatures of certain foreign countries have incorporated the doctrine of command responsibility into their criminal laws. Based on norms of IHL, both treaty-based and derived from case law, the legislative experiences of Germany, Canada, Azerbaijan, and Kyrgyzstan demonstrate how this doctrine can be implemented at the national level. The laws of these countries establish the responsibility of commanders as a separate offense. Certain doctrinal interpretations of ICTY jurisprudence have also been used to support the view that a commander's omission may be conceptualized as a distinct criminal offense.

In light of the foregoing, it appears advisable to supplement the CCU with a new Article 438-1 Omissions by Military Commanders, whereby intentional failure to take measures to prevent or suppress a serious violation of international humanitarian law committed by a subordinate, or failure by a military commander, or another person effectively acting as a military commander, to report to the pre-trial investigation authority information regarding a subordinate who has committed a serious violation, shall be punishable by imprisonment for a term of seven to ten years.

The term "military commander" in this article shall be understood to mean a military chief or any other person authorized to exercise command and control over subordinates participating in combat operations and belonging to the military formations of Ukraine or a foreign state. Additionally, the term "any person effectively acting as a military commander" shall be understood to mean a person

under whose authority and control subordinates participating in combat operations are placed due to the conduct of hostilities, and who does not belong to the military formations of Ukraine or a foreign state. In this way, responsibility will not depend on official rank, but on actual authority and control over subordinates.

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From Frozen Assets to Reparations: the Transformation of State Responsibility after Russian Aggression Against Ukraine

by Galyna Ierko [1], Valeriy Lykhvar [2], Viktoriia Sydor [3], Volodymyr Yarovyi [4], Bohdan Stetsiuk [5]

Abstract. The article explores the issue of the possible evolution of the international legal responsibility of states. The authors note that after the creation of the UN, the world suffered from military conflicts of various magnitudes. The war between Russia and Ukraine became a turning point in the need to rethink the international legal order. In particular, the authors raise the issue of the legal use of frozen Russian assets to pay reparations. The article reveals the evolution of approaches to state responsibility in the 21st century. The authors analyze legal and doctrinal approaches to the definition of the concept of "international legal responsibility of states" and emphasizes the need for changes in this concept. The novelty of the study lies in providing the authors' definition of the term taking into account modern realities. The authors examined international legal norms on the freezing and confiscation of assets. The article concludes that although international law does not contain a settled rule authorizing the confiscation of frozen state assets, existing doctrines and emerging practice provide potential legal avenues whose application remains contested and dependent on the design of the measure. Russia's breaches of obligations erga omnes are relevant to these legal

1 PhD in Law, Associate Professor, State Tax University, 08200, 31 Universytetska Str., Irpin, Ukraine, https://orcid.org/0000-0002-1165-7601, galynayerko@gmail.com.

2 Postgraduate Student, Kyiv University of Law of the National Academy of Sciences, 03142, 7A Akademika Dobrokhotova Str., Kyiv, Ukraine, https://orcid.org/0009-0002-1475-2433, valeriylyhvar@gmail.com.

3 Doctor of Law, Professor, "KROK" University, 03113, 30-32 Tabirna Str., Kyiv, Ukraine, https://orcid.org/0000-0002-1794-2577, victoriasd@krok.edu.ua.

4 Postgraduate Student, Interregional Academy of Personnel Management, 03039, 2 Frometivska Str., Kyiv, Ukraine, https://orcid.org/0009-0009-8693-5416, vovayarovoy157@gmail.com.

5 Doctor of Law, Professor, Ukrainian State Flight Academy, 25005, 1 Stepana Chobanu Str., Kropyvnytskyi, Ukraine, https://orcid.org/0000-0003-2273-637X, bohdan1702@ukr.net.

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arguments; however, they do not by themselves establish an uncontested right of third states to confiscate sovereign assets. At present, no single, generally accepted mechanism for such confiscation exists. The authors propose the concept of a multi-level compensation mechanism with specific steps, which is also a novelty of the work. It is concluded that the confiscation of frozen Russian assets can become not only a form of material compensation to Ukraine, but also a new stage in the development of international law.

Keywords: confiscation of assets; economic sanctions; frozen Russian assets; reparations; war in Ukraine..

Introduction

After World War II, countries decided to prevent military conflicts. They created the United Nations, a number of other organizations, and adopted relevant international legal acts. Since 1945, there have been several hundred thousand military clashes and conflicts around the world. The exact number is difficult to calculate, given the criteria for what can be considered a military clash. However, the figure is striking in a negative sense. The peak year in this context was 2024. The number of wars and conflicts in which at least one of the parties was a state reached a new peak worldwide in 2024. There were 61 conflicts in 36 countries, which is more than in any year since the end of World War II (Davies et al., 2025).

This fact shows that cooperation alone is not enough. The lack of adequate leverage often nullifies international peace efforts. Therefore, we believe that the most pressing issue for scholars around the world today is the revision of the international legal responsibility of states. This topic is complex and profound. We cannot fully explore it within the framework of a single scientific article. Therefore, in this work, we have focused on the issue of using Russia's frozen assets as a source of reparations for Ukraine.

Russia's aggression against Ukraine began on February 24, 2022, and became a turning point for contemporary international law and the security system. Its impact on the world order is compared to the upheavals of World War II. As Brunk and Hakimi (2022) note, it is "one of the most significant shocks to the global order since World War II." The invasion is already changing the foundations of

modern international law and the structure of global security. Russia's aggression has demonstrated the vulnerability of the collective security system, as the state is a permanent member of the UN Security Council. Russia has grossly violated Article 2(4) of the UN Charter (United Nations, 1945). on the prohibition of the use of force and has effectively blocked the Security Council through its veto power. This has undermined confidence in the UN's ability to maintain peace and forced the international community to seek new mechanisms for response.

The international legal order and security architecture have been seriously shaken. Countries have begun to revive concepts of collective self-defense and expand defense alliances. Examples include NATO's expansion with the membership of Sweden and Finland, as well as a significant increase in the military budgets of European states. The EU has traditionally emphasized "soft power." However, in 2022, it introduced large-scale military aid to the victim of aggression for the first time and activated all possible economic levers of pressure. Resolution ES-11/1 condemning the aggression was supported by 141 states (UN General Assembly, 2022a).

This demonstrated the almost unprecedented unity of most countries in recognizing Russia's gross violation of fundamental norms of international law. Although GA decisions are advisory in nature, politically they have laid the groundwork for further action. In particular, the UN General Assembly (2022b) adopted Resolution ES-11/5, which explicitly recognized the need to establish an international mechanism for reparations for the damage caused by Russia's aggression against Ukraine. In addition, this resolution recommended the establishment of an international register of damages. For the first time, the General Assembly clearly outlined the framework for the aggressor's future responsibility: recording all damages caused and developing a mechanism for their compensation. This step can be seen as a strengthening of the international legal principle that aggression must have financial and legal consequences for the offending state (Lamm, 2024).

It is important to note that the aggression provoked unprecedented economic sanctions and financial and legal measures from the international community. A coalition of countries (all G7 states, the EU, and a number of allies) imposed the most extensive package of sanctions against Russia in modern history. A particularly innovative step was the freezing of the Russian Federation's foreign assets, including approximately US$300 billion in gold and foreign exchange reserves

of the Central Bank of Russia (Moiseienko, 2025). Such measures had not been taken before. The sanctions coalition, citing Russia's violation of its erga omnes obligations, effectively legitimized the freezing of assets as a countermeasure.

However, the full-scale war raised the question: is it enough to simply keep the assets frozen, or should the next step be taken – to use them to pay reparations to Ukraine? This proposal has indeed been the subject of intense international debate (Nagy, 2023). We will examine this issue in more detail below. In general, the relevance of the study is determined by the need to adapt international legal mechanisms of responsibility to modern realities. Ensuring full compensation for the damage caused to the affected state is not only a matter of justice. It is an indicator of the effectiveness of the international legal order. The search for a legitimate mechanism for transferring the aggressor's frozen assets to Ukraine could lay the foundation for a new model of enforcement of reparations.

It will be important not only for Ukraine's post-conflict recovery, but also for the development of the doctrine of collective responsibility of states in cases of gross violations of jus cogens. Thus, Russia's full-scale invasion of Ukraine has become a catalyst for rethinking the norms of state responsibility. The international security system has responded cohesively, despite the turmoil (Bondarenko et al., 2022). Transformational approaches have been initiated in the financial and legal dimensions.

Literature review

The study of the international legal responsibility of states has been the subject of attention of many scholars. They focus on different aspects of this concept. This approach reflects its complexity and multi-layered nature. Thus, Benzaquen Perea (2020) defines international responsibility as an institution aimed at restoring international legal order. Sánchez de Tagle (2015) takes a different position, viewing international responsibility as a legal mechanism based on fundamental principles. Kukharchuk et al. (2022) define international legal responsibility as a system of legal relations arising from an international wrongful act. Mishchuk and Kirichuk (2023) interpret it as the obligation of a state to suffer adverse consequences for an unlawful act. In turn, Hrabynskyi and Hrushko (2023) draw attention to the aspect of succession, emphasizing that the successor state must be held responsible for the violations of its predecessor's obligations. Researchers

consider international legal responsibility not only as a legal obligation, but also as an instrument for achieving justice.

The issue of the necessity of confiscating frozen Russian assets is actively explored in contemporary international legal literature. Thus, Moiseienko et al. (2022) notes that the transfer of frozen assets of the aggressor to the victim state is a legitimate form of countermeasure. It is important that this be done collectively and have a clear international legal basis. The author emphasizes that in the context of the inaction of the UN Security Council, it is precisely a coalition approach that can ensure the legitimacy of decisions on asset confiscation. In turn, Zelikow (2022) stresses that Russian reserves should be considered as a source of reparations. The freezing of assets already creates a legal basis for further redistribution. However, some authors express certain concerns. For example, Sopronenkov et al. (2023) notes that such measures could set a precedent and destroy the entire global economic order.

In his work, Nagy (2023) argues that international investment law could become a practical legal mechanism for using frozen Russian assets to compensate for the damage caused to Ukraine. In his opinion, arbitration awards in such cases could provide grounds for enforcing claims against Russia's frozen assets. The author emphasizes that this approach does not violate international law. On the contrary, it allows the mechanism of sanctions to be legally transformed into a mechanism of reparations. He considers this path to be a realistic and legitimate strategy for the reconstruction of Ukraine.

Recent peer-reviewed scholarship does not reveal a complete consensus on the legal basis for measures involving Russian sovereign assets. Moiseienko (2023) argues that continued freezing can be justified as a lawful third-party countermeasure, whereas van der Horst (2023) reaches a different view on the immunity question but likewise considers a countermeasures justification potentially available. Janig (2025) argues that customary international law protects state property against certain non-judicial measures of constraint, while Hofer (2025) emphasizes that the customary-law status of third-party countermeasures remains unsettled. Taken together, this literature supports a distinction between immobilisation, use of extraordinary revenues, and permanent confiscation of the principal, and shows that the legal architecture for reparations remains developing rather than settled.

Methodology

The methodology of this study is based on a combination of systemic, comparative legal, analytical and structural-functional approaches. This combination of methods allowed for a comprehensive study of the phenomenon of international legal responsibility of states in the context of the possibility of legal use of frozen assets of the Russian Federation as a form of reparations to Ukraine. The methodological basis was formed taking into account classical approaches and the latest trends in international responsibility. The systemic method became the leading research method. It allowed considering the international legal responsibility of states as a complex legal institution. It functions in conjunction with other elements of the international legal order. We used a systemic approach to determine that the institution of state responsibility does not function in isolation. It responds to new challenges and can undergo transformation if necessary.

The comparative legal method was used to compare norms and approaches in international law at the universal and regional levels. The authors analyzed international legal acts and judicial practice. The purpose of this analysis was to identify legal possibilities for asset confiscation. The results of the study are reflected in the conclusion. The authors concluded that international law contains grounds for asset confiscation. This is manifested in the violation by the aggressor state of erga omnes norms. They are fundamental norms and their violation affects all states in the world. Thus, it was determined that this is a basis for confiscation. On the other hand, the analyzed legislation and practice do not contain appropriate mechanisms for lawful confiscation.

The analytical method was used to critically understand the scientific approaches presented in modern literature. A structured review of relevant scientific works was carried out. This method helped to generalize scientific positions on the definition of the international legal responsibility of the state. The authors provided their own definition based on existing terms. However, the novelty of the definition lies in the fact that the authors did not simply generalize existing approaches, but also took into account modern circumstances that have changed the understanding of the international legal responsibility of states. This method outlines the limits of the application of the institution of countermeasures as a mechanism for coercing reparations.

The authors used a structural-functional method. It allowed us to identify the internal logic of the functioning of the international legal institution of responsibility. The use of this method helped to trace how the function of responsibility has changed historically. In this context, the study is based on the decisions of international judicial bodies regarding compensation for damage caused by military actions. The historical method of scientific research is used to trace the evolution of state responsibility. This made it possible to understand how historical precedents influenced modern approaches to the confiscation of the aggressor's assets.

In addition, we used a predictive method to form the authors' proposals regarding the mechanisms of legal confiscation of Russian assets. We modeled a possible legal architecture of an international compensation mechanism based on an analysis of legislation and case law. This method allowed us to propose specific steps: the creation of an international claims commission; the formation of a trust fund to manage Russian state assets; and ensuring judicial control over the process of their distribution; differentiation of assets.

The methodology for selecting literature in this study was based on the principles of scientific relevance, chronological relevance, and representativeness of sources. First of all, the selection was made from scientific articles published in peer-reviewed international journals and collections specializing in international law. The analysis mainly included publications from the last five years (2020–2025). This selection ensures that the literature is up-to-date and relevant to current trends in the development of international law. Older works were used only in cases where they were of classical importance for the formation of the theoretical foundations of the institution of international legal responsibility. The literature was selected through a systematic search of international scientific databases. Only scientifically sound works of an analytical nature that met the criteria of academic integrity were included in the sample.

Results

Evolution of approaches and concepts of international legal responsibility of states

The issue of international legal responsibility of states has evolved significantly during the 20th and early 21st centuries. This doctrine focused primarily on bilateral relations between states in classical international law of the last century. Responsibility arose mainly for violations that caused damage to another spe-

cific state. Early codification projects focused specifically on liability for harm to foreign citizens. This can be seen in the first reports of Special Rapporteur F. V. Garcia-Amador (1956–1961). However, the approach began to change in the second half of the 20th century. International law went beyond purely diplomatic protection and moved towards the formation of general rules of responsibility for any violation of an international obligation.

Thus, since the 1960s, the UN International Law Commission (2001), under the leadership of R. Agou, has shifted its focus to defining the general principles of state responsibility, regardless of the nature of the obligation violated. The key change was the realization that international legal responsibility is universal in nature. Thus, any internationally wrongful act of a state entails its responsibility. Contemporary law does not require proof of the state's guilt or the existence of material damage as a prerequisite for responsibility. Today, the mere fact of a violation is sufficient for international responsibility (Crawford, 2006). As Shaw (2003) notes, this is a fundamental principle. When a state violates an international legal norm, a legal relationship of responsibility and reparations is automatically established between it and the injured party.

Another important evolution is the transition from purely bilateral responsibility to consideration of erga omnes obligations. UN International Court of Justice (1962) in the Barcelona Traction case recognized the existence of obligations that a state has towards all other states. For example, respect for fundamental human rights or the prohibition of aggression. This idea was first reflected in the drafts of the UN International Law Commission through the concept of "international crimes of states." They recognized as such particularly serious violations that infringed on the fundamental interests of the entire international community.

Article 19(3) of the Draft Articles on State Responsibility, provisionally adopted on first reading by the UN International Law Commission (1996), proposed to classify aggression, genocide, apartheid, and other gross violations of essential obligations as "international crimes of States". However, this concept sparked considerable debate. States did not agree with the very term "crime" in relation to states, since international law developed criminal responsibility for individuals, not for states. As a result, in the 21st century, the concept of "international crimes of states" was abandoned. Instead, the draft articles on state responsibility introduced a section on serious violations of peremptory norms (jus cogens), which

entail special consequences (UN International Law Commission, 2001). Thus, the modern approach recognizes a collective interest in holding accountable the most serious violations. Today, the term "crime" is not formally used in relation to states.

In summary, in the 21st century, international law has developed a more comprehensive and flexible concept of state responsibility. Modern international law is based on the principle of objective responsibility. The essence is that proof of guilt or intent is not required, and the fact itself is sufficient for liability to arise (Nalyvaiko & Chepik-Tregubenko, 2018). At the same time, liability arises for both treaty and customary obligations, since international law does not distinguish between ex contractu and ex delicto liability. Another characteristic feature is the absence of a requirement for material damage. In addition, states may be liable not only to individual states, but also to the entire international community (erga omnes). This approach allows them to be held accountable for particularly serious violations of international law. Finally, international legal responsibility is aimed primarily not at punishing the offender, but at restoring the rule of law and compensating for damage.

This principle of reparation was clearly formulated in the Chorzów Factory case (Permanent Court of International Justice, 1928). In this case, the Permanent Court of International Justice ruled that a breach of an international obligation entails the duty to eliminate all its consequences. Accordingly, Article 31 of the Draft Articles on the Responsibility of States establishes the duty of a state to ensure full reparation for damage caused by its internationally wrongful act (UN International Law Commission, 2001).

Thus, we can identify the key principles that distinguish contemporary international responsibility from the approaches of the last century: objective responsibility; universality of violated obligations; openness of claims for material damage; completeness of coverage of obligations; priority of reparations over punishment. However, in the context of our study, it is important to find a universal definition of the international legal responsibility of a state.

First of all, we note that the international legal responsibility of a state is one of the cornerstones of modern international law. Various authors emphasize different aspects of this concept, despite the apparent simplicity of its formulation. Let us consider several definitions proposed in recent scientific literature. For ex-

ample, the Peruvian ambassador to Qatar, Benzaquen Perea (2020), refers to the definition in the Legal Encyclopedia in his work. Thus, international responsibility is an institution aimed at restoring international legal order or the normal state of international life in the face of conduct harmful to members of the international community, which is an offence committed by a certain subject of international law (a state or international organisation) and entails an obligation to make reparation. This definition emphasizes the purpose of responsibility – to restore the violated order through reparation for the damage caused. In other words, the essence of responsibility lies in returning the situation to normal as far as possible.

Mexican researcher Sánchez de Tagle (2015) offers another formulation: "The international responsibility of states is based on two legal postulates. First, a state must have international obligations. Second, a state must be held responsible for failing to fulfill them. No specific material damage is required to hold a state accountable." This definition emphasizes the objective nature of the institution. The author stresses that the fact of a breach of obligation is sufficient to give rise to liability. Damages are not a mandatory element. This is consistent with the current understanding.

Taking into account that we are researching the issue of the Ukrainian-Russian war, we consider it appropriate to examine the views of Ukrainian scholars on this issue. Kukharchuk et al. (2022) defined the international legal responsibility of a state as a form of legal relations that may arise in international law in connection with an offense committed by a state, regardless of whether these relations are limited to legal relations between the state that committed the unlawful act and the state that was directly affected, or whether they also extend to other subjects of international law. Mishchuk and Kirichuk (2023) emphasize that the international legal responsibility of a state should be considered as the obligation of a subject of international law to suffer certain adverse consequences for an unlawful act (action or inaction).

Hrabynskyi and Hrushko (2023) note that the international legal responsibility of the successor state is an important sectoral principle of international law within the institution of international legal responsibility. This principle stipulates that the successor state must bear responsibility for violations of the obligations of the predecessor state. Ukrainian researchers consider international legal responsibility in the modern context. They interpret it not only as a legal obligation, but also as

an instrument of justice. Responsibility arises regardless of whether one state or several subjects of international law have suffered. The state must bear the consequences for every unlawful act. Responsibility covers both actions and inaction. Succession implies the obligation of the new state to be responsible for the violations of the predecessor. This approach forms a comprehensive, flexible concept. It takes into account contemporary conflicts and challenges of international law.

We also drew attention to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (UN International Law Commission, 2001). Article 1 states: "Every internationally wrongful act of a State entails the international legal responsibility of that State." Article 2 defines two necessary elements of such an act: (a) conduct (action or omission) that can be attributed to the state; (b) this conduct is a breach of the state's international obligation. Thus, from the point of view of positive law, a state is considered an offender when its organ or person violates any norm of international law applicable to it.

So, we have considered various approaches and can fairly conclude that the principle of reparation is one of the principles of international legal responsibility of the state. The key consequence of responsibility is the obligation of the offending state to fully compensate for the damage caused. We see this in most definitions. It is important that reparation is not punitive in nature – its purpose is compensatory. Taking into account the above principles and current realities, we can propose our own definition of the concept, which reflects classical norms and the latest trends.

The international legal responsibility of a state is the obligation established by international law for the offending state to cease violating its international obligations, ensure the full restoration of the legal relations that have been violated, and compensate for all damage, material or moral, caused by its actions that contravene the norms of international law. This obligation arises automatically at the moment a state commits an internationally wrongful act and is implemented through a set of legal consequences, including reparations and special measures by the international community to hold the state accountable.

This definition emphasizes the comprehensiveness and automatic nature of liability. In addition, the term defines the focus on restoration, as well as the role of the international community. The latter aspect is particularly relevant in view of current conflicts, such as the war in Ukraine. Here, the responsibility of the

aggressor state is implemented through a broad international campaign designed to ensure justice even in the absence of the violator's consent. Thus, we can conclude that approaches to state responsibility are undergoing changes due to new circumstances. In this context, it is important to analyze the possibility of confiscating and using frozen Russian assets.

State approaches and discussions on the transfer of frozen Russian assets for reparations

For analytical clarity, three legally distinct measures should be separated. Freezing or immobilisation temporarily restricts access to and transactions involving an asset while leaving title formally unchanged. The use of extraordinary revenues concerns income, windfall profits, or other proceeds generated while the underlying asset remains immobilised and does not itself transfer ownership of the principal. Confiscation or transfer of the principal, by contrast, entails a permanent deprivation or reallocation of the underlying sovereign asset and therefore raises the most acute questions of state immunity, countermeasures, and domestic authority (Kostruba, 2018; Moiseienko, 2023; Janig, 2025).

During 2023-2025, the issue of using frozen Russian state assets for the post-war reconstruction of Ukraine was at the center of international discussions. This primarily concerns approximately $300 billion in reserves of the Central Bank of Russia, which are "frozen" in the jurisdictions of the G7 countries and their partners. In addition, the estimated value of seized private Russian assets is approximately $58 billion. However, private assets are more difficult to confiscate legally. This is possible if it can be proven that the assets are proceeds of crime. The main focus of discussions is currently on Russia's state assets, primarily reserve funds held in financial institutions (Moiseienko, 2025).

The positions of states on the seizure currently differ. On the one hand, Ukraine and its closest allies are actively calling for a legal way to transfer these funds to rebuild the state. In general, this idea is also supported by the EU's governing institutions. In particular, they have set up an EU Working Group on this issue, which published its preliminary conclusions in June 2023. A consensus has been reached that interest income from frozen assets can and should be directed to Ukraine. Russia's frozen reserves continue to generate income.

For example, in 2023, Euroclear accrued €4.4 billion in interest on these as-

sets. Russia does not have access to them. The EU has obliged Euroclear to reserve interest in separate accounts, and Belgium has introduced a 25% tax on this income. By mid-2023, approximately €1.5 billion of such income had already been transferred to the EU for Ukraine's needs in the first tranches (Euroclear, 2023). In 2024, the G7 countries agreed to go further. They approved the Extraordinary Revenue Acceleration plan and issued a joint loan of $50 billion to Ukraine, secured by projected revenues from investing frozen Russian assets over the next 10 years. This mechanism was intended to convert future interest income into immediate aid.

At the same time, the full use of the principal (i.e., the $300 billion itself) raises more legal and political controversies. Belgium takes the most cautious position, since most of the assets are concentrated on its territory. The Belgian government openly states that without clear legal guarantees it will not support steps that could be interpreted as illegal alienation of assets. The state is wary of lawsuits from Russia or other interested parties. In October 2025, it was Belgium's reservations at the EU summit that actually slowed down the agreement on a specific mechanism. EU leaders postponed the decision until December, recognizing the need for additional work (Reuters, 2025).

Other countries also express different considerations. For example, Germany and France support the search for a legal solution. However, the states emphasize the importance of a full legal basis for confiscation in order not to create a dangerous precedent for the global financial system. The United States in 2022–2023 took steps to allow the transfer of certain confiscated assets of Russian individuals to aid funds for Ukraine. However, state reserves are not subject to such confiscations. The United States is currently studying the international legal consequences of such actions.

Canada in 2022 adopted legislative changes that potentially allow the confiscation of frozen assets of individuals involved in gross violations of international peace (Government of Canada, 2022). The relevant legislation could serve as the basis for confiscation actions. The European Commission in 2023 presented an option under which Russia's frozen reserves could be invested and the profits directed to Ukraine. This is, in essence, a compromise today. Such actions were supported by the majority of participants, since the assets themselves are intact. The finances would be returned to Russia if it voluntarily pays reparations (Nagy,

2023).

Thus, international actors are gradually moving from purely theoretical discussions to practical steps. A precedent has already been set for using interest from frozen assets to help Ukraine. The issuance of these assets as collateral could be the next logical step. But the final goal is full reparation, that is, using the principal amount to compensate for losses, as required by international law. The mechanism for this step has not yet been agreed upon. The doubts of cautious states are due to both legal and financial risks (Kryvovyazyuk et al., 2025). However, as time passes and losses continue to accumulate, the pressure to reach a decision only increases.

In conclusion, the discussion on frozen assets demonstrates the transformation of the concept of state responsibility in practice. This could become a new model for the collective implementation of the responsibility of the offending state and set a precedent for the future. However, the issue of the legal basis still remains a complex issue. Next, we will consider whether there are grounds for confiscation of assets and the prospects for transferring assets as reparations.

Basis and prospects for the transfer of frozen Russian assets for reparations

We have established that international law contains a clear principle whereby an aggressor state is obliged to fully compensate for the damage caused by its unlawful actions. According to Article 31 of the draft articles on the responsibility of states, the responsible state must make full reparation for "any damage, material or moral," caused by a violation of international law (UN International Law Commission, 2001). In the context of the war against Ukraine, this means that the Russian Federation is legally obliged to compensate Ukraine for all damages caused. As we noted earlier, the UN supported this position with its 2022 Resolutions.

At the same time, there is currently no effective judicial mechanism for enforcing reparations. Moiseienko et al. (2022) notes that the UN International Court of Justice cannot quickly determine and award huge amounts of damages. Although it has ordered Russia to stop the invasion, it has not demonstrated non-compliance with its orders. Other bodies, such as the ECHR or investment tribunals, are limited in their jurisdiction. But compliance with obligations remains a key element here. Russia will most likely refuse to voluntarily comply with court

decisions, even if they are issued. Thus, the only real source of compensation for damages remains Russian assets frozen abroad. This path seems realistic, as they are beyond Russia's control and can be used without the aggressor's consent.

However, the very concept of confiscation of sovereign assets faces serious legal obstacles. State property is protected from jurisdiction and enforcement in the courts of other countries under established rules of state immunity. The case law of the UN International Court of Justice prohibits the compulsory seizure of state assets without the consent of the state concerned, even if that state has violated international law. The precedent is the case of Germany v. Italy: Greece intervening (UN International Court of Justice, 2012).

The UN International Court of Justice ruled that Italy had violated international law by allowing its courts to hear claims against Germany for war crimes during World War II. This is due to the fact that states enjoy jurisdictional immunity even in cases of violation of jus cogens norms. The court emphasized that immunity is procedural in nature and is not waived due to the severity of the offense, therefore the seizure of German property was found to be illegal. This decision enshrined the priority of the principle of state immunity over the right of victims to judicial protection. However, it should be noted that it was widely criticized by scholars and sparked debate about the relationship between jus cogens and the international responsibility of states.

There is also no direct international treaty provision that would allow the automatic confiscation of the assets of an aggressor state and their allocation for reparations. The Security Council could theoretically authorize such measures under Chapter VII of the UN Charter (United Nations, 1945). As an example, we can cite the creation of the UN Compensation Commission, established by UN Security Council (1991) Resolution No. 687 after the Gulf War. Then Iraq invaded Kuwait. The Security Council obliged Iraq to bear international responsibility for the damage caused in accordance with Chapter VII of the UN Charter. It created a special fund to which part of the proceeds from Iraqi oil exports were directed ("Oil-for-Compensation").

Through this mechanism, more than 2.6 million claims worth about $52 billion were considered. This became a precedent for the internationally sanctioned forced use of state assets to pay reparations. Therefore, we can state that there were various precedents regarding the use of financial assets of other states as

a form of reparations. However, the direct confiscation of frozen assets of the Russian Federation is currently in a legal vacuum. On the one hand, there are powerful moral and legal arguments, on the other hand, there is a lack of precedents and clear international legal norms. In addition, the UN Security Council in the situation with Ukraine cannot act due to the Russian veto. The UN General Assembly can only recommend steps, but its resolutions are not binding.

In response to these challenges, Zelikow (2022) and Moiseienko et al. (2022) propose unconventional legal doctrines. One of them is the application of the concept of countermeasures. Countermeasures in international law are measures that a state that has suffered from a violation may take in response, breaching its obligations to the violator in order to induce it to return to fulfilling its obligations. They believe that collective non-recognition of Russia's sovereign immunity with regard to its frozen assets may be legitimate as a countermeasure in response to a gross violation of jus cogens.

It is important that the prohibition of aggression is generally understood as an obligation erga omnes. This status allows non-injured states to invoke responsibility under Article 48 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts. It does not, however, conclusively establish that every non-injured state may adopt countermeasures. Article 54 deliberately leaves the question open by referring only to "lawful measures," and the customary-law permissibility of third-party or collective countermeasures remains doctrinally contested because state practice and opinio juris are not unequivocal (Hofer, 2025). Some scholarship nevertheless argues that the coordinated freezing of Russian Central Bank assets can be justified as a third-party countermeasure in response to Russia's aggression (Moiseienko, 2023; van der Horst, 2023). Accordingly, collective countermeasures should be treated here as a plausible but unsettled legal basis rather than as an automatic consequence of the erga omnes character of the breached obligation. A further difficulty is that countermeasures should, as far as possible, remain temporary, reversible, and non-punitive; this makes permanent confiscation of the principal more difficult to justify than continued immobilisation or the use of revenues generated by immobilised assets.

In our opinion, international law is adapting under the pressure of current circumstances. Russia's attack on Ukraine is a violation of international law. The current norms do not directly provide for a mechanism for confiscating the assets

of the aggressor state. But the absence of such norms has itself become a problem that the international community is trying to solve. We believe that the era of soft law is over. International law must have a strong enforcement tool. Asset confiscation can be such a tool. It will make a significant contribution to the reconstruction of Ukraine. It will also serve as a warning to other aggressor states. The economic world is indeed small. Asset confiscation can set a negative precedent for investors. On the other hand, no state can live in economic isolation. Thus, we believe that economic factors may become perhaps the most important lever for countering aggression in the future. And for this, it is necessary to find ways to confiscate Russian assets.

We also consider it appropriate to consider international legal norms on asset confiscation at the EU level. The European Union responded to the aggression with large-scale sanctions, including asset freezing. The basis of the EU sanctions regime is laid down in decisions and regulations adopted after 2014 and significantly expanded after February 2022 (European Commission, 2025). In particular, Regulation (EU) No. 833/2014 (as amended) introduced sectoral restrictions and, among other things, the blocking of the reserves and assets of the Central Bank of Russia on the territory of the EU (Council of the European Union, 2014). Freezing means that the owners cannot use or move these assets, but formally the ownership remains with them (Strupczewski, 2025).

However, current EU legislation does not provide for automatic confiscation of frozen assets. European law is very cautious about the forced seizure of property. The EU has recognized this problem and has begun to look for legally justified ways to use frozen Russian funds. Full confiscation is not yet possible. Therefore, the European Commission has proposed a solution to attract Russian assets without formally confiscating them. We have already mentioned this earlier. As for the private assets of Russian oligarchs in Europe, the EU is also looking for legal ways to recover them. The European Commission has proposed to recognize the violation of sanctions as a criminal offense at the EU level.

Therefore, the EU currently has a regulatory framework for freezing assets. However, there are no legal grounds for their seizure. Nevertheless, the EU is attempting to find various ways to implement this possibility within the legal framework. This also confirms our thesis that international law is undergoing a period of significant transformation. Today, there are grounds for seizing Russian

assets as reparations for violations of erga omnes. However, the appropriate legal mechanisms are lacking. Nevertheless, if we talk about prospects, we see that the international community is actively working to create a legal mechanism for seizing the aggressor's assets. Therefore, we can state that the prospects for such actions are quite real. The longer the armed aggression against Ukraine continues, the more likely it is that the international community will decide to take such a step. Moreover, Russia's willingness to pay reparations may also be an important factor in favor of not seizing financial assets.

Discussion

The issue of transferring frozen Russian assets to Ukraine is the subject of lively debate among academics, politicians, and experts in international law. Most of the arguments in favor of this step are not only economic but also moral and legal in nature. First and foremost, they refer to the principle of justice. The state committed an act of aggression and must compensate for the damage caused. Implementing this principle through the use of Russian Federation assets would allow the abstract idea of the aggressor's responsibility to be translated into practice (Moiseienko et al., 2022). This would demonstrate that the victory of law over force has not only a symbolic but also a material dimension. At the same time, it is important to ensure that victims' rights to reparations are respected. This is guaranteed by international humanitarian law.

The use of Russian assets to create a compensation fund could become a real mechanism for restoring violated rights (Zelikow, 2022). Such an approach could set a precedent for the effective protection of the rights of victims of armed aggression. The transfer of frozen assets also makes financial and pragmatic sense. European states are financing aid to Ukraine, and this resource is not unlimited (Kryshtanovych et al., 2022). The use of Russian assets would reduce the burden on allies' budgets and ensure stable financing for reconstruction without causing political fatigue among societies. In addition, frozen assets lose value over time, while their use for reconstruction creates added economic value and stimulates the development of international markets (Kortukova et al., 2023).

Deterring future aggressors is another argument in favor. States will use confiscated assets to rebuild Ukraine. This will show that reparations are real. Potential aggressors will know that the loss of financial assets is a real threat (Nalyva-

iko et al., 2023; Coletta, 2023). Thus, confiscation can strengthen the preventive function of international law, compensating for the ineffectiveness of the UN Security Council. Confiscating assets and using them to benefit victims of aggression will send a signal that international law can be effective. This will restore confidence in the international justice system. Finally, the lack of real alternatives makes confiscation practically the only effective option. Voluntary reparations from Russia are unlikely. Therefore, using frozen assets for reparations is a necessary step.

We believe that effective and lawful confiscation of frozen Russian assets is only possible with a combination of political will, international consensus, and a clear legal framework. First and foremost, we recommend creating an international compensation mechanism by concluding a multilateral agreement under the auspices of the UN, the Council of Europe, or the G7 coalition. Such an agreement should enshrine the waiver of the Russian Federation's immunity with regard to its frozen assets. In addition, the provisions should define the procedure for transferring these assets to a special fund for the reconstruction of Ukraine. This will ensure the legitimacy of the process and consolidate the support of the international community.

We consider it advisable to create an International Claims Commission for Ukraine. It would be similar to the UN Compensation Commission that operated after Iraq's aggression against Kuwait. This structure could operate in conjunction with the already established Register of Damages under the auspices of the Council of Europe. Such decisions could become a quasi-judicial basis for the redistribution of confiscated assets. In addition, we propose to apply a differentiated approach to different categories of assets.

It would be advisable for states to create a trust fund for the Russian Federation's state reserves under the control of independent financial institutions. Its resources could be used for Ukrainian needs, but with the conditional possibility of return in the event that Russia fulfills the requirements of international law. Such an approach would maintain a balance between the principle of state immunity and the need for justice. For private assets of individuals associated with the Russian regime, we recommend more active use of civil confiscation mechanisms. Finally, it is important to intensify the judicial component. The decisions of the ECHR, international arbitrations and national courts will form the legal basis for

the legitimate redistribution of assets, even if Russia does not comply with them.

We also emphasize the importance of preventing abuse and ensuring the legal integrity of the process. We propose the creation of independent oversight bodies in each jurisdiction to monitor that confiscations are carried out in compliance with the rights of bona fide third parties. This will reduce the risks of international litigation and strengthen trust in the mechanism itself. We are convinced that these steps are both feasible and necessary. They will enable the creation of a new standard of international accountability, whereby the aggressor actually compensates for the damage caused. Thus, the confiscation of frozen Russian assets could become more than just a legal precedent.

Conclusion

Russia's military aggression against Ukraine and subsequent efforts to contain and punish it have demonstrated the need to develop the institution of international legal responsibility of states. Historically, this institution has evolved from a narrow understanding to a modern comprehensive mechanism. It covers violations before the entire international community and provides for full compensation for damages. The study showed that the transition from frozen assets to reparations reflects the transformation of approaches to state responsibility. If this precedent is successfully implemented, it will be an important evolutionary step in international law. It will confirm that no state can commit aggression without serious material consequences for itself. The establishment and observance of the principles of international legal responsibility in the current environment is the key to maintaining international peace and order.

The research showed that international law contains arguments that may support measures directed at immobilised Russian sovereign assets, particularly in response to serious breaches of obligations erga omnes. However, the legal basis for permanent confiscation of the principal is not settled. The erga omnes character of the breached obligations permits non-injured states to invoke responsibility, but whether it also authorizes third-party countermeasures remains contested, and confiscation additionally raises questions of state immunity, proportionality, reversibility, and domestic legal authority. Accordingly, existing law and emerging practice provide potential pathways rather than an uncontested mechanism. States have therefore tended to distinguish continued immobilisation and the use

of extraordinary revenues from outright transfer of the principal. Any future confiscation mechanism would require a carefully defined legal basis, substantial international coordination, and safeguards capable of addressing these unresolved issues. If such a mechanism is developed consistently with international and domestic law, it could contribute to a new model for enforcing reparation obligations after aggression.

However, there are also prospects for the transformation of international responsibility. We have highlighted the efforts of states to freeze assets and seek legal ways to seize them. All this gives us reason to say that the transformation of the international legal responsibility of states for crimes is already undergoing changes. They are relevant and dictated by the demands of the times. The political will and efforts of the international community can significantly change the world order and ensure the long-term peace that has not been achieved since 1945.

We propose a series of concrete steps to properly address this issue. First and foremost, the effective and lawful confiscation of frozen Russian assets is only possible with a combination of political determination, international consensus, and a clear legal basis. Such a process must be based on the creation of an international compensation mechanism. It would be advisable to establish an International Claims Commission, which would work in conjunction with the Register of Damages. A differentiated approach to assets is a rational solution. Strengthening the judicial component will lay the foundation for the legality of actions involving frozen assets. The implementation of these steps will establish a new standard of international responsibility and strengthen the international legal order.

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Transformation of Civil Legislation of Ukraine in Special Condition

by Myroslav Hryhorchuk [1], Svitlana Bobrovnyk [2], Mykhailo Kostytskyi [3], Kateryna Dobkina [4], Yevgeniya Klyuyeva [5]

Abstract. This article examines the transformation of civil legislation of Ukraine in the context of countering Russian military aggression, focusing on amendments to the Civil Code of Ukraine and related national and international legal acts adopted between February 24, 2022 and January 1, 2026. The study is grounded in a historical and theoretical understanding of law as a social regulator and analyzes the evolution of private law mechanisms aimed at protecting subjective rights during wartime. Particular attention is devoted to the effectiveness of updated substantive norms intended to restore violated property rights and provide compensation for material losses and moral damage caused by the Russian armed attack. The research methodology integrates philosophical and dialectical principles with systemic, comparative-legal, formal-legal, structural-functional, and interdisciplinary approaches, ensuring a comprehensive and dynamic analysis of law-making and law-enforcement processes under conditions of armed conflict. Based on the examination of regulatory frameworks and contemporary scientific scholarship, the authors identify key challenges in the protection of private rights and propose measures to enhance the effectiveness of national and international legal protection mechanisms, emphasizing their scientific and practical significance for strengthening civil law instruments during ongoing military aggression.

Keywords: Civil Code; civil law; civil legislation; compensation for damage; Constitution of Ukraine; military aggression; property rights.

1 Doctor of Law, Associate Professor, Zhytomyr Polytechnic State University, 10005, 103 Chudnivska Str., Zhytomyr, Ukraine, https://orcid.org/0000-0003-0523-030X, kppd_gmv@ztu.edu.ua.

2 Doctor of Law, Professor, Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine, https://orcid.org/0000-0002-9225-8871, bobrovnyk.sv@gmail.com.

3 Doctor of Law, Professor, Institute of Lawmaking and Scientific-Legal Expertise of the National Academy of Sciences of Ukraine, 01024, 3 Pylypa Orlyka Str., Kyiv, Ukraine, https://orcid.org/0000-0002-2093-2513, nkkiev1966@gmail com.

4 Doctor of Law, Professor, National Transport University, 04210, 2 Volodymyr Ivasiuk Ave., Kyiv, Ukraine, https://orcid.org/0000-0003-2627-8871, dobkina@ukr.net.

5 Doctor of Law, Professor, National Transport University, 04210, 2 Volodymyr Ivasiuk Ave., Kyiv, Ukraine, https://orcid.org/0000-0003-4306-9959, klyuyeva0711@ukr.net.

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Introduction

The economic, political and humanitarian consequences of the Ukrainian national state formation in 1991-2026 caused objective changes in all spheres of society. Along with the permanent reform of the economic sector of the state, transformation processes affected the sphere of law, including the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), which has been amended on several occasions since its adoption. A cursory analysis of these constitutional changes shows that their separate study can serve as a basis for an analytical and legal examination of successive stages in the formation of the Ukrainian state in a clear chronological order (Petrunenko et al., 2019).

The author's analysis of the problems associated with the transformation of the legal sphere has shown the continuity of these processes with cyclical stages of increasing or decreasing activity in the modern understanding of the subjects of legislative initiative. In this regard, we make the current conclusion that among other branches of law (for example, criminal, administrative, etc.) civil law has shown a high level of resistance to change and understanding of system-forming categories since the time of man's primary self-awareness of the need to establish written rules of social life with a mandatory element of imperativeness as a condition for possible coercion to comply with the established order (Kuznetsova, 2012; Kostruba, 2018). The processes of emergence, formation and development of civil law as a natural and unconditional component of the concept of "humanity" have always aroused increased public interest, accompanied by evaluative judgments of prominent philosophers and thinkers, and later scientists of different eras.

The main topic of this article is the study of the transformation of civil law in Ukraine in special conditions. At the same time, the full-scale Russian military aggression had a significant destructive impact on the processes of changes in legislation. To this end, the key areas of change in the field of contractual obligations, protection of property rights, liability for violation of civil rights, as well as the peculiarities of the legal regime of force majeure and compensation for damage caused by military actions are analyzed (Valendyuk, 2025). As an example, the discussion will revolve around the draft Civil Code of Ukraine (No. 14394 of 01/22/2026), which has been submitted for consideration by the Committee of the Verkhovna Rada of Ukraine on Legal Policy with subsequent transfer to other committees of the Ukrainian Parliament (Lawmaking Academy, 2023).

This article proceeds from the research premise that wartime legislative changes should be assessed not only as individual adaptive measures but also in terms of their possible cumulative impact on the Ukrainian private-law model. The analysis therefore focuses on the main problems concerning the application of civil-law norms under the special conditions created by Russia's full-scale invasion of Ukraine on February 24, 2022. Domestic judicial practice and relevant human-rights standards are examined to determine how these changes affect the protection of the subjective rights of individuals and legal entities; the resulting assessment is presented in the Results, Discussion and Conclusions sections.

The author's forecast of the results of the introduction of the new edition of the Civil Code of Ukraine was made (given the need to ensure a balance between public and private interest and the distribution of the burden of proof when considering claims by national courts for compensation for material and moral damage caused by the actions of the Russian military during real confrontation and in the post-war period).

The analysis of scientific achievements on problems related to the study of transformational processes in the field of private law regulation conducted by the authors showed an ambiguous perception by the scientific community of the role and significance of the introduced and proposed changes in the future. The breadth of the presented scientific approaches in approaches to understanding the axiological significance of the norm-setting activities of subjects of legislative initiative indicates an increased interest in this issue. Thus, this article examines the transformation processes in the field of civil law with increased attention to the peculiarities of the application of human rights mechanisms in the context of repelling Russian aggression against Ukraine, as well as their effectiveness as guarantees for the observance of human and citizen rights and freedoms.

Materials and Methods

To fulfill the task of scientific research, an appropriate methodological toolkit was selected, namely, the study of the issues of the article by applying general scientific, special scientific, interdisciplinary approaches and methods. This decision was based on the observance of systematicity in presenting the author's conclusions while ensuring the requirements of the principles of deep scientific knowledge. This is about objectivity, cognitive ability, an active creative approach to solving

the assigned task, and also focused on the combination of theory and practice while observing the laws of dialectics and logic, the specificity of truth, etc.

The systematization of methodological tools requires compliance with the appropriate logical order, which begins with substantiating the prevailing role of the philosophical-dialectical principle. To achieve the goal of our research, this principle acquires fundamental importance, since law-making processes in the field of civil law are characterized by constant development with the withering away of those regulatory tools and mechanisms that have lost their effectiveness and hinder further development. This principle acquires special significance in scientific research during the period of Ukraine's repelling the Russian armed attack, since it provides an understanding that law-making processes are studied not in statics, but in dynamics, based on the relevant laws of dialectics and logic.

The use of general scientific approaches within the framework of this article will contribute to the systematization of knowledge and the identification of patterns in the development of civil law both in general and at the stage of protecting private law in the context of repelling Russian military aggression against Ukraine. To solve the task, we will limit ourselves to using the following approaches:

- systemic provided for a comprehensive analysis of legal phenomena, their interdependence and connections with the state, ensuring a holistic understanding of the legal system;
- synergistic used to analyze civil law as an open nonlinear system that is in a state of transformation under the influence of military factors, and allows identifying the patterns of its self-organization, bifurcation points, and new structural attractors of legal regulation;
- axiological allowed us to examine legal phenomena through the prism of their social benefit, humanism and compliance with ideals, which ultimately will allow us to assess the role and significance of civil law as an effective institution, the tasks of which are the effective protection of private law;
- integrative contributed to the understanding of civil law as a holistic phenomenon that is in the process of constant self-creation through interaction between people, which encompasses legal norms, legal consciousness, legal practice, etc.

Regarding the scientific significance of general scientific methods of scientific research, it would be appropriate to apply the possibilities of analysis and synthe-

sis, induction and deduction, historical and comparative methods. Among the possibilities of special scientific methods of scientific research, we consider it appropriate to turn to formal and legal (analysis of norms), comparative law (theoretical and legal analysis of legal regulation of private legal relations at different stages of social development), structural and functional and legal forecasting. The application of interdisciplinary methods of scientific research has provided a deeper understanding of the nature of civil liability, the formation of new models of compensation for damage, the expansion of the interpretation of freedom of contract, the rethinking of the category of risk, the integration of international standards for the protection of human rights, and the justification of the transformation of civil law in wartime as a natural stage of its evolution.

Results

Lawmaking processes in Ukraine during the period of independence are characterized by significant dynamics, which is determined by socio-economic conditions and measures aimed, among others, at membership in the European Union (hereinafter referred to as the EU). The chosen vector of European development had a significant impact on the lawmaking processes and necessitated the need to bring national laws into line with EU standards. Priority was given to the implementation of the constitutional principle, according to which a person is recognized as the highest social value. In the understanding of the Civil Code of Ukraine, a person, his life, health, honor, dignity, property, non-property rights, etc. are under constant protection by pre-trial and judicial methods of restoring violated, disputed, unrecognized rights.

A retrospective study of the process of the formation of civil law in independent Ukraine showed that until 2003 this area of law, like all others, was regulated by the Civil Code of the Ukrainian SSR (Ukrainian Soviet Socialist Republic) received from the Soviet Union, adopted at the second session of the Supreme Soviet of the Ukrainian SSR of the sixth convocation on July 18, 1963 by the Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR "On the Procedure for Enacting the Civil and Civil Procedural Codes of the Ukrainian SSR" (Presidium of the Supreme Soviet of the Ukrainian SSR, 1963). These codified laws were put into effect on January 1, 1964.

An interesting interpretation of the term "transformation" is found in the analyzed scientific work. Thus, Bidzyura (2004) in his monographic study under-

stands transformation "as a moment in the development of an object reflecting a transitional state from what is no longer there to what is not yet there, but it should or should be". Tsvetkov et al. (2003), define this process somewhat differently. Researchers believe that "Taken in its etymological meaning, the word "transformation" means a change, transformation of a certain form, the transition of the latter into some new one with a qualitatively new meaning. Tested in social practice, this word began to be used to denote large-scale transformations of the social organism, which cause the emergence of new qualitative characteristics of society".

Leaving the procedural component outside the scope of this discussion, we will focus on the theoretical and legal analysis of substantive law, which is most fully covered by the Civil Code of Ukraine. Thus, Article 1 of the Civil Code of Ukraine states that "Civil law regulates personal non-property and property relations (civil relations) based on legal equality, free will, and property independence of their participants" (Verkhovna Rada of Ukraine, 2003).

According to Article 2 "Participants of civil relations are individuals and legal entities (hereinafter referred to as individuals), (Part 1), Participants of civil relations are: the state of Ukraine, the Autonomous Republic of Crimea, territorial communities, foreign states and other subjects of public law (Part 2). The comparative analysis of the new and invalid codified acts conducted by the authors reveals the position of the legislator, which is characterized by updated approaches to understanding the tasks of civil legislation.

Thus, Article 1 states, "The Civil Code of the Ukrainian Soviet Socialist Republic" regulates property and related personal non-property relations in order to create the material and technical base of communism and more fully satisfy the material and spiritual needs of citizens. In cases provided for by law, this Code also regulates other personal non-property relations. The basis of property relations in Soviet society is the socialist system of economy and socialist ownership of the means of production. The economic life of the Ukrainian SSR is determined and directed by state plans for economic and social development (Verkhovna Rada of the Ukrainian SSR, 1963). Focusing on the essence of the transformation processes of civil legislation, we note that a significant difference in the legislator's approaches to understanding the tasks of this branch of law compared to the 1963 Code, the 2003 Code does not contain a direct reference to the tasks.

This position of the legislator has led to a well-founded discussion between scientists and practitioners about whether it is possible to identify the tasks and

principles of civil legislation. At present, there is no unambiguous understanding in the approaches to this problem. In modern civil doctrine, general principles are increasingly considered as: a value-normative expression of the tasks of civil legislation. That is, tasks answer the question "for what?", and general principles - "how and on what values?". That is why the principles can be considered as functionalized tasks, implemented in the form of principles. However, in our opinion, the general principles of civil legislation are not tasks of the civil code in the formal-legal sense, but in their functional and value content they act as a way of specifying and implementing the tasks of civil legislation.

In the context of the above, it is appropriate to point out that the Draft Civil Code of Ukraine (Code of Private Law) also does not define the tasks of civil legislation. The legislator decided to adhere to the procedure for forming the tasks of civil legislation specified by the current CCU by outlining the principles of private law (Article 3):

1. Private relations are based on the principles of private law.
2. The principles of private law are: 1) legal equality of subjects of private relations; 2) private autonomy; 3) dispositivity; 4) justice; 5) good faith (bona fides); 6) reasonableness; 7) inadmissibility of arbitrary interference in the sphere of a person's private life; 8) prohibition of unlawful deprivation of property rights; 9) freedom of contract or other transaction; 10) freedom of entrepreneurial activity that is not prohibited by law; 11) prevention of obtaining benefits from one's own unlawful and/or unfair behavior, prohibition of abuse of law; 12) judicial protection of civil rights and/or legitimate interests.
3. The list of principles defined in part two of this article is not exhaustive.

In our opinion, such a position of the legislator seems debatable, since the concepts of "task" and "principles" cannot be replaced in a document aimed at implementing the constitutional principle of the rule of law and other guarantees established as norms of direct action in the Basic Law. To substantiate the author's position, we turn to explanatory dictionaries that will allow us to outline the scope of each of the analyzed terms. At the same time, the comparative analysis of Article 3 of the current Civil Code of Ukraine and Article 3 of the draft Civil Code of Ukraine indicates the transformation and evolution of the general principles of civil legislation. There is a transition from a formal and principled list of principles of civil legislation to a holistic axiological system aimed at implementing the tasks of civil law in the context of modern social challenges, in particular armed

conflict. At the same time, as Spesivtsev (2022) states, "as a rule, the very fact of the existence of civil law or the emergence, development and termination of civil legal relations of a certain type does not affect war as an event. At the same time, war almost always affects civil relations, as well as civil law. Although it should still be recognized that such an influence can be mutual".

Another, currently extremely relevant direction of amendments to civil legislation is its adaptation to force majeure (extraordinary) conditions associated with repelling Russian military aggression (crisis transformation), namely, taking into account such circumstances as war, mass losses, force majeure; impossibility of fulfilling obligations; postponement, restitution, compensation. In the context of the above, we can make a current conclusion about the presence of signs of the transition of civil law to the regime of adaptation to the conditions of objective reality while maintaining a balance between private and public interests.

At this stage, we will abstract from the general analysis of changes in civil law and focus only on the study of those documents that testify to the adaptation and transformation process in the context of countering Russian military aggression against Ukraine. The author's analysis showed that in the period from February 24, 2022 to the present, 38 amendments and additions were made to the Civil Code of Ukraine. The current conclusion from the study of legislative acts that amended the CCU shows that legislative activity during the specified period took place mainly in the following areas:

- systemic renewal and recodification of institutions and principles of civil law;
- unification of private law regulation through synchronization with other codes, including in connection with the loss of validity from 28.08. 2025 by the Commercial Code of Ukraine;
- strengthening the protection of the rights of bona fide purchasers of property;
- digitalization and integration of electronic registers into civil regulation (for example, expanding the range of services in the "DIYA" application) (Bielialov et al., 2023);
- adaptation to the conditions of martial law and restoration of legal certainty (limitation periods);
- expansion of social protection of certain categories (guardianship, guardianship, etc.).

Law enforcement mechanisms in the field of compensation for damages to

individuals and legal entities are provided for by the Resolution of the Cabinet of Ministers of Ukraine No. 365 (Verkhovna Rada of Ukraine, 2024). The purpose of this resolution is to implement the provisions of Resolution CM/Res(2023)3 (Council of Europe, 2023). This document approved:

1. The procedure for submitting applications by individuals for compensation for losses, losses or damage caused by the aggression of the Russian Federation against Ukraine to the Register of damages caused by the aggression of the Russian Federation against Ukraine, by means of the Unified State Web Portal of Electronic Services;
2. The procedure for submitting applications by legal entities and the state of Ukraine for compensation for losses, losses or damage caused by the aggression of the Russian Federation against Ukraine, by means of the Unified State Web Portal of Electronic Services.

The authors' analysis shows that Ukrainian courts increasingly consider claims brought by Ukrainian businesses against the Russian Federation seeking compensation for losses caused by the full-scale invasion (Alekseieva et al., 2023). According to Opendatabot's analysis of Ukrainian court decisions, 639 decisions concerning compensation for war-related losses had been issued since the beginning of the full-scale invasion as of December 2025. Of these, 549 claims (85.9%) were satisfied in full, 87 (13.6%) were satisfied partially, and only three (0.5%) were dismissed. In the frontline regions alone, 311 decisions awarded more than UAH 386 billion in compensation, demonstrating the growing practical significance of judicial mechanisms for protecting property rights affected by Russian aggression (Opendatabot, 2025).

The practical development of this category of disputes is also demonstrated by specific Supreme Court decisions. In its judgment of 14 April 2022 in case No. 308/9708/19, the Civil Court of Cassation held that Ukrainian courts may hear a claim against the Russian Federation for moral damage caused to Ukrainian citizens by armed aggression without requiring the aggressor state's consent to jurisdiction. This approach was reaffirmed and further substantiated in the judgment of 18 May 2022 in case No. 760/17232/20-c (Supreme Court of Ukraine, 2022a; 2022b).

Judges of the Supreme Court of the Civil Court of Cassation stated that the Civil Code of Ukraine is not focused on application for compensation for losses caused as a result of armed aggression, it contains certain algorithms and mecha-

nisms that make it possible to apply it to resolve relevant disputes. These disputes are atypical: the subject of compensation for damage is the aggressor country and only the plaintiff takes an active part in the process. The amount of monetary compensation for moral damage caused to a person as a result of the military aggression of the Russian Federation against Ukraine may vary depending on the circumstances of the moral damage referred to by the plaintiff and the circumstances taken into account by the court when determining the amount of monetary compensation for moral damage Regarding the decisions of foreign courts and the European Court of Human Rights, it is necessary to point out that the problem of recognition and enforcement of decisions of Ukrainian courts on compensation for damage to the Russian Federation in foreign courts, which primarily raise the question of proper notification of the aggressor country about the consideration of the case (Supreme Court of Ukraine, 2026) .

At the same time, it should be noted that court decisions remain unenforced, that is, an illusion of efficiency is created. The reality in this case is that court decisions do not ensure the restoration of the right violated by the aggressor country. This situation is determined by a number of reasons, which, in our opinion, are the lack of access to the debtor's assets; the mechanism of enforcement against a foreign state is actually blocked; there is no universal international compensation fund with real powers. Therefore, there is a gap between the declaratory recognition of the violation and the actual compensation for damage.

A significant problem concerns the practical application of the doctrine of state immunity, under which a foreign state generally enjoys jurisdictional immunity before the courts of another state without its consent and may also enjoy immunity from enforcement. Ukrainian Supreme Court practice concerning damage caused by the Russian Federation has developed a specific exception in the context of armed aggression. In the judgment of 14 April 2022 in case No. 308/9708/19, the Civil Court of Cassation concluded that Ukrainian courts may disregard the Russian Federation's jurisdictional immunity in claims for damage caused to Ukrainian individuals by its armed aggression. The Court further developed this reasoning in the judgments of 18 May 2022 in cases No. 760/17232/20-c and No. 428/11673/19, referring, inter alia, to the territorial-tort exception and to the violation of Ukraine's sovereignty (Supreme Court of Ukraine, 2022a; 2022b; 2022c). This domestic approach concerns jurisdiction before Ukrainian courts; questions of recognition and enforcement abroad remain dependent on the law and immuni-

ty rules applicable in the relevant foreign jurisdiction.

As for the conflict between sovereign immunity and the right to an effective remedy, Article 13 of the European Convention on Human Rights guarantees an effective remedy before a national authority for violations of Convention rights (Counci of Europe, 1950). The Convention is cited here as the primary source for the content of Article 13; questions concerning the compatibility of state immunity with access to a court require separate consideration under the relevant case law and cannot be inferred from Article 13 alone.

However, in the situation of mass war crimes, there is a collision between the classical doctrine of sovereign equality of states and the modern paradigm of the priority of human rights. The problem is that the priority of the provisions on preserving immunity or giving preference to the right of the victim to real protection has not been resolved. Thus, based on the analysis of judicial practice, it was found that the problem of compensation for losses and moral damage caused by the Russian Federation during armed aggression lies not only in jurisdiction, but in the structural crisis of the international mechanism of state responsibility for aggression.

Information available to the general public in open media makes it possible to have information about the state of affairs with the holding of the aggressor country to account for crimes committed against Ukrainian citizens. The courts satisfied the majority of claims for compensation for damage caused by the aggressor country. According to statistics on the consideration of this category of cases, first instance courts made 614 decisions in such cases (of which 366 were civil and 248 were economic decisions); appeal courts made 17 decisions (15 and 2 decisions, respectively). Civil courts fully satisfied 167 claims, commercial courts - 223 claims; 148 and 18 claims were partially satisfied, respectively; 51 and 7 claims were rejected, respectively (Supreme Court of Ukraine, 2026).

In order to ensure the realization of the rights of citizens of Ukraine who have suffered material losses and moral damage from Russian aggression, international mechanisms have been introduced to force the aggressor country to compensate for the damages caused. The first step towards obtaining international reparations was the Register of Damages for Ukraine created in The Hague (2026a). The basis was Resolution CM/Res(2023)3 (Council of Europe, 2023). As of the end of December 2025, the Register had received "100,000 applications submitted by individuals for compensation for damage, loss or harm to health caused by the Russian Fed-

eration's aggression against Ukraine" (Register of Damages for Ukraine, 2026b).

The current conclusion from the above is that the amendments made to the laws are mostly reactive in nature (martial law, financial stabilization, digitalization, compensation mechanisms). The side effects of the law-making process are their dualistic impact on the legal system, since they can be perceived as "fragmentary patches", since they are introduced without a simultaneous revision of the general part, are not provided with a correlation of basic principles, and form special regimes. Such an approach indicates a fragmentary adaptation, not a conceptual modernization. The study of the impact of legislative changes on the systematicity of codification showed that it does not fully coincide with the classical pandect model, since it is characterized by an increase in the number of special norms outside the structure of the Code, the transfer of regulation to special laws, and the strengthening of the role of temporary provisions. This indicates partial decoding, but not a complete loss of systematicity. The general part of the Civil Code continues to perform an integration function, but its regulatory influence is narrowing.

It should be noted that the changes made to the legislation did not result in a departure from the continental tradition. In this case, it is appropriate to talk about hybridization, because the codification model is formally preserved, but the precedent-oriented and principled approach is actually strengthened. Signs of transformation, in our opinion, can be considered strengthening of principles (good faith, fairness, proportionality); expansion of judicial interpretation, in particular through the practice of the Supreme Court (departure from previous court decisions); implementation of the standards of the European Court of Human Rights; growth of the public-law element in private law regulation.

The conceptual conclusion from the above is that the changes are mainly adaptive-fragmentary in nature, there is a tendency towards partial decoding, the classical pandect systematicity is formally preserved, but its regulatory role is gradually weakening, hybridization of the continental model of private law is taking place under the influence of military and European factors.

Discussion

In this article, we will selectively refer to scientific and practical sources that characterize the paradigm of scientific thought in matters of improving civil law at different historical stages. The analysis of scientific approaches to the axiologi-

cal significance of changes in civil legislation in wartime allows us to distinguish three conceptual approaches: conservative, evolutionary and transformational.

Representatives of the conservative approach advocate preserving the systemic integrity of codification. War novellas are considered as temporary measures (lex specialis) that do not affect the fundamental pandect structure of civil legislation. Changes are interpreted as reactive and functionally limited. In fact, it is about adaptation without changing the model, since the emphasis is on the stability of the legal system and its ability to self-renew after the end of the crisis period. War novellas are considered by them as temporary measures (lex specialis) that do not transform the private law model, but only ensure its adaptation to crisis conditions. In this logic, civil law demonstrates stability and the ability to self-renew (Popko, 2023a).

Supporters of the evolutionary approach advocate a gradual modification of the legal system, since such a position involves partial decoding and expansion of principle-oriented regulation. At the same time, they believe that processes are a natural stage in the development of civil law. At the same time, the introduced changes do not deny the continental model, but adapt it to new socio-economic and security conditions. The transformational approach is that the catalyst for a deep restructuring of the private law model is war. Signs of this are: fragmentation of the normative array, the growth of the role of special legislation, the strengthening of the public element in private law constructions, as well as the system-forming role of judicial practice in conditions of normative instability (Kostruba et al., 2020).

Analytical and legal comparison of the system-forming significance of changes introduced into civil legislation in special conditions showed the difference between the approaches, which consists not in recognizing the fact of changes, but in assessing their scale: from adaptation without changing the model - through gradual modernization - to structural transformation (Gafarova, 2023). It is this gradation that allows us to outline the field of modern scientific discussion and determine the theoretical coordinates of further research into the nature of the transformation of civil law in conditions of war.

In terms of theoretical understanding of the nature of transformation, it is necessary to note that this legal phenomenon is considered not as a temporary reaction to the crisis, but as a process that has the potential to form a new configuration of private law. In our opinion, it is appropriate to talk about the dualistic nature of transformation, as evidenced by adaptive anti-crisis changes and a gradual shift

in the systemic parameters of civil law. Under such conditions, there is a partial rejection of the rigid pandect systematicity in the direction of a more principle-oriented and hybrid model with an emphasis on good faith, justice, proportionality, etc., which in a fundamental sense acquire increased regulatory significance. This contributes to the strengthening of the compensatory role of judicial practice, since the boundary between private and public law becomes more flexible and transparent (Popko, 2023b).

In view of the above, we can talk about the formation of a model of crisis-induced structural transformation of private law. In this process, the leading role is assigned to the creation of a legal basis that would meet the requirements of legal certainty, duration and consistency, since the catalyst for changing the balance between the private and public elements was Russia's military aggression against Ukraine. This approach contributed to the strengthening of the regulatory role of the state, the introduction of special regimes of property, liability, and the fulfillment of obligations, and also caused the need to change the vector of public-legal influences in the sphere of traditionally private-law relations.

According to Kuznetsova (2012) "The formation of Ukrainian law, in particular civil law, takes place in the context of the formation of new conceptual approaches, conditioned by the processes of world and European globalization. For private law, the ideas of European integration are implemented primarily through the process of harmonization. The developers of the current Civil Code took these European realities into account even at the stage of preparing its draft in the late 1990s". We believe that harmonization should not take the form of mechanical borrowing of structures. We proceed from the fact that Ukrainian private law has a rich historical, doctrinal and powerful systemic basis. Therefore, in our opinion, we need to talk about the dialogue of legal systems while preserving the internal logic of codification, and not only about adapting legislation to the requirements of the European Union.

Kot (2025) as a supporter of the evolutionary approach, points out that "At the present stage, the process of updating civil legislation is ongoing, which includes, among other things, the need for a comprehensive reform of all books of the Civil Code of Ukraine… Such updating should be correlated with the European integration vector of the development of our state, which involves a gradual approach to European values and norms, in particular, in terms of adapting domestic civil legislation to EU legislation. Khomyuk (2015) notes that "Legal reform is a pro-

cess of updating a legal phenomenon, aimed at its change and improvement. At the same time, legal modification is a change, improvement, adaptation to the requirements of modernity, which can be observed both in the process of reform and transformation"

A generalized paradigm of the cyclical development of a social phenomenon, which is law as such, is presented by Burlachuk et al. (2004). Scientists note that "The modern world is changing rapidly, the features of the present are strikingly contrasting with those of yesterday. Since the time of Heraclitus, these statements have probably seemed almost axiomatic banality for all eras, cultures and civilizations, but the everyday experience of our contemporaries, who are eyewitnesses to numerous changes, proves their correctness". Kryvytskyi (2022) points out that "Legal development as a type of social development (genesis) encompasses all qualitative and quantitative; substantive and formal; progressive and regressive; rational and irrational; regular, random and tendentious changes (formation, transformation, functioning, degradation, decline, etc.) of legal phenomena and processes in legal life and occurs in various forms".

Kuznetsova (2021) emphasizes the foundational role of private law in protecting equality, private property, and individual rights and freedoms. For the purposes of this study, the relevant concepts should be distinguished functionally rather than treated as synonyms: transformation denotes the overarching structural, functional and axiological change of the private-law system, while reform denotes deliberately initiated legislative change directed toward specified policy and legal objectives.

Within that hierarchy, recodification is a particularly deep form of reform that restructures a codified act and may reconsider its institutions and conceptual model. Modification, by contrast, denotes a limited adjustment of individual rules or institutions that does not itself alter the conceptual architecture of codification.

Accordingly, the analytical sequence used in this article is concise: transformation is the broader systemic process; reform is an instrument through which transformation may be pursued; recodification is a systemic form of reform; and modification is a narrower, point-specific adjustment. This distinction helps evaluate whether wartime changes to Ukrainian civil legislation remain adaptive and fragmentary or cumulatively produce a deeper structural shift in the private-law model.

Another trigger for the fact that changes in civil law are timely is the task of

ensuring that the state, represented by authorized bodies, implements constitutional guarantees that relate to personal property and non-property rights of a person. That is why we draw attention to the need to abandon in the new Civil Code the use of concepts that, according to their content, cannot unambiguously formulate the purpose for which they were introduced into this codified act. We are talking about the expediency of clarifying the fundamental formulations, namely, to unambiguously define the tasks of this codified act. In the presented version of the draft law, there are no tasks at all. Instead, the principles of private law are indicated. Such a substitution of concepts leads to differences of opinion regarding the formalized tasks of civil law. In substantiation of the author's position on this issue, we cite as an example the formulation of the tasks of the Criminal Code of Ukraine, where Part 1 of Article 1 states, "The Criminal Code of Ukraine has as its task the legal provision of protection of human and citizen rights and freedoms, property, public order and public safety, the environment, the constitutional order of Ukraine from criminal and unlawful encroachments, ensuring peace and security of humanity, as well as the prevention of criminal offenses" (Verkhovna Rada of Ukraine, 2001).

The analyzed sources and the conclusions drawn on their basis have acquired an interdisciplinary character. This is explained by the dialectical connection of civil law with other branches of law, as well as by the fact that the theory and practice of applying legal protection instruments mutually complement each other and provide an understanding of the essence of human rights processes. This confirms the possibility of applying the derived author's judgments in further scientific research and in practical legal activity. Taking into account the peculiarities of the military regime, the expressed judgments and conclusions can serve as a basis for developing new approaches to resolving problematic issues related to the application of legal protection mechanisms of private law within the framework of constitutional guarantees of the rule of law and the recognition of the individual as the highest social value of the state.

The theoretical-legal and logical-legal assessment of the state of ensuring the protection of private law, as well as the analytical-legal analysis of the regulatory framework and judicial practice carried out by the authors, contributed to a more complete understanding of the effectiveness of law-enforcing and law-restoring measures aimed at protecting violated rights in their broad sense. This material may also be used as a basis for preparing academic courses focused on the practi-

cal mastery of civil law and related branches of law. The author's conclusions and theoretical generalizations can be considered as a foundation for the development of new scientific approaches to understanding the role and significance of civil law as a regulator of social relations, as well as for further improvement in legislative drafting and law-enforcement practice.

Conclusions

Russian military aggression has accelerated the need to implement profound changes in the civil legislation of Ukraine. Despite the fact that they are not systemic in the full sense of the term, their importance cannot be overestimated. We draw this conclusion from the results of the authors' analysis of regulatory acts and scientific sources on this issue. The amendments and additions to the Civil Code of Ukraine from January 2022 to December 2025 ensured adaptation to martial law (e.g., extension of limitation periods), enhanced protection for bona fide purchasers, enabled digitalized access to services, supported systematic renewal and transformation of civil law institutions, promoted unification of private law, and strengthened social protection for vulnerable groups. These changes contributed to a modern understanding of legal protection, a comprehensive system for safeguarding private-law subjects, and greater legal certainty. It is proven that the transformation of civil law is manifested in the change of its value orientations, functional purpose, principled structure and mechanisms of law enforcement, which is due to both European integration and extraordinary conditions of armed aggression.

A structural shift in the private law model of Ukraine is noted, but this does not negate the predominantly adaptive and fragmentary character of many individual wartime measures identified in the analysis. Rather, the cumulative effect of these measures may extend beyond point adaptation: the balance between private autonomy and public interest has changed, fragmentation of the codified system has increased, tort and compensation mechanisms have expanded, approaches to state immunity in Ukrainian judicial practice have evolved, and the digitalization of legal relations is accelerating. At the same time, the European integration vector continues to shape the development of the private-law sphere.

Regarding the systematicity, decoding and the role of judicial practice, it should be noted that there are tendencies towards partial decoding and fragmen-

tary adaptation, which requires a deeper analysis of its consequences for the internal consistency of civil legislation. At the same time, it is important that there is a risk of imbalance between the stability of codification and the dynamics of special regulation, temporary special norms (lex specialis of the war period) sometimes compete with basic principles, and conditions are created for the parallel existence of general norms and temporary regimes. Thus, the process of decoding does not mean the complete destruction of systematicity, but transforms it: from formally codified to more flexible, fundamentally and judicially supported.

The final conclusion and novelty of this study is that it provides a doctrinal assessment of the effectiveness of legal instruments, including legislative measures introduced from February 24, 2022 through the study period, in protecting and restoring private rights affected by armed aggression. The analysis relies primarily on legislation, official institutional materials and judicial decisions; journalistic materials are used only as supplementary contextual sources and are expressly distinguished from official statistics. Particular attention is paid to compensation for material and moral damage and to the evolving judicial treatment of state immunity in claims arising from the Russian Federation's aggression.

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Administrative and Legal Guarantees of the Rights of Military Personnel and War Veterans

by Vladyslav Mekheda [1], Valerii Vlasenko [2],
Yuliia Lisovska [3], Olha Pasechnik [4]

Abstract. In light of the long-term armed aggression against Ukraine, ensuring administrative and legal guarantees of the rights of military personnel and war veterans has become especially important, since the state's ability to defend itself directly depends on the degree of their legal and social protection. However, the current legal framework remains fragmented and largely outdated. There is no codified law; the concept of "social protection of family members of military personnel" has not been established, and new categories of defenders are not fully covered. The state has already taken measures to improve this sector by introducing new concepts and methods, as well as developing the Ministry of Veterans Affairs and digital services such as "E-veteran". This requires a thorough scientific study of the current legal system to identify weaknesses and propose improvements. The purpose of the study is to assess the administrative and legal guarantees of the rights of military personnel and veterans, identify legal conflicts, and develop ideas for strengthening the legal regulation of this area in Ukraine. The scientific uniqueness of the study lies in the functional model of administrative and legal guarantees (at normative, procedural, institutional, digital, and supervisory levels) and in the identification of systemic shortcomings in their implementation. To identify legislative gaps and shortcomings in implementation, as well as to justify specific legislative changes, the study uses doctrinal legal analysis, components of legislative content analysis, and an assessment of case-specific jurisprudence.

1 Deputy Head, PhD in Law, Military Institute of Armored Forces of National Technical University "Kharkiv Polytechnic, 61034, 192 Poltavskyy Shlyakh Str., Kharkiv, Ukraine, https://orcid.org/0000-0002-2160-3738, vladyslav_mekheda@edu-iosa.org.

2 Associate Professor, PhD in Law, National Academy of Internal Affairs, 03035, 1 Solomianska Sq., Kyiv, Ukrain, https://orcid.org/0000-0002-1287-9732, vlasenko.v@navs.edu.ua.

3 Associate Professor, PhD in Law, Interregional Academy of Personnel Management, 03039, 2 Frometivska Str., Kyiv, Ukraine, https://orcid.org/0000-0001-9278-4487, ivsd@i.ua.

4 Judge, PhD in Law, Kharkiv Circuit Administrative Court, 61700, 6 Maidan Svobody Sq., Kharkiv, Ukraine, pasechnik1202@gmail.com.

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Introduction

In view of the ongoing armed attack on Ukraine, it is essential to ensure administrative and legal guarantees of the rights of military personnel and veterans of hostilities. The State's defense capability and its readiness to perform official tasks in situations of increased risk to life and health directly depend on the level of legal and social protection afforded to military personnel, who are an essential component of the national security system. Laws of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991) and "On Status of War Veterans, Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1993) provide a legal and regulatory basis for social and legal protection.

However, the current system remains fragmented and partially outdated: individual guarantees are mainly declarative in nature, there is no codified regulation, no legal definition of the concept of "social protection of family members of military personnel" is formulated, and the new categories of defenders that arose as a result of modern war are not fully covered. Initiatives of the Ministry of Veterans Affairs, the Concept and Strategy of State Policy on Veterans, and digital services such as "E-veteran" are all examples of how the State simultaneously updates its policy in this area. This requires full scientific substantiation of the administrative and legal guarantees of the rights of military personnel and veterans, identification of gaps and conflicts, and substantiation of directions for strengthening state policy.

For terminological consistency, this study operates with the following terminology: military personnel is used as the general term for persons currently performing military service; war veteran stands for the statutory category of a participant in hostilities governed by the Law of Ukraine "On Status of War Veterans, Guarantees of Their Social Protection"; serviceman is retained only in the official English titles or wording of Ukrainian legal acts.

The three scientific innovations of the study are as follows:

(1) a functional model of administrative-legal guarantees (normative-procedural-institutional-digital-level of supervision) is proposed, which allows distinguishing between declarative and enforceable guarantees;

(2) periodic failures in implementation are systematized based on official complaint/case statistics and selected case law;

(3) specific mechanisms for legislative integration are developed including the inclusion of the concept of "social and legal protection of family members of military personnel" and the logic of codification.

Several scientists studied the legal guarantees for military personnel. Bortniak and Makarova (2024) examined the relationship between the concepts of "security" and "protection" in veterans' rights and substantiated the need for comprehensive protection, including active protection, as well as identified the key features of veteran status and the need for state support. Mashika (2023) investigated the impact of humanization on the constitutional and legal guarantees of military personnel, emphasizing the need to strengthen regulatory mechanisms and implement special procedures to ensure fair service conditions. Sivkov (2025) focused on veterans' economic reintegration and proposed a comprehensive approach combining legal safeguards, retraining, entrepreneurship support, and international experience. Stender et al. (2024) and Riabchuk (2025) highlighted areas for improvement in the administrative and legal provision of health care under martial law, stressing the need for further reforms, the strengthening of military medical doctrine, and the development of digital tools.

The purpose of this study is to conduct a thorough analysis of administrative and legal guarantees of the rights of military personnel and war veterans in Ukraine, to identify any gaps or conflicts in the current legislation and methods of its application, as well as to develop scientifically based recommendations for improving the system of state policy and legal and regulatory regulation of their social and legal protection.

Materials and Methods

Various methods were used to conduct a thorough study of the administrative and legal protection of the rights of military personnel and veterans. These methods enabled a more detailed analysis of legislative acts, the identification of shortcomings in the current legal framework, and the formulation of proposals to improve it. Several methods were used in the study to scrutinize the circumstances.

The empirical basis of the study consists of the following: (a) a targeted study

of specific court decisions related to social guarantees of military personnel (including disagreements regarding one-time payments, recalculation of pensions and issues related to medical commissions); (b) official data on complaints regarding the rights of military personnel submitted to the Ukrainian Parliament Commissioner for Human Rights; and (c) publicly available statistics on the number and types of lawsuits regarding military pensions. With these sources, procedural bottlenecks and repetitive patterns of violations were identified.

The first stage was the study of current legal acts regulating the social protection of military personnel and veterans, as well as the synthesis of alternative methods of their implementation in modern conditions. These techniques have enabled both the explanation of the main legal procedures and the identification of any shortcomings encountered during actual implementation. For example, the abuse of the rights of military personnel was evaluated, based on which contradictions in the legislation or problems with its application in practice were revealed.

Induction was actively used to create conclusions and proposals based on real events. This approach enabled generalization of the problems of the legal system and identification of the main reasons hindering the effective exercise of their rights by military personnel, based on specific cases, such as appeals by military personnel to state bodies or court decisions. To create proposals for improving the system, deduction also helped formulate general principles based on the requirements of the Constitution of Ukraine and other normative legal acts. The dialectical method enabled us to account for changes in the country during the conflict, as well as the interactions among political, social, and legal elements. It was used to identify significant modifications that would allow us to adapt the system to new realities and to assess how new issues affected the development of legal safeguards for veterans and military personnel.

The comparative method was drawn to compare the Ukrainian protection system with selected foreign models and relevant European and international standards. Poland and Lithuania were selected as EU and NATO states in Central and Eastern Europe with security environments and post-service reintegration needs that offer regionally relevant benchmarks for Ukraine; Israel was selected because of its long-standing institutional framework for supporting persons affected by military service in a sustained security context; and the United States was included as an example of a mature, specialized veterans' benefits and reinte-

gration system. The jurisdictions were therefore selected purposively to represent regional comparators and established institutional models rather than as a statistically representative sample. This approach made it possible to identify transferable institutional and procedural features while taking account of differences in legal systems and funding models. Abstraction and generalization served as tools for identifying the main trends and patterns in the social protection of military personnel and war veterans. Thus, the combination of theoretical and empirical methods enabled a structured assessment of administrative and legal guarantees and the formulation of proposals for improving their regulation in Ukraine.

Results

The Verkhovna Rada of Ukraine has ratified international normative legal acts, and national normative legal acts based on the principles of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) are the basis of the country's legal system for social and legal protection of military personnel and their families. Administrative and legal guarantees for research purposes are organized at five functional levels, since the analysis shows that the current guarantee system is fragmented:

(1) regulatory guarantees (laws and by-laws defining rights and benefits);
(2) procedural guarantees (administrative procedures for obtaining benefits, benefits, rehabilitation and recognition of status);
(3) institutional guarantees (competences and coordination of public bodies);
(4) digital safeguards (electronic services and registries providing access and reducing bureaucracy);
(5) oversight and legal protection safeguards (complaint mechanisms and judicial protection).

With this concept, declaratory safeguards can be distinguished from those underpinned by institutional responsibility and enforcement processes. The State's duty to provide social support for military personnel and their families is established by constitutional guarantees (Article 17). However, the study indicates that the principal vulnerabilities lie at the procedural and institutional levels, where fragmented regulation leads to uneven implementation rather than at the constitutional level.

The main legislative act establishing the administrative and legal basis of social protection of military personnel and their family members is the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991). This law defines social protection of military personnel as an activity (function) of the state aimed at creating a system of legal and social guarantees that guarantee the realization of constitutional rights and freedoms, meeting the material and spiritual needs of military personnel in accordance with the specifics of their official activities, their status in society and maintaining social stability in the military environment. This right ensures their provision in situations such as old age, unemployment due to uncontrollable circumstances, loss of a breadwinner, total, partial, or temporary disability, and other legally defined circumstances (Bortniak & Makarova, 2024).

However, the scope of the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991) does not include persons belonging to the category of military service veterans (war veterans). This phrase is used in the Law of Ukraine "On Status of War Veterans, Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1993), which defines war veterans as those who participated in the defense of the Motherland or in conflicts on the territory of other states.

Thus, it seems necessary, under the conditions of martial law in Ukraine, to amend the following laws and to improve the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991) to expand its scope of application to war veterans. The main conclusion of the analysis at the normative level is that there are two distinct legal regimes (military personnel and war veterans) that differ in definitions, eligibility requirements, and administrative processes. In the context of new categories of defenders, this duality creates legal confusion and places the burden of explanation on courts and administrative authorities.

Systemic problems in ensuring the social and legal protection of military personnel are confirmed by official monitoring data. According to the Ukrainian Parliament Commissioner for Human Rights, more than 5,000 appeals concerning the rights of military personnel, persons liable for military service, personnel of the security and defense sector, and members of their families were received in 2023. More than 30% of these appeals concerned discharge from military service, 20% concerned financial support, 16% concerned military medical examinations

and access to medical services, and 14% concerned the conditions and procedures of military service (Ukrainian Parliament Commissioner for Human Rights, 2024). In 2024, the Commissioner received more than 6,800 appeals concerning persons liable for military service, military personnel, law-enforcement officers, and members of their families, as well as more than 1,200 appeals from veterans and members of their families. More than 3,300 appeals concerned the observance of rights during mobilization. Approximately 90% of the appeals resulted in explanations or assistance in exercising the applicants' rights, while fewer than 10% required formal intervention by the Commissioner; citizens' rights were restored in 1,064 cases (Ukrainian Parliament Commissioner for Human Rights, 2025). These data demonstrate that difficulties in the implementation of statutory guarantees persist primarily at the procedural and administrative levels, particularly in relation to discharge from service, financial support, military medical examinations, and mobilization procedures.

Since the performance of high-risk duties and special conditions of service lead to the restriction of certain civil rights, such as freedom of movement and free choice of residence, as well as other rights in accordance with the Constitution of Ukraine, the primary purpose of social protection of military personnel is to provide comprehensive support to military personnel and their family members. The creation of a system of legal and social guarantees should be understood as the legislative consolidation of specific political, socio-economic, and legal conditions necessary to guarantee civil rights, as well as practical organizational actions of the state aimed at their actual creation. Social protection of military personnel and their family members in Ukraine should be considered a system comprising two components: humanitarian-legal and material-household (Shatilo et al., 2023; Dobrenka et al., 2025).

At the material level, guarantees cover both material (payment, housing, medical assistance) and intangible (status-related assistance, procedural and legal assistance) rights (Alekseieva et al., 2023). The scope of such guarantees under martial law is described in the existing study. However, the study's results show that the crucial disadvantage lies in institutional coordination and access procedures, rather than the claimed range of payments (Trufanova & Maika, 2023).

Ukraine is actively updating the legal framework for the social and legal protection of military personnel and veterans to address the problems that have arisen. It was noted that the fundamental legislative acts in this area, "On Social and

Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991) and "On Status of War Veterans, Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1993), need to be updated.

Full-scale war has exposed the shortcomings of the current system: the legal framework is outdated, government obligations (such as housing support) have often remained declaratory, and the definition of "war veteran" is archaic and fails to account for modern realities. The concept of public policy for veterans and their family members was developed in 2023 by several specialized public organizations, including "Legal Hundred", "Princip", "Veteran Hub", "Veteran", and others. She focused on three main issues of current legislation: outdated reintegration methods, the impracticality of many social guarantees, and the ambiguous definition of the circle of veterans (Turlakova, 2025).

The authorities considered this proposal. Cabinet of Ministers of Ukraine (2024) adopted the State Policy Strategy for Veterans until 2030 and its implementation plan in 2024-2027. At the institutional level, the Ministry of Veterans Affairs of Ukraine develops and implements state policy in this area and coordinates veteran-support reforms (Kostiuk et al., 2025).

The study of judicial practice regarding the observance of rights to ensure social protection for military personnel identifies several problems that prevent the implementation of legislative guarantees. While military personnel are legally and State-sponsored with a special social status with various rights, benefits, compensation, and guarantees, in practice, they are unable to ensure their full implementation owing to the lack of the necessary economic base, sufficient financial resources, and clearly defined mechanisms for the implementation of guarantees (Varava & Cherevatiuk, 2025).

Court practice is additional evidence of systemic shortcomings in the administrative implementation of social guarantees. Military personnel submit thousands of applications regarding the recalculation of pensions, continued payments of combat financial support, one-time compensation for injury or death, and disagreements with decisions of the military medical commission. The Supreme Court has repeatedly emphasized that troops are forced to rely on judicial protection as the primary mechanism when administrative authorities fail to ensure the timely and lawful implementation of safeguards. This demonstrates that litigation has evolved from an unusual remedy to a systematic substitute for effective ad-

ministrative processes (Kropyvnytskyi, 2024).

The effectiveness of monitoring systems and attempts to protect the rights of military personnel are hampered by several problems. The first issue to be addressed is that the morale and performance of military personnel may be affected if their rights to leave or medical treatment are violated. In view of the above, the case No. 3-192/2020 (465/20) on the constitutional complaint of Serhiy Oleksiyovych Polishchuk regarding the constitutionality of paragraph 4 of Article 16-3 of the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Constitutional Court of Ukraine, 2022) deserves special attention.

"If, within two years, a serviceman, conscript, or reservist is assigned another disability group or a higher disability percentage after the initial determination of disability or the degree of disability without establishing disability during the re-examination, which gives the right to a one-time cash benefit in a larger amount, the payment is made taking into account the previously paid amount. In the event of a change in the disability group, its causes, or the degree of disability within more than two years after the initial establishment of disability, the payment of a one-time cash benefit in connection with the changes that have occurred should not be provided for" (Constitutional Court of Ukraine, 2022).

The cited clause, which limits military personnel's right to receive a lump-sum payment for two years, violates the principles of social protection and equality before the law. Such a law does not offer fair and adequate social protection for soldiers and persons released from military service, as it introduces discriminatory conditions that narrow the scope and content of existing rights. During periods of armed conflict, when social and military insecurity increases, such restrictions may worsen their financial situation (Duliba, 2023; Zgoliński, 2024)

Veterans may lose confidence in the state, social friction may increase, and social conflict may become more likely due to inadequate care. As a result, a decline in trust in state bodies responsible for protecting the rights of military personnel can lead to social conflicts and destabilization within the military. This underlines the importance of effective methods of responding to violations of the rights of military personnel (Moskvych, 2024).

The state has significantly expanded the scope of social guarantees for service members, veterans, and relatives of those killed in the context of Russian aggres-

sion. The family of the deceased defender receives 15 million hryvnias, which is a significant increase in the one-time financial assistance in the event of the death of a serviceman, according to the legislative changes of 2022. The state guarantees this right, which is codified in Article 16² of the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families". Insurance payments in the event of an accident or incapacity of military personnel have also been increased, depending on the group created; compensation can range from 400 thousand to 1.2 million hryvnias (Zubrytskyi & Hanechko, 2025).

In addition to direct payments, the government approved additional combat allowances for active army personnel (for example, 100,000 hryvnias per month for advanced units and one-time incentives for combat missions). Taking into account the specific circumstances of the service, labor legislation, and social vacations for military personnel, these are also actively considered. Therefore, the State works to ensure, in practice, the constitutional right of defenders to social security, even under martial law, supporting it with financial guarantees regardless of the State of the economy (Sytnyk et al., 2022; Mazurenko, 2023).

The new categories of defenders that emerged during the Russian-Ukrainian war must eventually be included in the legislation. In particular, the official status of combatants and the right to appropriate rewards were granted to volunteers of the territorial defense forces and volunteer formations who participated in hostilities from the very beginning of the invasion (Mashika, 2023). In addition, the State promises social assistance not only to the personnel of the Armed Forces, but also to soldiers of other security forces, volunteers, and reservists who were involved in the defense of the country (Kortukova, et al., 2023).

Ultimately, it is essential to note that the international community supports efforts to improve the social protection system for veterans and military personnel. The European Social Charter, the International Covenant on Economic, Social, and Cultural Rights, and other international agreements serve as a compass for Ukraine. Joint initiatives with the EU and the Council of Europe are underway to enhance the State's ability to protect the rights of military personnel and their families. Such cooperation enables harmonization of Ukrainian legislation with European legislation and ensures the long-term viability of the system of social and legal guarantees.

The analysis of the current legislation of Ukraine allows us to show that cur-

rently, there is no definition of the concept of "social protection of family members of military personnel" in the normative acts of Ukraine. In particular, the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Verkhovna Rada of Ukraine, 1991) states that the State guarantees military personnel and members of their families social and legal protection in accordance with the laws and regulations adopted in this regard.

However, it is difficult to accurately describe the administrative and legal support of this group, since such a legislative position cannot be recognized as a normative definition of the phrase "social protection of family members of military personnel". To fully protect the rights of military personnel and veterans, Ukraine is simultaneously reviewing the administrative systems for providing social assistance. The development of digital services that simplify communication between the State and veterans is a significant step forward. Since 2023, a single digital portal, "E-veteran", has been operating, providing information on all benefits and services available to veterans, their family members, and the relatives of the deceased (Matros, 2025).

The digitalization of veteran services has also expanded access to status confirmation and administrative support. In 2024, the "E-veteran" ecosystem was supplemented by online tools for accessing veteran-support services and obtaining information about available guarantees. To avoid conflating informational visits with verified service uptake, this study does not treat website-use estimates as equivalent to the number of beneficiaries.

A designated veteran-support specialist can accompany a veteran after an application and assist with documentation, rehabilitation, employment, and access to benefits. Separately, the Ministry of Veterans Affairs reported in 2024 that more than 300,000 people were already using the electronic Veteran ID available through the Diia application; this figure concerns use of the electronic certificate rather than use of the "E-veteran" information portal (Ministry of Veterans Affairs of Ukraine, 2024). The distinction is important because the two digital instruments perform different administrative functions.

Special emphasis is placed on psychological healing and care. On November 29, 2022, the government passed Resolution No. 1338 (Cabinet of Ministers of Ukraine, 2022), which created a system to provide free psychological support to veterans, their families, and other designated groups. This system received

further development: since December 2023, the Register of providers of psychological services for veterans, related to the "E-veteran" platform, has been operating. Since 2024, the State has developed a three-level system of psychiatric care for veterans and their families. The first level is basic social and psychological assistance and support. Specialized psychological rehabilitation and therapy are provided at the second and third levels.

The State provides funding for these programmes. It is essential to emphasize the set of measures (legal, organizational, psychological, economic, educational, medical, and rehabilitation) that should be established, with consideration of the needs of military personnel and their family members. It is also proposed to take into account the social protection of military personnel and their family members from the point of view of social security, to actualize the problem of state guarantee of a flexible system of social protection, to create and implement a new model of social insurance, and to protect the labor and intellectual potential of a person (Bondarenko et al., 2022; Nanieva, 2025).

Therefore, it is proposed to include the term "social and legal protection of family members of military personnel" in the current legislation. This refers to the State's efforts to establish a system of social and legal guarantees that ensure the exercise of constitutional rights and freedoms and meet the material and spiritual needs of military personnel, in accordance with their unique legal position in society.

In addition, it guarantees members of the families of military personnel the right to social security in case of total, partial, or temporary incapacity for work, loss of breadwinner, unemployment due to uncontrolled circumstances, old age, and other legally defined situations. It is also worth defining the characteristic features of the protection of family members of military personnel, namely: taking into account the conditions and situations that contribute to the emergence of legal facts for the implementation of "social protection of family members of military personnel"; the presence of special legislation that defines the features of social protection of this category of persons; state policy on social protection of military personnel should also take into account the social protection of their family members; this social protection includes benefits, guarantees, as well as other types of material support (Nanieva, 2025).

It is essential to address the lack of a codified act in the field of legislative regulation of social protection rights, which would allow the State to both un-

derscore its commitment to this constitutional right and address several alarming issues that have accumulated in Ukraine over many years. It is important to remember that legislation on social protection for military personnel and their families is constantly evolving and improving, while the number of regulatory acts in this area is also increasing.

A three-tier strategy could be used to implement the proposed changes to the law. First, the framework law "On Status of War Veterans, Guarantees of Their Social Protection" should contain cross-references to industry legislation, agreed definitions and eligibility requirements at the codification level. Secondly, at the level of sectoral changes, the Law "On Social and Legal Protection of Servicemen and Members of Their Families" should define "social and legal protection of family members of servicemen" and harmonise it with the Law "On Status of War Veterans, Guarantees of Their Social Protection". Thirdly, the Cabinet of Ministers of Ukraine should establish uniform administrative processes (standardised evidentiary requirements, deadlines, and channels of appeal) and ensure that the "E-veteran" ecosystem supports their digital implementation.

A comparative study of the purposively selected jurisdictions reveals different strategies for ensuring adequate protection for military personnel and veterans. Poland and Lithuania provide regionally relevant examples of long-term reintegration and institutional support within EU and NATO settings; the United States illustrates a mature specialized benefits system combining disability compensation, education, housing, and reintegration instruments; and Israel provides an example of sustained institutional support for wounded and demobilized personnel in a prolonged security environment. These jurisdictions are used as functional benchmarks rather than as directly transplantable models. For Ukraine, the comparative lesson is that effective protection depends on coherent legislation, stable institutional responsibility, predictable funding, and accessible administrative procedures rather than on a dispersed set of guarantees (Organisation for Economic Co-operation and Development, 2023).

After the introduction of martial law in Ukraine, numerous changes were made to laws and other normative legal acts. It is important to remember that the number of these changes does not necessarily indicate the existence of comprehensive social protection. An analysis of the regulations governing social protection for members of the armed forces and their families shows that they are not always systematized or properly organized. For example, different pieces of

legislation with different legal force can only partially regulate the same type of social protection, defining separate parts of its essence (Kostruba, 2023). It is therefore crucial to study constantly and methodically a wide range of regulations, such as laws, regulations, instructions, etc., with a view to understanding legal norms, their full definition, their content, scope, size, and procedures for implementing a specific type of social protection for military personnel and their families (Pohosian, 2023).

This circumstance demonstrates the absence of a holistic strategy for the legislative and administrative regulation of social protection for military personnel and their families. Ukraine currently desperately needs a single legislative act to establish unified, mutually acceptable norms and principles for a system of social and legal protection for military personnel and their families. Despite the importance of adopting laws and regulations that provide military personnel and their families with adequate social and legal protection, many problems remain unresolved. Thus, despite the expansion of regulatory rights, the data show that the main shortcomings are located at the procedural and institutional level of guarantees, which explains the growing number of complaints and lawsuits.

Discussion

To ensure proper social protection for military personnel and veterans, it is essential to consider both current problems and earlier implemented practical solutions. One of the most important was the Constitutional Court of Ukraine's abolition of the discriminatory restriction on receiving one-time assistance after two years. The decision adopted on April 6, 2022, recognized the norms of Article 163 of the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families", as invalid. This decision ended the legal dispute and restored justice for military personnel, in particular for wounded soldiers who needed a higher group and were crippled for an extended period (Riadinska & Epel, 2023).

Correction methods are quickly replacing preventive administrative safeguards, as shown by complaint and litigation data in section "Results". Interpretation of these indicators and description of institutional responses to coordination and procedural weaknesses are the main topics of this discussion. To address this problem, it is crucial to strengthen cooperation among the various public author-

ities. For example, the lack of a single information space for exchanging data on conscripts and conscription leads to errors and duplication of functions, hindering service provision. Implementing a single digital database will minimize bureaucracy, improve the processing of requests, and speed up the payment of social services (Riabchuk, 2025).

Among the steps taken to strengthen the social protection of military personnel are legal reforms, including Law No. 10313 (Press Service of the Verkhovna Rada of Ukraine, 2024), which expanded a number of social guarantees. A further institutional milestone was the adoption of the Law of Ukraine "On the Military Ombudsman" No. 4603-IX of 17 September 2025, which entered into force on 24 January 2026 and defines the Military Ombudsman as an official through whom the President exercises democratic civilian control over compliance with the rights of military personnel and other specified categories in the security and defence sector (Verkhovna Rada of Ukraine, 2025). The organizational framework of the Office was additionally established by Presidential Decree No. 691/2025 of 19 September 2025.

Under this legal framework, the Military Ombudsman is empowered to receive and examine complaints and to exercise oversight functions concerning observance of the rights of persons covered by the Law. This mechanism complements, rather than replaces, judicial protection and the mandate of the Ukrainian Parliament Commissioner for Human Rights. Another critical issue is raising the legal awareness of military personnel and war veterans. Online resources and educational initiatives, including the "E-veteran" ecosystem, can reduce information barriers by consolidating information on benefits and administrative services (Sivkov, 2025).

Despite advances in legislation and public policy, difficulties with administrative procedures and inter-agency cooperation remain significant. Closer coordination is particularly required among the Ministry of Veterans Affairs, the Ministry of Defence and its subordinate military units, military medical commissions, the Pension Fund of Ukraine, social-protection authorities, and local state and self-government bodies that administer status recognition, medical documentation, pensions, payments, rehabilitation, and local services. Interoperable registries, standardized evidentiary requirements, defined deadlines, and clear referral rules between these authorities would reduce duplication and the need for applicants to submit the same information repeatedly. Improving such coordination

and reducing bureaucratic obstacles are essential to the effective implementation of the rights of military personnel and war veterans.

The study has several limitations. It is based primarily on doctrinal legal analysis, selected case law, and publicly available administrative data; consequently, it does not measure the prevalence of rights violations among all military personnel or war veterans, and the selected judicial decisions cannot be treated as a statistically representative sample. Official datasets also use changing or partly overlapping categories, which limits direct year-to-year comparison. The comparative analysis is purposive and functional rather than exhaustive and does not provide a full country-by-country review of benefit levels or institutional performance. Future research should combine systematic coding of a larger body of case law with administrative microdata and interviews with veterans, military personnel, family members, and public authorities to evaluate how the proposed guarantees operate in practice.

Conclusion

Three key findings emerge from the investigation. First, there is legal ambiguity regarding the new categories of defenders and their families, as the existing system of administrative and legal guarantees is fragmented and operates through two poorly connected legal regimes (military personnel versus war veterans). Secondly, empirical indicators (trial and complaint data) show that remedial measures are gradually replacing preventive administrative safeguards, suggesting insufficient inter-agency cooperation and procedural obstacles. Thirdly, the report proposes a functional model of safeguards and a legislative integration pathway that combines sectoral reforms, codification, and uniform administrative processes, supported by digital services, to address these gaps.

Despite regulations such as laws of Ukraine “On Social and Legal Protection of Servicemen and Members of Their Families” and “On Status of War Veterans, Guarantees of Their Social Protection”, the existing protection system leaves a number of key gaps, preventing the effective exercise of rights. One major problem is the lack of codification in legislation, as well as the insufficient coverage of new types of defenders, such as territorial defence volunteers. It is necessary to clarify and expand the term “social protection of family members of military personnel”, which is still absent in the current legislation.

At the same time, state measures to strengthen social protection have made significant progress. The state's willingness to improve the protection system for military personnel and veterans is demonstrated by the adoption of new laws, such as Law No. 10313, which enhances social guarantees for military personnel, and by the creation of organizations, such as the Military Ombudsman. Defenders have better access to information and services thanks to digitalization, especially the "E-veteran" platform.

Despite these achievements, significant problems remain in the practical implementation of the rights of military personnel and war veterans, particularly because responsibilities are distributed among several authorities and procedures are not always interoperable. Priority should therefore be given to formal coordination among the Ministry of Veterans Affairs, the Ministry of Defence, military medical commissions, the Pension Fund of Ukraine, social-protection bodies, and local authorities, with common evidentiary standards, data-exchange rules, processing deadlines, and clearly designated channels of appeal. Such measures would reduce payment delays, repetitive document requests, and avoidable recourse to litigation.

This will provide greater legal clarity and remove bureaucratic obstacles. In addition, it is vital to support the implementation of international standards, particularly through cooperation with foreign partners, thereby enabling harmonization of national legislation with European legislation. In view of the ongoing changes in circumstances, Ukraine should continue to improve the legislative and administrative framework for social protection, especially by enhancing digital services and ensuring close cooperation among public organizations, state institutions, and veterans. A practical and fair system of social assistance for military personnel and war veterans can be created only through a comprehensive approach to improving legislation and guaranteeing legal protection.

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Combat Immunity as Legal Mechanism for Protecting Commanders in Decision-Making Under Combat Conditions

by Liudmyla Medvid [1], Dmytro Stupak [2], Volodymyr Pashynskyi [3], Ivan Piskun [4], Roman Aliev [5]

Abstract.The article examines the fulfillment of the duty to defend the Homeland, its independence, and territorial integrity as a circumstance that excludes the criminal unlawfulness of an act. The concept of combat immunity and its correlation with the circumstance that excludes the criminal unlawfulness of actions related to repelling armed aggression is highlighted. Legislative inconsistencies between the provisions of criminal liability legislation and the Law of Ukraine "On the Defense of Ukraine" are revealed. The legal mechanisms for applying combat immunity in the legislation of the United States of America and Ukraine are analyzed. Legal mechanisms are proposed for determining the institution authorized to provide a legal assessment of an offense committed under combat conditions and to establish the grounds for applying the rules of combat immunity to a servicemember or commander of the Armed Forces. Legal recommendations are developed to protect commanders of military units from criminal liability when making managerial decisions under constantly changing operational conditions on the battlefield while repelling the enemy in the context of armed aggression.

Keywords: combat immunity, armed conflicts, combatants, rules of warfare, criminal liability of servicemembers.

1 Department of Military Law and Law Enforcement, Educational and Scientific Institute of Military History, Law and Social Sciences, National Defense University of Ukraine, 03049, 28 Povitryanyi Sil av., Kyiv.

2 Same of note 1.

3 Department of Administrative Law and Process Educational and Scientific Institute of Law of Taras Shevchenko National University Volodymyrska Street, 60, Kyiv, 01033.

4 Department of Constitutional Law, National Academy of Internal Affairs 03035, 1 Solomianska Square, Kyiv

5 Same of note 1.

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Introduction

The ongoing transformation of modern warfare and the large-scale armed aggression against Ukraine have significantly intensified the need to reconsider legal mechanisms designed to protect servicemembers who make operational and managerial decisions in combat conditions. Military commanders are frequently required to make rapid and complex decisions under circumstances characterized by uncertainty, high psychological pressure, and rapidly changing operational environments. In such conditions, the risk of causing unintended losses, damage to military equipment, or other negative consequences inevitably increases. At the same time, the possibility of subsequent criminal prosecution for decisions made during hostilities may negatively affect commanders' willingness to act decisively and effectively.

One of the key legal mechanisms designed to address this challenge is the institution of combat immunity. Combat immunity serves as a legal guarantee that protects military personnel from criminal liability for lawful actions committed during hostilities when such actions are carried out in accordance with the rules of warfare and the norms of international humanitarian law. The concept of combat immunity is closely related to the broader legal doctrine of circumstances excluding the criminal unlawfulness of an act. In this sense, combat immunity functions as a specific legal safeguard aimed at balancing two fundamental objectives: ensuring accountability for violations of the laws and customs of war while simultaneously protecting servicemembers who perform their duties in good faith under extreme combat conditions.

The historical development of the concept of combat immunity can be traced to the evolution of international humanitarian law. The first significant steps toward the codification of rules governing the conduct of hostilities were made through the Hague Conventions of 1899 and 1907, which established fundamental principles regulating the conduct of war on land. Later developments in international humanitarian law, including the Geneva Conventions of 1949 and their Additional Protocols, further clarified the legal status of combatants and established the principle that combatants should not be punished for lawful acts of war committed in accordance with the laws and customs of armed conflict.

In contemporary armed conflicts, the issue of combat immunity has become increasingly relevant due to the complexity of modern warfare, including hybrid

warfare, asymmetric threats, cyber operations, and the involvement of irregular armed formations. These factors significantly complicate the decision-making process for military commanders and increase the likelihood that their actions may subsequently become subject to legal scrutiny. As a result, the existence of clear and well-regulated legal mechanisms governing the application of combat immunity is essential for maintaining the operational effectiveness of the armed forces.

In Ukraine, the issue of combat immunity gained particular significance after the beginning of the full-scale invasion of the Russian Federation in 2022. In response to these circumstances, the Ukrainian legislature introduced amendments to national legislation aimed at providing legal protection to servicemembers involved in the defense of the state. In particular, the Law of Ukraine "On Amendments to the Criminal Code of Ukraine and Other Legislative Acts of Ukraine Concerning the Definition of Circumstances Excluding the Criminal Unlawfulness of an Act and Ensuring Combat Immunity under Martial Law" introduced the concept of combat immunity into national legislation and defined its basic legal parameters.

However, despite these legislative developments, a number of legal inconsistencies remain within Ukrainian legislation regarding the interpretation and practical application of combat immunity. In particular, the definition contained in the Law of Ukraine "On the Defense of Ukraine" does not fully correspond with the structure of criminal law norms regulating circumstances excluding the criminal unlawfulness of an act. This creates legal uncertainty regarding whether combat immunity should be considered a circumstance excluding criminal unlawfulness or merely a ground for exemption from criminal liability.

Given these challenges, further scientific analysis of the legal nature of combat immunity and the mechanisms of its application is necessary. The purpose of this article is to analyze the legal foundations of combat immunity as a mechanism for protecting commanders when making decisions in combat conditions, to identify inconsistencies in Ukrainian legislation, and to develop proposals for improving the legal regulation of this institution based on comparative analysis with the legal mechanisms used in the United States.

The central research question is how Ukrainian law can distinguish lawful

battlefield risk-taking from punishable misconduct without prejudging factual questions or restricting independent criminal investigation. The article advances a two-level model: substantive protection must be assessed under the applicable criminal-law provision, while military operational expertise should inform—but never replace—the procedural decisions of investigators, prosecutors, and courts.

Methodology

The research methodology of this study is based on a combination of general scientific and special legal methods aimed at comprehensively analyzing the institution of combat immunity and the mechanisms of its legal regulation.

First, the dialectical method was used to examine the development of the concept of combat immunity and its transformation within the framework of international humanitarian law and national legal systems. This method made it possible to analyze the evolution of legal norms regulating the responsibility of servicemembers during armed conflicts and to identify the factors that influenced the emergence of the institution of combat immunity.

The comparative legal method played a central role in the study. It was used to compare the legal mechanisms governing combat immunity in the legislation of Ukraine and the United States. This comparison made it possible to identify the strengths and weaknesses of existing Ukrainian legal regulation and to formulate proposals for improving national legislation based on the practical experience of foreign legal systems.

The formal legal method was applied in the analysis of legislative acts regulating the institution of combat immunity, including the Criminal Code of Ukraine, the Law of Ukraine "On the Defense of Ukraine," and other normative legal acts governing the legal status of servicemembers during martial law. This method allowed for the clarification of the legal content of the relevant provisions and the identification of contradictions between different legislative acts.

In addition, the systemic and structural method was used to analyze the place of combat immunity within the broader system of criminal law institutions, particularly within the category of circumstances excluding the criminal unlawfulness of an act. This method made it possible to determine the internal legal logic of the institution and its relationship with other elements of criminal

law regulation.

The analytical method was used to examine judicial practice, analytical reports, and academic publications addressing the issue of criminal liability of servicemembers and the legal protection of commanders during combat operations. The analysis of these sources helped identify practical problems in the application of combat immunity and evaluate existing mechanisms for resolving them.

The combination of these methodological approaches made it possible to conduct a comprehensive study of combat immunity as a legal mechanism for protecting military commanders during decision-making in combat conditions and to formulate practical recommendations for improving the legal regulation of this institution in Ukraine.

The comparison applies four consistent criteria to each jurisdiction: (1) the protected conduct and persons; (2) the legal effect of protection, distinguishing substantive criminal-law defenses from civil-liability rules and combatant privilege; (3) the institution competent to investigate and decide; and (4) safeguards against impunity, including factual verification and review. The Ukrainian statutory provisions and the cited judicial proceedings constitute the primary domestic materials; U.S., UK, and French rules are assessed as functionally different reference points rather than interchangeable models. The selected decisions illustrate legal reasoning but do not constitute a representative quantitative sample of Ukrainian case law.

Results and Discussion

Combat immunity is a legal framework for assessing the consequences of conduct connected with military operations; it should not be conflated with psychological resilience or a commander's general capacity to act decisively. The relevant legal question is whether the particular conduct falls within the conditions and limits of the applicable protective rule, not whether military necessity alone makes an otherwise unlawful act permissible (Tiutiunnyk, 2022).

A terminological distinction is necessary. Combatant privilege under international humanitarian law primarily concerns the entitlement of qualifying combatants in an international armed conflict to participate directly in hostilities

without being prosecuted by the opposing state merely for lawful acts of war. It does not immunize war crimes and does not itself resolve domestic allegations of abuse of authority, negligence, or improper handling of property. By contrast, the Ukrainian statutory notion of "combat immunity" addresses specified consequences of defensive action and justified risk within the national liability framework. The two regimes may overlap factually, but they differ in source, addressees, legal effects, and decision-making institutions.

The issue of applying combat immunity becomes particularly important when commanders of military units make managerial decisions under constant changes in the operational situation on the battlefield. Such decisions inevitably carry legal consequences. This challenge becomes even more serious for the Armed Forces in the context of hybrid warfare, where classical forms of armed confrontation are combined with asymmetric actions, informational and cyber pressure, special operations forces activities, and the involvement of irregular armed groups. This creates unprecedented psychological strain on the command staff, as commanders must act in conditions of high uncertainty, continuously adapt to changes in the combat environment, and remain prepared for any scenario—including the possibility of legal liability for potentially improper decisions.

Therefore, under wartime conditions, the introduction of combat immunity is a sound, logical, and effective solution. It helps prevent unjustified criminal prosecution of commanders and servicemembers in the future, given that the criteria for reasonable caution and justified risk during wartime are significantly broader (Harust et al., 2025).

The origins of the concept of combat immunity can be traced to customary norms of warfare that developed over centuries across different cultures and civilizations. The idea that participants in hostilities should have certain legal protections was embedded even in the earliest codified legal collections of ancient states. However, the formalization of combat immunity principles at the international level occurred much later, alongside the development of international humanitarian law in the 19th–20th centuries. The first major documents that laid the foundations for the modern institution of combat immunity were the Hague Conventions of 1899 and 1907 (Hague Convention, 1907).

In the 20th century, the concept of combat immunity became more clearly defined. International law introduced norms prohibiting the punishment of

servicemembers for actions committed in combat if those actions complied with the rules of warfare. A key requirement for applying combat immunity is the mandatory adherence of combatants to the norms of the law of armed conflict. This development was driven by the fact that the two world wars and numerous armed conflicts of the previous century led to a significant increase in civilian casualties. This forced the international community to reconsider the rules of warfare and strengthen the protection of civilians. As a result, new norms of international humanitarian law emerged, prohibiting the use of weapons and other methods of warfare that could cause unjustified suffering to the civilian population.

In the modern world, characterized by a large number of armed conflicts, the concept of combat immunity remains consistently relevant. It is recognized by international law and the national legislation of many countries. It can be stated that today the concept of combat immunity is one of the key notions in international humanitarian law, as it directly concerns the protection of servicemembers during armed conflicts. Combat immunity defines the legal status of combatants and the permissible methods of their participation in hostilities, as well as establishes the limits of their liability for the use of force. According to the norms of international humanitarian law, combat immunity is understood as the exemption of combatants from criminal liability for lawful actions committed during an armed conflict. At the same time, this immunity does not extend to war crimes or other serious violations of international law (Protocol Additional to the Geneva Conventions, 1977).

The non-application of criminal-law measures to a servicemember in the ordinary manner is often conditioned by certain elements of their legal status that "shield" them from criminal liability, in much the same way as the immune system protects a living organism from harmful external influences. Such "protective elements" are known in legal theory as legal immunities. They also operate in criminal law, and therefore the existence of outwardly similar acts to criminal offenses, yet not subject to punishment, is an objectively existing phenomenon. Due to the similarity of such behavior to criminal offenses, it becomes the subject of criminal-law assessment, while the refusal to apply criminal-law measures to it (a conscious decision not to prosecute) represents one of the criminal-law consequences of the act. This implies that specialists applying criminal law must be familiar with the specifics of such assessments and the resulting legal consequences, and legal scholars studying these norms and their practical

application should focus particular attention on these issues (Begunts, 2022).

In other words, combat immunity for combatants is an "immunity from criminal liability," a concept widely used in international law. For example, Article 6 of the Agreement between Ukraine and the Kingdom of Spain "On the Performance of Remunerated Activities by Family Members Who Are Dependents of Diplomatic, Consular, Administrative, and Technical Staff of Diplomatic Missions and Consular Offices" of 16 September 2015 is titled "Immunity from Criminal Jurisdiction" and provides immunity from the criminal law of the receiving state (Verkhovna Rada of Ukraine, 2015a).

Currently, immunities as legal instruments are regulated rather narrowly in Ukraine's criminal legislation, and within the theory of criminal law they remain an insufficiently studied academic issue. This is due to the fact that for a long time the concept of "combat immunity" was entirely absent from national legislation. The urgency of addressing the issue of legal regulation of combat immunity in Ukraine intensified in the spring of 2022 and is unquestionably linked to the act of unprovoked, full-scale military invasion by the Russian Federation into the territory of Ukraine. In this context, the national legislator was compelled to take immediate measures to ensure the protection of Ukraine's independence and territorial integrity and its defense against the aggressor by exempting citizens who took up arms in defense of their country from criminal prosecution.

Thus, on 15 March 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Criminal Code of Ukraine and Other Legislative Acts of Ukraine Concerning the Definition of Circumstances Excluding the Criminal Unlawfulness of an Act and Ensuring Combat Immunity under Martial Law" (Verkhovna Rada of Ukraine, 2022a). Among other provisions, it amended the Law of Ukraine No. 1932-XII "On the Defense of Ukraine" of 6 December 1991 by adding a second paragraph to Article 1, defining combat immunity as follows: "Combat immunity is the exemption of military command, servicemembers, volunteers of the Territorial Defense Forces of the Armed Forces of Ukraine, law enforcement personnel who, within the scope of their powers, participate in the defense of Ukraine, as well as persons defined by the Law of Ukraine 'On Ensuring the Participation of Civilians in the Defense of Ukraine,' from liability, including criminal liability, for losses of personnel, military equipment, or other military property, the consequences of the use of

armed or other force during the repulsion of armed aggression against Ukraine or during the elimination (neutralization) of an armed conflict, as well as for the performance of other defense tasks involving the use of any types of weapons, the consequences of which, taking into account reasonable caution, could not have been foreseen during the planning and execution of such actions (tasks) or which fall within justified risk, except in cases of violations of the laws and customs of war or the use of armed force as defined by international treaties to which the Verkhovna Rada of Ukraine has given binding consent" (Verkhovna Rada of Ukraine, 1991).

Thus, under the mentioned law, combat immunity is classified as a circumstance that results in exemption from criminal liability. However, the specialized legal act—the Criminal Code of Ukraine—does not contain a corresponding provision on exemption from criminal liability. According to the logic of the amendments introduced by Parliament, such a corresponding norm, as intended by the lawmakers, should have been Article 43-1, "Fulfillment of the Duty to Defend the Homeland, Independence, and Territorial Integrity of Ukraine." Nevertheless, this article was placed in the section "Circumstances Excluding the Criminal Unlawfulness of an Act"(Verkhovna Rada of Ukraine, 2001).

In this way, the legislator created a rather significant legal conflict that prevents a clear determination of whether the presence of combat immunity excludes criminal unlawfulness entirely (which would mean exclusion of criminal liability and the application of any criminal-law measures), or whether it merely entails exemption from criminal liability (which, as previously noted, still involves the acknowledgment of the criminal unlawfulness of the act committed by the individual).

This tension must be described precisely: exclusion of criminal unlawfulness means that the statutory conditions negate the criminal character of the act; exemption from criminal liability presupposes a different legal analysis and should not be used as a synonym. Moreover, the scope of Article 43-1 must be established from its own elements, whereas the definition in the defense legislation also refers to unforeseeable consequences and justified risk. Neither provision creates a blanket personal immunity for every act performed by a servicemember.

As a result, Ukrainian law enforcement and judicial authorities have been applying the legal norms on combat immunity inconsistently in cases involving

servicemembers who committed offenses under combat conditions. For example, the Unified State Register of Court Decisions contains rulings in which courts close criminal proceedings and apply combat immunity, as well as decisions in which courts do not apply these norms and instead hold servicemembers criminally liable. Even more perplexing are cases in which a court of first instance applies Article 43-1 of the Criminal Code of Ukraine and closes the criminal proceeding—thereby exempting the servicemember from criminal liability—while an appellate court later overturns such a decision as unfounded and remands the case for a new trial before the first-instance court.

For instance, in case No. 729/1550/23, the court of first instance considered a motion by the defense counsel to apply combat immunity to servicemember "X," who was charged under Part 5 of Article 426-1 of the Criminal Code of Ukraine ("Exceeding Authority or Official Powers by a Military Serviceperson"). The court established that the accused, being a military officer during martial law, had forcibly seized vehicles belonging to a private enterprise for the needs of the Armed Forces of Ukraine. Upon review, the court concluded that the legislator, in accordance with the procedure defined by the Law of Ukraine "On Law-Making Activity" (Verkhovna Rada of Ukraine, 2023), supplemented the General Part of the Criminal Code of Ukraine with Article 43-1, thereby decriminalizing the offense stipulated in the Special Part under certain conditions defined by law.

On that basis, the court agreed with the defense and found that the criminal proceedings against person "X", based on the contents of the indictment, could be closed without establishing the factual circumstances of the case at the preparatory court hearing stage. The court considered that it was appropriate in this proceeding to apply Art. 43-1 of the Criminal Code of Ukraine, which relieves a person of liability for an offense committed during the effect of a normative-legal act that defined the notion of the offense and the liability for it. At the same time, the court took into account the provisions of the Law of Ukraine "On the Legal Regime of Martial Law," which enshrine the rule that a person authorized to perform state functions does not bear liability, including criminal liability, for decisions, actions or omissions whose negative consequences could not have been foreseen or which fall within justified risk, provided that such actions (omissions) were necessary to repel armed aggression against Ukraine or to eliminate (neutralize) an armed conflict. (Verkhovna Rada of Ukraine, 2015b). Pursuant to para. 2 of part 3 of Art. 314 of the Criminal Procedure Code of Ukraine, at the preparatory

court hearing the court has the right to close proceedings if grounds provided for in paragraphs 5–8, 10 of part one or part two of Art. 284 of that Code are established. (Verkhovna Rada of Ukraine, 2012). Under these circumstances, given that the grounds for closing the criminal proceedings indicated by the defense in the motion are not connected with establishing the factual circumstances of the case showing the absence of an offense, but are related to changes in the criminal-liability legislation, the criminal proceedings against person X, accused of the offense under Part 5 of Art. 426-1 of the Criminal Code of Ukraine, are subject to closure on the basis stated above, pursuant to Art. 58 of the Constitution of Ukraine, (Verkhovna Rada of Ukraine, 1996) Art. 5, part 1 of Art. 43-1 of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001), and Arts. 284, 314, 369, 371, 372, 395, 479-2 of the Criminal Procedure Code of Ukraine. (Unified State Register of Court Decisions, 2023).

The appellate court, having considered the prosecutor's appeal against the first-instance court's ruling, found that an analysis of the content of Art. 43-1 of the Criminal Code of Ukraine shows that it removes criminal liability for an act when a set of conditions established by law are met. Part 2 of Art. 43-1 of the Criminal Code grants the person the possibility (guarantees) to act decisively and offensively: regardless of whether a confrontation or infliction of harm could have been avoided, or whether it would have been possible to turn to other persons or state authorities or the Armed Forces of Ukraine for assistance. The provisions of parts 1 and 4 of Art. 43-1 warn against allowing cases of exceeding the performance of the duty to defend the Homeland, independence and territorial integrity of Ukraine. (Verkhovna Rada of Ukraine, 2001). At the same time, the panel of judges concluded that the first-instance court, in closing the criminal proceedings against person "X", did not verify the set of conditions prescribed by law, because this can only be done by examining the relevant evidence, which is possible only during a trial and not at the preparatory hearing stage. Therefore, the first-instance court's conclusions in the contested ruling about the necessity of closing the criminal proceedings against person "X" were premature.

The analytical significance of this appellate ruling is procedural rather than a categorical rejection of combat immunity. It demonstrates that the existence of an armed conflict and a military purpose cannot substitute for proof of the particular statutory conditions. The disputed requisition, the authority to order it, the operational necessity, and the proportionality of the measures may require

evidentiary examination. Accordingly, an early defense application should trigger prompt and reasoned consideration, but not automatic termination where material facts remain contested.

Thus, during the appeal review a material violation of procedural law by the first-instance court was established, which made it impossible to render a lawful and reasoned judicial decision, and which required unconditional annulment of the court's ruling and the appointment of a new hearing in the first-instance court. Consequently, having regard to the above and pursuant to Arts. 407, 412 and 419 of the Criminal Procedure Code of Ukraine, the panel of judges ruled that at the new consideration by the first-instance court it is necessary to take the foregoing into account, to consider the criminal proceedings in the ordinary procedure, in particular to examine in detail the evidence regarding circumstances to which the accused actually objected, evaluate them as a whole, and also to verify the circumstances that exclude the criminality of the act provided for in Part 5 of Art. 426-1 of the Criminal Code of Ukraine, and to render a lawful and well-founded decision. (Unified State Register of Court Decisions, 2023).

The two levels of adjudication in case No. 729/1550/23 reveal a more precise disagreement than a simple choice between granting and denying combat immunity. The first-instance approach treated the statutory defence as capable of disposing of the proceedings at the preparatory stage on the basis of the indictment and the defence motion. The appellate approach instead required verification of the factual predicates of Article 43-1, including the nature of the conduct and its connection with the defence of Ukraine. The appellate ruling therefore concerns the evidentiary and procedural threshold for applying the provision; it does not establish that the accused ultimately lacked protection. The case illustrates why the substantive availability of a justification must be distinguished from the procedural stage at which its conditions can reliably be established (Unified State Register of Court Decisions, 2023).

The reference to case No. 752/15448/22 raises a related but distinct issue: the use of military expert assessments in proceedings involving operational conduct (Unified State Register of Court Decisions, 2022). Such expertise may assist a court or investigator in reconstructing the information available to a commander, the operational constraints and the military feasibility of alternative decisions. It cannot, however, conclusively determine whether Article 43-1 applies: statutory

interpretation and the final assessment of criminal unlawfulness belong to the competent criminal justice authorities. The present manuscript does not reproduce the relevant expert opinion or the complete reasoning in that case; consequently, it would be methodologically unjustified to describe the case as a judicial precedent either granting or refusing combat immunity. Its analytical value here is to identify the boundary between specialist military findings and legal adjudication.

Read together, these examples suggest three sources of apparent inconsistency in practice: the conflation of exclusion of criminal unlawfulness with exemption from criminal liability; differing views on whether the necessary facts can be established before trial; and uncertainty over the evidentiary weight of internal military inquiries and expert opinions. These are analytically distinct problems and require different responses. Legislative clarification should address the substantive conditions of Article 43-1; procedural guidance should identify how potentially exculpatory operational evidence is obtained and assessed promptly; and institutional reform should preserve judicial and prosecutorial independence rather than allow a command decision to bind criminal proceedings. The cases discussed are illustrative, not a systematic or representative sample of Ukrainian judicial practice, and therefore do not support a quantitative claim about the prevalence of conflicting rulings.

A large number of such diametrically opposed decisions regarding the application of combat immunity norms can be found in the Unified State Register of Court Decisions. In examining these legal discrepancies, we concur with the scholarly views of many researchers who argue that combat immunity should be classified as a circumstance that excludes the criminal unlawfulness of an act altogether. (Vozniuk et al., 2022) We believe that the key legal fact here is that individuals who committed such acts are not released from criminal liability — rather, they do not incur criminal liability in the first place. Thus, it can be asserted that the commission of the aforementioned acts, if they were committed under martial law or during an armed conflict and were aimed at repelling and deterring the armed aggression of the Russian Federation or another aggressor state, does not constitute a criminal offense as defined by Article 11 of the Criminal Code of Ukraine. (Harust et al., 2025) It is precisely in this manner that the norms of combat immunity are applied in the legislation of Ukraine's partner states.

The comparative findings also require separating three different legal questions. The U.S. combatant privilege concerns lawful belligerent acts under the law of armed conflict; the combatant-activities exception in 28 U.S.C. § 2680(j) limits certain tort claims against the federal government and is not a general criminal defense for commanders. UK combat immunity case law predominantly concerns the scope of negligence claims arising from actual combat operations, rather than an executive power to extinguish criminal liability. French rules on military criminal responsibility likewise operate within their own statutory and procedural framework. These distinctions caution against treating the foreign examples as proof of one universal mechanism.

For example, in the legislation of the United States, Article 2680 (J) of Title 28 of the U.S. Code (Judiciary and Judicial Procedure) establishes the immunity of the U.S. Government from any claims arising from combat activities of the Army, Navy, or Coast Guard during wartime. [16] The fundamental principles governing the mechanism of combat immunity and determining the liability of commanders and service members in the United States are contained in the Law of War Manual (2022), the Operational Law Handbook (Library of Congress), as well as in judicial decisions. The legal norms set out in these documents require a detailed analysis and examination of all circumstances under which a commander acted when making a given decision, including the regulatory instruments guiding that decision.

In the legal system of the United Kingdom, the Minister of Defence is vested with the authority to establish combat immunity for members of the Armed Forces of the Crown. Where national security threats arise, or during military operations conducted outside the United Kingdom, combat immunity applies to prevent the prosecution of service members in cases concerning the lifting of liability for death, injury, or harm caused to another person during the execution of combat missions or during combat duty. The principle of combat immunity rests on the notion that service members who are actively engaged in armed hostilities (combat) cannot be held civilly liable for negligence, actions, or omissions. This approach has been affirmed through judicial decisions, which form part of the national law of the United Kingdom. (Centre for Defence Strategies, 2021).

Article 16 of the French General Military Statute provides that service members do not bear criminal liability for unintentional acts committed in

the course of performing their duties, taking into account the difficulties that may arise in executing complex tasks assigned by law. In this context, French legislation identifies complex and unpredictable circumstances that may emerge during combat missions and establishes a flexible approach for determining when liability does or does not arise, taking into consideration the specific situations that may occur during military operations. (2005)

It is important to note that the institution of combat immunity introduced in Ukraine has developed distinct characteristics, differing from its foreign counterparts. In our view, the most significant feature is that its provisions are dispersed across various normative legal acts and apply to multiple categories of individuals—each with its own particularities—resulting in ambiguous interpretations and certain legal inconsistencies.

The first category of persons to whom combat immunity applies includes: military command, service members, volunteers of the Territorial Defence Forces of the Armed Forces of Ukraine, and law enforcement personnel who, within the scope of their authority, participate in Ukraine's defence. These are individuals whose official duties involve the defence of Ukraine and the maintenance of public order.

The second category includes persons defined by the Law of Ukraine "On Ensuring the Participation of Civilians in the Defence of Ukraine," meaning that it extends to civilians as recognition of the natural human right to participate in the armed defence of their homeland against an aggressor. This category may include any civilian (a Ukrainian citizen, a foreign national, or a stateless person), of any age, who is not serving in the military or in any other service responsible for national defence. (Verkhovna Rada of Ukraine, 2022b)

The third category was introduced in the Law of Ukraine "On the Legal Regime of Martial Law," which includes persons authorized to perform functions of the state or local self-government who do not bear liability, including criminal liability, for decisions, actions, or omissions whose negative consequences could not have been foreseen or which fall within the scope of a justified risk, provided that such actions (or omissions) were necessary to repel armed aggression against Ukraine or to eliminate (neutralize) an armed conflict. Thus, this refers to civilian officials who exercise authoritative powers in state or local government bodies. (Verkhovna Rada of Ukraine, 2015b)

As for the second and third categories of individuals, it may be stated that Ukraine has developed a certain legal "know-how" in introducing legal classifications within the domain of combat immunity. The need to adopt legal norms defining permissible limits of violations of Ukrainian law for persons who are not combatants—and, most importantly, the conditions under which they may be exempt from legal liability for offences committed—arose as a result of the rapid and extraordinary developments during the defence of Ukraine's sovereignty amid the Russian-Ukrainian war. (Harust et al., 2025) In our view, a more appropriate term for these categories of subjects would be "civil immunity under wartime conditions."

Another urgent and distinctive feature of Ukrainian combat immunity is the manner of its application, which is based on the mechanism of "decriminalization" of certain acts, rather than exemption from liability (including criminal liability). The latter—i.e., the mechanism of exemption from liability—is the dominant approach in foreign models of combat immunity and combatant immunity doctrines, as well as in the Law of Ukraine "On the Defence of Ukraine," which, in fact, provides the definition of "combat immunity." (Suspilne Media, 2024).

We fully agree with the assertions of many Ukrainian scholars that the norms of this law, instead of exempting individuals from legal liability for their actions, effectively decriminalize the act itself, provided that harm is inflicted on the life or health of a person engaged in aggression. Indeed, Article 43-1 of the Criminal Code of Ukraine stipulates that an act is not considered a criminal offense if it is committed under conditions of martial law or during an armed conflict; is aimed at repelling and deterring armed aggression by the Russian Federation or another state; causes harm to the life or health of a person engaged in aggression or any other legally protected interests, in the absence of signs of torture or the use of means of warfare prohibited by international law. (Verkhovna Rada of Ukraine, 2001)

At the same time, the Law of Ukraine "On the Defence of Ukraine" incorporates a foreign-model approach to "combat immunity," namely exemption from liability, including criminal liability, for the loss of personnel, military equipment, or other military property, when such consequences could not have been foreseen with reasonable prudence during the planning or execution of such actions (tasks), or when they fall within the scope of justified risk. (Verkhovna Rada of Ukraine, 1991) This fundamental inconsistency between Article 43-1

of the Criminal Code of Ukraine and the definitions provided in the Law "On the Defence of Ukraine" significantly restricts the rights of service members performing combat missions—rights that should be guaranteed to them under the concept of "combat immunity."

Based on the conducted research, we conclude that a rather peculiar judicial and procedural practice has begun to emerge in the domestic criminal justice system regarding the application of Article 43-1 of the Criminal Code of Ukraine, one that diverges significantly from foreign approaches to combat immunity. An example of this is the presence of criminal proceedings in the Unified Register of Pre-Trial Investigations concerning offenses committed by service members during 2022–2025 under conditions of martial law and during an armed conflict, where their actions were aimed at repelling and deterring armed aggression by the Russian Federation. Despite the existence of grounds for applying combat immunity provisions—which would prohibit criminal prosecution—investigators of the State Bureau of Investigation have initiated criminal cases and are conducting investigative actions. At the same time, investigating judges, despite defence motions to apply combat immunity norms and close the proceedings, deem such references by the defence premature. In their view, only during a full judicial trial can the factual circumstances of the case be established and properly assessed.

Such a practice, however, results in a wide range of negative consequences—from diverting service members from performing combat missions to creating reluctance among commanders to make decisions under rapidly changing battlefield conditions. Moreover, a commander's decision is always influenced by numerous factors, such as the situation and terrain, logistics, the completeness and accuracy of available information, and more. A decision misaligned with the actual situation may result in assigning unattainable objectives to the troops or in failing to make full use of their combat capabilities. Consequently, commander's decisions have a particular nature: a decision may be legally correct while militarily inappropriate, or vice versa.

For example, the case of Colonel Roman Chervinskyi, commander of a Special Operations Forces unit of the Armed Forces of Ukraine, who is accused of exceeding authority during a special operation that led to the shelling of the Kanatove airfield in Kirovohrad region in July 2022. According to his lawyer, the defence twice submitted motions to the prosecutor requesting initiation of the

procedure for exemption from criminal liability due to the presence of combat immunity. However, the prosecutor denied both motions. (Suspilne Media, 2024)

Another illustrative example is the case of Colonel Oleksandr Vodolazkyi, commander of the 128th Brigade of the Territorial Defense Forces of the Armed Forces of Ukraine, who defended the city of Dnipro. He was notified of suspicion of exceeding military authority because, in early March 2022, he issued an order on the forced requisition of property for the needs of his military unit's subdivisions and constructed defensive positions on private land to protect the city. Although the issue of applying combat immunity in this case has not been publicly emphasized, the Colonel's actions evidently fall within the scope of Article 43-1 of the Criminal Code of Ukraine. (NV.ua., 2023).

Comparing the application of combat immunity norms in Ukraine and partner countries, we conclude that Ukrainian legislation contains a legal gap regarding the mechanism for establishing the grounds for applying combat immunity to commanders (service members) to exempt them from legal liability. Most importantly, it lacks a designated authority responsible for determining the existence of grounds for applying combat immunity to a specific individual.

As noted above, after four years of war, Ukraine has developed a judicial practice under which exemption from criminal liability for a person already notified of suspicion requires the prosecutor's petition to the court. Thus, even when circumstances indicate the possible application of Article 43-1 of the Criminal Code, the implementation of such exemption at the pre-trial stage depends entirely on the prosecutor—that is, the accusing party. This significantly narrows the ability of service members to protect their rights and contradicts the core principle of the impossibility of criminal prosecution when combat immunity is applied as a legal instrument for protecting commanders (service members) during combat operations. Another notable feature is that, increasingly, during investigations of crimes committed by military personnel, forensic military expert opinions appear that include conclusions as to whether an individual "had combat immunity" at the time of the alleged criminal act (e.g., case No. 752/15448/22). (Unified State Register of Court Decisions, 2022)

Consequently, investigators, inquiry officers, and prosecutors must examine indications that Article 43-1 may apply at the earliest legally appropriate stage. Nevertheless, the possibility of combat immunity does not itself bar registration

of information concerning a possible criminal offense or necessary factual investigation under Article 214 of the Criminal Procedure Code. Where the statutory conditions are established, the competent procedural authority should adopt a reasoned decision in accordance with the Code, subject to available review. This approach protects lawful battlefield decisions without creating an evidentiary blind spot for possible war crimes or other unlawful conduct.

For illustrative purposes, it is advisable to examine the legal mechanism for applying combat immunity norms to service members of the United States Armed Forces, given that their personnel regularly participate in military operations worldwide. The application of "combatant immunity" in the United States is regulated by international humanitarian law, federal legislation, military regulations, and judicial practice. The status of a combatant and immunity applicable to such individuals are regulated by legal acts of the U.S. Department of War. The legal mechanisms for holding military personnel accountable (including matters related to war crimes), as well as the regulations governing the activities of field military courts and commissions, are contained in the Uniform Code of Military Justice (UCMJ). This document codifies the principle of combatant immunity: lawful combatants cannot be prosecuted for lawful acts committed during hostilities. While the term "combat immunity" does not explicitly appear in the UCMJ, legal scholarship holds that the right to combatant immunity—that is, immunity for participation in hostilities that complies with the laws of war—is recognized through the principle that a combatant may not be held criminally liable for such acts if they adhere to the laws of war. However, if a service member violates the laws of war, immunity does not apply. (United States Congress, 1950) Thus, if a U.S. Army commander acts as a lawful combatant, he is potentially protected by combat immunity from prosecution by another state or a military commission for lawful actions taken during combat operations. (President of the United States, 1984)

Our examination of the legal mechanism for applying combat immunity to U.S. service members and commanders demonstrates that it is well-balanced, objective, and involves multiple stages of application and oversight. First, in decision-making processes within the U.S. Armed Forces, a command oversight system is implemented. This is an established procedure in which higher command headquarters review the legality of a commander's operational decision (order) for compliance with the rules of engagement, followed by mandatory documentation

in field reports. If the decision complies with the laws of war, the commander's combat immunity applies automatically.

The U.S. materials support the importance of operational legal advice and incident review, but do not establish that higher command may conclusively grant immunity from criminal prosecution. Internal military assessments can clarify operational context; decisions on criminal investigation and adjudication remain governed by the competent legal institutions. This division of functions is essential to the comparative lesson proposed here.

The most important stage for our research is the assessment of the legality of the commander's actions. This is a special review conducted when an incident occurs (e.g., civilian casualties, a contested airstrike), carried out by military legal officers authorized by higher command. If the review determines that the commander acted within the confines of the laws of war, the case is closed and the commander retains immunity from legal liability. If violations are identified, the case is transferred to a military court under the Uniform Code of Military Justice. (United States Congress, 1950) Thus, combat immunity does not equate to absolute impunity—it operates strictly within the boundaries of the laws of war.

The stage of shared command responsibility serves as a counterbalance to immunity. It provides that if a commander knows—or ought to know—that subordinates have committed a war crime and fails to take appropriate measures, he loses combat immunity and may be held accountable. (President of the United States, 1984)

Another scientifically important aspect is the stage of external protection, wherein actions of a commander outside the United States must be assessed in accordance with the national legislation of the country where they occurred. However, the United States, as a state, assumes international responsibility for the actions of its commander. This means that a member of the U.S. Armed Forces who acted within the laws of war is not subject to prosecution by foreign law enforcement agencies or courts.

The decision to apply the norms of "combat immunity" is made by the higher command based on materials from a review conducted by authorized specialists—military lawyers within the U.S. Armed Forces. (President of the United States, 1984) U.S. military lawyers play a central role in ensuring compliance with the Laws of War and the Directives on the Conduct of Hostilities of the U.S. Armed

Forces during the planning and execution of military operations, as well as in subsequent investigations of incidents. The actions of U.S. military lawyers are prescribed by a comprehensive set of national and international legal documents, namely:

- The Uniform Code of Military Justice (UCMJ), which forms the foundation of the entire military justice system. This legal act defines military criminal offenses, procedures for their investigation, the powers of commanders and lawyers, and the structure of military courts. (President of the United States, 1984)
- The Manual for Courts-Martial, which details the procedures for applying the UCMJ (President of the United States, 1984) and the Rules for Courts-Martial (RCM), and specifies types of penalties for particular offenses. (U.S. Department of Defense, 2019)
- Directives of the U.S. Department of War and internal instructions of the Armed Forces, which specify the procedures for implementing the Law of War Compliance Program. (U.S. Department of Defense, 2011)
- The Department of Defense Manual on the Law of War, which serves as guidance for personnel, including military lawyers, on the practical application of international law in armed conflicts. (U.S. Department of Defense, 2023)

Our analysis of the role of military lawyers in the U.S. Armed Forces leads to the conclusion that they provide the legal foundation for operational planning, advising commanders, and ensuring justice. They effectively guarantee that all actions taken by combatants within the U.S. Armed Forces comply with national legislation and international law. During military operations, military lawyers provide commanders with qualified legal assistance necessary to make reasoned decisions in complex combat conditions, helping to balance military necessity with legal constraints. Thus, U.S. military lawyers are integrated into decision-making processes at all levels, playing a critical role in upholding the rule of law even during armed conflicts.

Analyzing the mechanism for applying combat immunity norms in the U.S. Armed Forces, we fully confirm our approach regarding its core principle. It can now be asserted that when a commander (or service member) commits an offense during combat operations, the legal decision to apply combat immunity norms must be made prior to the opening of a criminal case. If lawful grounds for the

application of combat immunity exist, a criminal case against the service member is not initiated, and investigative actions under criminal procedure legislation are not conducted.

However, the issue remains unresolved concerning the institution or authority that should provide a legal assessment of an offense committed during combat and determine whether grounds exist for applying combat immunity norms to a service member or commander of the Armed Forces of Ukraine. This problem exists in many armies worldwide, largely because the armed forces of these countries are not engaged in active combat operations, and thus the application of combat immunity is not currently relevant.

Conclusion

The concept of "combat immunity" in the Law of Ukraine "On the Defense of Ukraine" covers the loss of personnel, military equipment, or other military property, the consequences of the use of armed or other force during the repulsion of armed aggression against Ukraine or the elimination (neutralization) of an armed conflict, and the execution of other defense-related tasks using any type of weaponry, the consequences of which could not reasonably have been foreseen during the planning and execution of such actions (tasks) or which fall within a justified risk. (Verkhovna Rada of Ukraine, 1991) Accordingly, the legal assessment of a commander's (or service member's) actions in such cases cannot be limited solely to an internal service investigation, often conducted within the military unit by individuals who may lack the required expertise, but must receive an objective external law enforcement evaluation.

Based on our research, we consider that the mechanism for applying combat immunity norms in the U.S. Armed Forces should be implemented into the national legislation of Ukraine and other partner countries. Primarily, this is because the experience of U.S. service members in military operations is among the most extensive worldwide, and the procedure for applying combat immunity involves multiple stages and levels of control, having been rigorously tested by the U.S. judicial system.

The proposed Ukrainian mechanism should prioritize early assessment of potential combat-immunity grounds without making such an assessment a mandato-

ry precondition for opening a criminal proceeding. Higher command, supported by independent military legal specialists, could prepare a documented operational assessment of the information available at the time, mission objectives, foreseeable risks, applicable orders, and feasible alternatives. Such an assessment would be evidence for the competent investigative and judicial authorities, not a binding determination of criminal liability or a substitute for judicial control.

In our view, considering the legislatively defined tasks and powers of the Military Law Enforcement Service within the Armed Forces of Ukraine (Verkhovna Rada of Ukraine, 2002), as well as the availability of professional personnel within its units capable of conducting service investigations under the Ministry of Defense Order No. 608 of 21.11.2017, "On Approval of the Procedure for Conducting Service Investigations in the Armed Forces of Ukraine," it would be entirely appropriate to designate the Main Directorate of the Military Law Enforcement Service of the Armed Forces of Ukraine as the authority empowered to conduct service investigations regarding the application of combat immunity norms to service members. We propose amending the Procedure for Conducting Service Investigations in the Armed Forces of Ukraine, supplementing Section VII, "Service Investigations," with Clause 12 of the following content:

Implementation requires safeguards against command influence and conflicts of interest. Review personnel should be institutionally separate from the unit whose decisions are examined; evidence must be preserved; conclusions should be reasoned and disclosed through lawful procedural channels; and allegations of serious violations of international humanitarian law must be referred without delay to the competent investigative authorities. A specialist review should have a defined timeframe and an avenue for contesting its findings. Any legislative amendment must explicitly preserve the powers conferred by the Criminal Procedure Code on investigators, prosecutors, investigating judges, and courts.

Where an incident arising from combat operations raises a question concerning the application of combat immunity, a specialized unit of the Military Law Enforcement Service may, within its lawful competence, conduct an independent service review of the operational circumstances and prepare a reasoned advisory report for the competent commander and, where required by law, the competent investigative authority. Such a report shall not constitute a decision to exempt a person from criminal liability, shall not prevent registration or investigation

of a possible criminal offense, and shall not limit judicial review or the investigation of alleged violations of international humanitarian law. The procedure, safeguards of independence, preservation of evidence, and referral obligations shall be specified by law.

Additionally, it is worth mentioning the somewhat stalled process of establishing a military law enforcement body in Ukraine—the Military Police—and the urgent need for its existence in a country at war. In the event of the creation of such a military law enforcement agency, we propose that the functions of reviewing the application of combat immunity norms to service members, and, in their absence, conducting pre-trial investigations, be legislatively assigned to the Military Police units.

The proposal is therefore conditional on legislative competence, resources, access to classified operational information, and safeguards for independence. The Military Police, if established, should not combine unrestricted command-controlled screening with exclusive criminal-investigative authority over the same incident. Further empirical evaluation of case outcomes and consultation with criminal-justice practitioners would be necessary before adopting the proposed institutional design.

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On Dehumanization
A Research applied to the War in Ukraine

by Ondřej Kolman [1]

Abstract. The content of the study is applied research on the phenomenon of dehumanization. The author focuses on the topic of genocide studies. This thesis aims to enrich previous research in the field of genocides with a closer understanding of the influence of situational factors culminating in dehumanization under conditions of war. Respondents were combatants of the current conflict in Ukraine. Semi-structured interview was chosen as the method of qualitative research. The aim of this study is the application of research on the phenomenon of dehumanization, which was carried out within the internal grant system at the Metropolitan University Prague. The author of the paper focuses on the issue of genocide studies with emphasis on situational factors and *perpetrator studies*. The applied research was conducted between May 2023 and February 2024 during several research trips to the territory of Ukraine, including the frontline area near Donetsk.

Research description and methodology

The aim of this research was to extend the original knowledge in the field of genocide studies to the context of war conflict, which by its nature is related to genocidal-type mass violence in certain aspects under investigation. The basic matter under investigation was the phenomenon of dehumanization and related situational factors conducive to the conversion of the common man into the executor of orders leading to the killing of the enemy in combat units and the psychological response of the members of these units. The research was focused on members of combat units of the Ukrainian army. I also had the extraordinary opportunity to conduct research with several Russian prisoners of war, including a member of the so-called Wagner Group.

The administrative burden of obtaining the necessary permits and being able

1 Mgr. Ondřej Kolman, Metropolitan University Prague, Dubečská 900/10, 100 00 Praha 10. E-mail: kolman.ondrej@post.cz

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to visit the front line was obviously considerable, as was the difficulty of finding respondents willing to talk openly about such intrinsically challenging aspects of their experiences. As a researcher, I did not avoid certain ethical issues related to the right to ask such sensitive questions.[2] I was therefore surprised by the helpfulness of the respondents, who reflected very positively on the interest I was showing in them and their psychological response and the overall context of the war experience. The trauma and potentiality of post-traumatic syndrome is present in the psyche of virtually every veteran of these battles, and this phenomenon will continue to be a complex social problem in Ukraine's post-war development. During the course of my research, and thanks to previous theoretical training and research already conducted with perpetrators and victims of the Rwandan genocide,[3] I have acquired very interesting and enriching accounts illuminating this complex topic.

The research was conducted using a qualitative phenomenological research method through semi-structured interviews. Phenomenological research seems to be the ideal method for such a complex phenomenon as dehumanization and killing the enemy at close range in general. Too much scaliness would not be able to reflect such a complex and multi-layered topic, influenced in addition by the individual context of the respondents in question. Moreover, an attempt to understand these phenomena necessarily falls into the realm of interdisciplinary inquiry. It must be emphasized that the relatedness of the situational factors contained in genocide studies and *perpetrator studies* in particular is not related to this research in terms of legitimacy, but rather is relevant to the relatedness of the selected situational factors and the psychological response to the killing of another human being at close range.

There were twelve respondents and they were of different profiles. They ranged in age (twenty to fifty years old), nationality (Czech volunteers, Ukrainian volunteers, Ukrainian professionals, American volunteers, Russian conscripts, and Russian members of the so-called Wagner army), and education. The research was conducted directly on the front line near Donetsk, on the premises of Ukrainian military intelligence, or in various areas of Kiev or Lviv.

A crucial aspect for this kind of qualitative field research is the openness of the

2 Daniel Štrobl [*2019*] states the same feeling in his study.

3 [*Kolman 2024*].

respondents, which was (surprisingly for me) maximum. The humanitarian aid in the form of rescue vehicles, which I organize and deliver directly to Ukraine, and the complete openness attributed to the phenomenon of so-called "trench socialism" also played a role.[4] Last but not least, my "research assistant," who is an experienced commanding officer with a lot of combat experience and a great deal of respect from fellow soldiers, played a significant role and also proved to be my most interesting interviewee.

The pitfalls of this method are obvious. The first was the lower number of respondents, which was, however, the maximum possible in the given context, and at the same time a certain culturally determined given of the respondents from the ranks of the Ukrainian army, who are not used to excessive emotional openness and sharing of the most intimate and often traumatic combat experiences. Surprisingly, it was on the frontline that I got the most open accounts from the most exposed men – those stationed at the tip (i.e. the most forward) of the defensive units, when the research was conducted literally to the sound of nearby artillery fire.

Compared to my parallel research on the genocidal acts in Rwanda, the advantage in Ukraine is the present. Human memory is highly selective and interpretive and thus plays a role in potentially distorting traumatic experiences. In the methodological dispute between constructivism and positivism, the author of the study acknowledges its relevance to the constructivist thesis, which perceives in subjective experience the relevant risk of presumed authenticity, where experience is, however, "the product of unconscious and conscious desires as well as of linguistic and symbolic structures that permeate both the subject who presumably experiences reality directly and the subject who reconstructs it from a historical distance.[5] At the same time, however, such testimonies provide a logical basis for attempting to understand the phenomenon under investigation and, in conjunction with theoretical sources, an epistemological maxim. While in Rwanda, after thirty years, the risk of distortion is evident, the sad contemporaneity of the brutal

4 This phenomenon came into use after the First World War and signifies the blurring of social distinctions in the war experience and the fighting collective, and the resulting personal bond of comrades-in-arms of the most intense nature. For more information see Thomas Kühne [*2014: 61*]. On the intensity of the bond between comrades-in-arms, see LeShan [*2002*] for more detail.

5 [*Barša 2011: 44*].

trench warfare of today's war in Ukraine provides a more direct testimony, unbiased by the veil of time and memory. At the same time, I also acknowledge outright that this study is a subjective qualitative phenomenological field research,[6] which leaves the *terra firma of* empirically verifiable facts and often moves to the quicksands of psychology, as Richard Holmes [*2011*] states.[7] However, I firmly believe that this is precisely the matter highly relevant to research. At the same time, my findings are grounded in the literature and draw on testimonies from combat participants, which gives them the greatest possible validity as data. Indeed, I was reassured of this by a respected frontline unit commander nicknamed "Rambo,"[8] who thanked me for the fact that someone from the West is interested in such a sensitive and painful part of the war experience.

Historical context

Let us first give the context of the conflict itself. Russia's no longer assertive but aggressive definition of itself against the West and liberal democracy in general (if it has ever ended since the Cold War) can be symbolically dated back to the Munich Security Conference in 2007, where Vladimir Putin relativized, or rather defined himself against the unipolar world and the liberal democratic establishment. While there was nothing fundamentally new here in terms of rhetoric, since unipolarity has been a leitmotif of Russian foreign policy since the wild 1990s, the world was alerted by the new threatening tone.[9]

The brief attempt at democracy in the 1990s under Boris Yeltsin ended in tragic chaos in Russia and the much-lamented loss of middle-class savings caused by the devaluation of the ruble in 1998, resulting in a fatal loss of Russian confidence in the democratic system. The creeping return of authoritarianism to this land of "missed opportunities," as Aleksandr Solzhenitsyn called it, was all the easier. As with Mussolini's Italy[10] or Hitler's Germany,[11] the population applauded the su-

6 The researcher tries to enter the inner world of the individual in order to understand the meanings he/she attaches to the phenomenon. See [*Hendl 2008: 126*].

7 So does Richard Holmes [*2011*] in his book.

8 Many volunteers go by their nicknames in combat operations and in the collective in general.

9 For more, see Philip Short's monograph [*2022: 418*].

10 [*Hibbert 2020: 43*].

11 [*Bullock 2005: 142-178*].

perficial appearance of order and rule by a firm hand. The entirely uncaused rise in state budget revenues from increased oil prices on world markets[12] then gave the appearance of a rationally and efficiently managed economy. Some of the surpluses from the soaring prices of strategic commodities were transferred to the middle class, making the regime an acceptable and, eventually, generally accepted – even welcomed – system of governance for the general population. Victory in the Second Chechen War also played its part, and while it was redeemed by tens of thousands of civilian casualties in the utterly coldly conducted carpet-bagging brutality of that conflict,[13] it was a welcome revitalizing return to pride in the strength of the Red Army for the collective identity of the Russian population. Thus, the Potemkin version of democracy and basic human rights, combined with the phenomenon of collective narcissism along the lines of Fromm's theses,[14] not only achieved acceptance among its own dominated population, but at the same time the appealing facade was mistaken for a genuine transformative effort in the geopolitical field as well.

The noughties in Russia were a time of struggle between two groups – the siloviki and the oligarchs – over the shape and future of Russia.[15] The checkered game of democracy and a stable legal environment for foreign investors was ended with the fall of Yukos. With this decisive step and the arrest of Russia's richest man, Mikhail Khodorkovsky, the regime gave a clear signal to all the oligarchs: The huge profits from highly questionable privatizations and subsequent business activities are and will be tolerated, but the state and its power are untouchable. This was a destructive move for foreign investors and the economy, but symbolism was more important to the regime than economic gains. It was a symbolic milestone typical of Russia and its history – the needs of the state (much more accurately the power clique in the country's leadership) are always above the interests of the population.

For civil society and the media scene, the murder of the Kremlin's most fearless critic, journalist Anna Politkovskaya, on October 7 2006, symbolically on the day of Vladimir Putin's fifty-fourth birthday, was a clear signal. The poisoning of Alexander Litvinenko, a former FSB officer, with the radioactive isotope po-

12 [*Lucas 2008: 110*].
13 [*Gilligan 2010: 35*].
14 [*Fromm 1997*].
15 [*Laqueur 2016: 78-107*].

lonium 210, almost all of which is produced in Russia, sent a clear signal inside the forces and internationally that, under certain circumstances, Russian siloviki would not resist even assassinations abroad.[16] The haughty refusal to extradite Andrei Lugovoy only confirmed this feature of the new regime. The 2015 shooting of the most powerful opposition politician, Boris Nemtsov, was already anything but a surprise.

Russia's determination and increasing aggression began with the then still "internal" war in Chechnya, which was given the tendentious label of a war on terrorism.[17] Then came the aggression in Georgia (2008) as a warning that the West did not want to accept, only to be followed by the fateful year of 2014. That year holds the key to today's "full-scale" war in Ukraine, the prelude to which was 2004. In the fourth year of the new millennium, something happened to which the Russian regime had to respond sooner or later. The pro-Russian candidate Viktor Yanukovych was elected president in an apparently fraudulent election, and the Ukrainian people took to the streets to get a rerun and the election of pro-Western candidate Viktor Yushchenko.[18] Something unthinkable for the Kremlin and Vladimir Putin happened – civil society triumphed over state power. This was the Rubicon for Ukraine, which resulted, with the hearty support of de facto declared Western weakness, in the full-blown Russian military aggression of today.

Since 2000, Russia has increasingly profiled itself as a country dominated by a political regime where the state is everything and the citizens are just the material necessary for the existence and politics of the state. The fate of Mikhail Khodorkovsky symbolized that it was unthinkable for state power to be limited by oligarchs and that a strong civil society was completely unacceptable. Indeed, in this, as in many other respects, Putinism is related to Soviet communism. The communists flirted in their legitimizing doctrinal-eclectic equilibristics with many of the elements that their basic doctrine originally condemned, such as elements of a market economy,[19] but they never allowed civil society as such.[20] Indeed, a strong civil society creates an uncontrolled and

16 According to information from foreign intelligence services, the order to kill was issued by Nikolai Patrushev with the direct approval of Vladimir Putin [*Short 2022: 415*].

17 [*Gilligan 2010: 33*].

18 [*Mokryk 2023: 105*].

19 For example, Lenin's NEP [*Kershaw 2017: 161*].

20 [*Applebaum 2014: 154*].

spontaneous[21] power alternative and represents hypothetical and often consequently practical limits to state power. And this is what distinguished Ukraine from Russia – in effect, it solidified its transition from a servile political culture to a participatory one.[22] The Orange Revolution, and subsequently the Revolution of Dignity in particular, as the 2014 civil society uprising against political violence is called, established a disturbing precedent and the ultimate affirmation of the unthinkable for the Russian worldview – that is, the victory of civil society over the center of power and the free decision of the majority of society to adopt a pro-Western orientation in the Russian outpost. A free, pro-Western and prosperous Ukraine thus poses a mortal danger to the authoritarian Kremlin regime.[23]

The fact remains that despite all the shortcomings caused by the destructive nature of the Soviet centralized system and the Russian *peace* with which the country had to live for so long, Ukraine at the end of the last century and the beginning of the new millennium had the character of a country with a political system devoid of violence and a strong civil society controlling the state power system. With the traditional interdependence of the two countries, the Kremlin regime could not afford to allow Russians consumed with constant propagandistic false constructions of their own exceptionalism and economic prosperity to achieve an epiphany by simply comparing the increasing prosperity and quality of life of their pro-Western neighbor. Russia's backwardness[24] and the inefficiency of a central authoritarian leadership based on state power, corruption, and nepotism would then obviously be comprehensible to Russian citizens.

The fact remains that this is how the Kremlin unleashed a war conflict back in 2014. And the sad truth is that the West responded with a fatally weak response with a strong whiff of appeasement, only to be reminded of the consequences of this policy in the form of a full-scale military aggression unleashed by the Russian Federation against Ukraine on February 24 2022.

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21 Spontaneity is the fundamental heresy for any attempt at dictatorship or totalitarianism [*Arendt 1996: 532-620*].

22 [*Almond - Verba 1989*].

23 More Timothy Snyder [*2019*].

24 On traditional Russian underdevelopment, see also Richard Pipes [*1998*], Orlando Figes [*2000*], and Jiří Vykoukal et al. [*Vykoukal - Litera - Tejchman 2000: 483-492*]. On the frequent fallacy of the balanced state budget of the USSR and communist countries, see Tony Judt [*2017: 600*] for more details

Research on situational factors of dehumanization

The central thesis of my research is the predominance of the relevance of situational factors over dispositional influences. The perpetrator of mass violence, like the soldier who kills in war, must overcome the absolutely fundamental internalization of the basic cultural taboo of killing another human being. This is precisely what the phenomenon of dehumanization serves as a central mechanism for overcoming this problematic aspect, and the wide range of situational factors that, at various stages, contribute to the psychological transformation of the actor of violent acts, culminating not only in the ability to kill another human being, but also in the psychological acceptance and absorption of the act in question. These factors are partly related to outbreaks of mass violence and acts of war, without, of course, making any comparison between the legitimacy of the actions of the participants in such situational contexts.

Let us begin by making a brief comment on the very essence of lived experience, i.e. in the case of this applied research, the battle or combat situation. Cultural production, particularly but not exclusively of American provenance, abounds with films not only heroizing historical battles and victories important to collective identity, but the bulk of it exhibits a highly destructive depiction of battles and war as a kind of almost gleeful masculine adventure imbued with strained patriotism, righteous combat, black-and-white interpretations of complex historical realities, heroism, and cheerful camaraderie. In the literature, these phenomena are referred to as "johnwayneism."[25] Historically, then, such a fatally mistaken notion of the nature of the impending existential experience of war can be demonstrated by the all-encompassing cheerfulness accompanying the men rushing into the First World War in virtually all the participating states, which was very soon to turn into the grunting of the dying in the mud of the Somme or Verdun.[26]

The film industry in particular often portrays war as a traditional battle between good and evil[27] and it is a commercially and socially positively accepted

25 [*Haluzík 2018: 353-374*].

26 [*Kershaw 2017: 56*]. The generation fighting in World War I thus quickly came to its senses and subsequently propaganda was needed to portray the opposing side as pure binary evil [*Gilbert - Large 2003: 147*].

27 When the first official film was made, *The Battle of the Somme*, which depicted the war as

attempt to anchor the ingrained constitutive myths of a given society, charged with an eclectic interpretation of our commonly shared history, which are the basis of nationalism and social cohesion in general.[28] However, the experience of struggle is in fact anything but the experience so falsely portrayed. Respondents to this applied research reported frequent, completely uncontrollable physical manifestations of stress prior to combat, which, in the moments immediately preceding combat, include problems maintaining stool or urine retention, vomiting, uncontrollable tremors, or a general breakdown that resulted, for example, in the cancellation of an operation because the team as a whole was no longer combat-ready for the day.[29] The civilizational and cultural characteristics of armies influence how they treat such perfectly common and frequent phenomena preceding or accompanying combat engagements. In the context of the Russo-Ukrainian conflict, these are the instances of front-line shootings into the faces of expressions of fear and lack of action in offensive operations (as related during the testimony of a Russian member of the so-called Wagner Group, and also confirmed by Russian prisoners of war to my respondents). In the Ukrainian context, the treatment came from the simple human understanding of such biologically predetermined phenomena from the ranks of Ukrainian military units described by my respondents in the context of the Ukrainian army. Ukrainians deal with such trauma by doctors or collective support, Russians by shooting and court martial.[30]

The combat situation and the life-threatening conflict itself is then significantly less frequent in war conflicts than we generally imagine.[31] At the same time, however, today's form of warfare is extremely and unprecedentedly demanding on the psyche, as the phenomenon of long-range artillery fire and, in today's conflicts, reconnaissance and suicide drones have entered modern warfare. As a result of these two phenomena, the soldier cannot apply the phylogenetically programed survival mechanisms of "fight or flee,"[32] which results in extreme

it was, people in the cinemas recoiled in horror [*Kershaw 2017: 84*].

28 More Filip Tesař [*2007*].

29 For more on combat stress, see Dave Grossman [*2009: 5-17*].

30 The likelihood of developing PTSD is lower the greater the support of the social environment and vice versa. Thus, a higher rate of serious mental disorders and their negative impact on society can be expected in Russia [*Olasov Rothbaum - Rauch 2020: 22*].

31 [*Holmes 2011: 71*].

32 [*Fromm 1997: 198*].

psychological stress culminating sooner or later in some form of breakdown. The battle itself is then, not too surprisingly, anything but the aforementioned romantic-masculine fun. The battle site is filled with deafening explosions, dirt, mud, the roar of the (often limbless) wounded and surroundings littered with human entrails; chaos far from tactical descriptions of combat situations often permeates everything. The pervading feeling is an absolute existential experience of terror and an animalistic desire to survive "forcing one to bury one's head as deep as possible in the mud," as one respondent put it. Another participant, an extremely experienced member of an elite Ukrainian unit operating in the rear of the enemy, answered the question posed at the very end of the research, "What does war mean to you?" after a long stare into space with one word: "fear."

If we can better imagine the existential context in which the combatants find themselves, we can understand with greater insight what situational factors play a role and in what mental state one commits the actual act of fighting and killing. Some of the interviewees reported that there is a psychological mechanism of duplication of personality or perception of reality as such culminating in a feeling that it is "as if someone else is doing it," i.e. a mechanism of dissociation. This phenomenon may be situationally more permanent (reported, for example, by Nazi doctors working in Auschwitz),[33] or ephemeral in nature at the very focus of combat experience, as some of my interviewees reported. The dissociative state is spontaneously initiated by the psyche as a defensive strategy to avoid reaching a critical point of irreversible or permanent damage. Thus, in the manic phase, it is a psychological response to the all-pervading brutality and terror when the psyche abandons *the self* and dissociates from its own identity. In these states, there have been cases in history where soldiers have committed atrocities that they could not subsequently recall – that is, a so-called traumatic amnesia occurs.[34] This did not happen to all of the defenders interviewed, but all of my interviewees consistently reported that combat action was a "different form of reality," and two reported an actual dissociation called *homo duplex* in the literature.[35]

33 [*Lifton 2008*].

34 [*Holmes 2011: 139*].

35 For more on the principle of psychological doubling, see Lifton [*2008: 479-491*].

Isolation as an intensification of parallel reality

This different reality, however, does not only accompany the existential experience of combat, where it is certainly most intense, but is also consistently and without exception cited by respondents for the actual stay in the area of combat, where soldiers find themselves disconnected from their original life context. Isolation is thus another powerful situational factor that is extremely conducive to the transformation not only of identity but also of accepted ethical norms. Respondents to my research reported that they seemed to be in a different, distorted reality that people living in the safety of the rear could not understand.[36] For our attempt to understand the aspects and situational factors leading to dehumanization and acts of killing the enemy, then, isolation and the resulting sense of a different identity and a differently experienced sense of being thrown into a very different world is important for understanding the ability to accept different norms of behavior that often clash with the conventionally accepted and originally exhibited form of morality. Soldiers feel isolated not only locally, but especially cognitively, perceptually, and ethically disconnected from the world "back home," leading to a certain vacuum for the originally accepted ethical norms and the acceptance of new socialization and adaptive rules of the game. Adaptation to a new version of reality leads to an intensification of the need to feel protected by the collective of fractured identities and thus to another; perhaps the strongest situational factor conducive to potentially destructive patterns of behavior, dehumanization of the enemy and killing as such – *peer* pressure.

Peer pressure

The frequency of references to this aspect in the literature is truly exceptional. A classic work might be the monograph by the British historian Christopher R. Browning [*2002*]. This factor of the extreme importance of collective pressure usually starts in the resocialization of conscripts into the army or combat units already in the training. A uniform appearance (haircut) is modified, one is dressed in uniform (the army follows strictly the etymological givenness of this term *uniform*), there is a leveling of the social status of the conscripts (among other things,

36 The conversion of reality into its parallel distorted form is reported by both Holocaust survivors and perpetrators.

the extremely masculine and vulgar language serves to blur social and intellectual distinctions), and within the training this culminates in the ritual act of swearing in, which is not just a formal act as one might think. In the historical accounts of German soldiers, the oath played an important role in the reasons soldiers gave for remaining in combat (because I swore to the Führer).[37] The ultimate consequence is the "uni-form," i.e. the maximum possible erasure of differences and the imposed resignation of original individual freedoms and rights and the acceptance of new social norms of collective identity represented by the disembodied and socially accepted authority of the abstract army. The latter, moreover, possesses a draconian coercive apparatus in the form of punishment or even imprisonment and the death penalty. The man thus prepared as the bearer of this newly created identity is then sent into the field of combat.

There the phenomenon of collective pressure takes on a completely new, unexpected, surprising, and truly unprecedented dimension in terms of intensity. We must remember that soldiers often fight in the rear of the enemy or on the front line. Thanks to the aforementioned isolation, this incites them phylogenetically and psychologically[38] to the greatest possible cohesion. At the same time, they go through a highly existential experience of the terror of death and all-encompassing destruction, where their own survival depends on none other than a few comrades – fellow soldiers in their closest proximity. The shared emotion of animalistic terror of death then leads to a sense of transcendence.[39] The men then feel loyalty not to the abstract whole of an army or nation, but to their combat unit, with which they identify within the perimeter of their everyday experience. The strength of belonging and the depth of emotion between men cemented by the transcendental conditions of the existential experience of life-and-death combat then takes on the deepest possible intensity, as many accounts from a variety of research have consistently indicated. The intimacy between comrades-in-arms is so deep due to the context of combat experiences that it is often referred to as an alliance between lovers.[40] Even many testimonies reported a greater intensity toward the men of the combat unit than they had ever experienced toward their

37 [*Holmes 2011: 36*].

38 More on this Thomas Kühne [*2014: 55-77*].

39 More on the topic of common emotions leading to a sense of transcendence Haluzík [*2018*].

40 [*LeShan 2002: 107*].

wives or even children. The self-transcending, almost metaphysical experience, can be explained from a psychoanalytic perspective, and in my opinion very interestingly, as the fulfillment of our contradictory desire to assert the ego in the group but at the same time to merge into one with the collective identity. Belonging and the absolute intensity of the relationship towards fellow soldiers was reported in all cases of my applied research. Men repeatedly mentioned the term "one mind" associating interestingly the psychoanalytic level of this phenomenon. At the same time, in response to my very last question for possible positive features of the combat experience, they reported finding a sense of belonging with fellow combatants far beyond conventional friendship in virtually all cases.

Dehumanization as a consequence of the most intense shared humanity

This brings us to the important motif of acts of brutality, sadism, torture, and other outbursts of human destructiveness committed under combat conditions. This motive is the death of a fellow soldier. As noted above, these people have gone through the most horrific conditions of combat, isolating themselves from the ordinary world and establishing the closest possible human connection that becomes both part of their own identity and sense of security and the very possibility of survival. This existential bond between two human beings is suddenly broken by the killing of one of them. The natural reaction of the psyche is then an enormous upsurge of emotions, despair, and anger, which must somehow be channeled and the tension vented. Violence is unfortunately a tried and tested method. My Lai, an example often cited in the literature of war crimes committed by the US army in Vietnam, is a clear illustration of this. The unit suffered significant casualties fighting an enemy who was hiding among the local population, and the day before the massacre, the popular Sergeant Cox was killed.[41] This situational factor of the death of fellow soldiers is one of the most intense motives for destructive behavior and one of the most important factors accompanying dehumanization, because you cannot situationally share a norm of humanity with an enemy who has killed such a close being and thus disrupted your identity and inner psychism in a destructive and intense way. By killing such a close being, who in the given situational context is an integral part of the fragile construction

41 [*Holmes 2011: 340*].

of the psychic capacity to maintain mental health and the ability to survive, this world collapses and the resulting despair and rage results in acts of violence as a symbolic attempt to restore balance. In such a moment, the perception of the enemy inevitably leads to a binary-oppositional perception.

Binary-oppositional construction of reality through propaganda

The binary-oppositional perception, i.e. the division of the world into black and white, good and evil, righteous and tyrants, into "us-people" and "them-non-people" is also prepared by propaganda as the most effective tool of regimes, states, and ideologies for preparing the psyche to interrupt the perception of the other as the bearer of the same norm of humanity.[42] Propaganda is too obvious a phenomenon that helps to convert the perception of a certain group of people, to dehumanize them and to create the category[43] as an abstract as the basis of dehumanization itself, for me to deal with this phenomenon in depth in this text. Nevertheless, the research has yielded a rather interesting differential in the perceived importance of this factor. In the case of Russian troops, propaganda is necessary not only to prepare the psyche of the masses and the acceptance of group violence, and in the case of Russia and Ukraine, the acceptance of war aggression by the general population, but also to motivate the combat troops themselves. Soldiers should believe that they are fighting fascism. The ubiquitous lie as the cornerstone of Russian propaganda, which in effect creates a kind of mythical reality[44] and indoctrinates, or rather intoxicates, Russian soldiers, thus works both in the population at large and in the combat units. One of my interviewees, for example, literally referred to "two different worlds, two different internets," which he only became familiar with in captivity. In his testimony, another respondent said that after capturing several Russian soldiers, one suddenly shot himself in the head with a pistol. When asked why he did this, other prisoners testified that they did not want to be tortured and eaten by the Ukrainians. Thus, the collective perception of reality is not unlike a certain sectarian worldview of many people, where these people live in an all-encompassing lie fabricated by the Russian regime about the world's collective conspiracy against the messianic

42 An interesting contribution to this topic is made by Bedrich W. Loewenstein [*1997: 119*].
43 More Zygmunt Bauman [*2010*].
44 More LeShan [*2002: 80-91*].

and peace-seeking Russian nation. In contrast, the Ukrainian forces have cited propaganda as an element that plays essentially no major role for themselves and their motivations. Its existence and importance were cited by these men for the broader population and the existence and persistence of a strong upwelling of Ukraine's collective identity and patriotic spirit that sustains the momentum of this conflict and maintains the resistance of the invaded state and motivates the population to continue to support combat operations. However, propaganda was cited by respondents as completely irrelevant as a motive for fighting, or propaganda in the sense of transmitting documented evidence of violence against the civilian population played a role, motivating Ukrainian soldiers and dehumanizing members of the Russian army through images of Buchi or Mariupol.[45] However, the primary motive remains the defense of families and country against the war aggression of the Russian Federation.

Reactive violence

This factor of so-called reactive violence was absolutely paramount for the respondents of my research. Russian soldiers (very often non-Russian ethnics detached from the Kremlin's geopolitical goals) lose motivation in the trenches and the dynamics of their combat activity, according to their testimonies, declines rather quickly. However, Ukrainians, aware of the existential struggle for the survival not only of themselves, but of their families, the nation and Ukraine as such, do not lose sight of this most valuable and powerful factor even during combat operations. The Ukrainian respondents of my applied research cited defense as the primary motive in all their statements. Reactive violence is classified by Erich Fromm as benign aggression, as opposed to malignant aggression conditioned by either passions or situational factors.[46] It is a necessity for any criminal political regime initiating war aggression to convince the dominated society of the de facto re-polarization of reality – an offensive war must become a defensive war. That is why, in the context of the Ukrainian-Russian conflict, the West's conspiracy against Russia made it necessary to cast Ukraine as a country overrun with bloodthirsty fascists. Thus, the Russians, through this crime, have been caught in

45 The most tragic account of the massacre in Mariupol is the documentary *20 Days in Mariupol*.

46 [*Fromm 1969: 18*].

a reverse historical paradox, whereby the former rise of the collective will and resistance of their own nation against the German aggressor in a simple, almost genocidal struggle to survive the contours of the war of extermination declared by Nazi Germany is now experienced by themselves, in form of the extremely strong truly existential motivation of Ukrainians resisting Russian war aggression.

Language as the Trojan Horse of the unconscious

This brings us to language and its misuse in propaganda and the fabrication of mythical reality necessary to indoctrinate society and intoxicate the collective consciousness. To illustrate this using Russian propaganda, it is precisely the pejorative *fascist* that has completely lost its historical and political science meaning and has become an empty, contentless label, a universally applicable pejorative for anyone who rejects the Russian vision of the world – that is, among other things, the right to imperial war and war aggression. In the spirit of Russian history, then, the contours of the fascists are utterly fluid, changing *ad hoc* according to the needs of the regime and the evolution of the situation on the war and geopolitical fronts, not unlike *enemy of the people*,[47] a fluid pejorative used by the Stalinist regime in the bloody Soviet history. But of course, pejoratives as a dehumanizing strategy have been used in all war conflicts[48] and it is no different on the Ukrainian side, where Russians are most often referred to as *orcs*, thus achieving conveniently and quickly on a subconscious level the effect of partially dehumanizing the enemy. However, this pejorative is rather contained in the propaganda appeals of the mass media. The men of the combat units most often use the crude, nuclear term *pidor*, referring to the homosexual context as a frequent symbol of defamation in masculine communities.

Language in war and in outbreaks of mass violence must always be careful not to go against another human being, but rather against the dehumanized object of hatred – the category. Ideology, then, as a kind of almost secular religion,[49] always makes sure to shift the hatred of the enemy to the identity-ideological plane. It creates the enemy of our very norm of humanity, the enemy of civilization, thus taking the conflict to an almost interspecies level, which is always powerfully

47 [*Courtois 1999: 57*].
48 More Grossman [*2009: 161*].
49 More A. James Gregor [*2015*].

lethal even on the ethological plane.[50] On the other hand, some respondents also reported sympathy for the soldiers of the other side, demonstrating that the degree and need for dehumanization is strongly individual. In general, categorical dehumanizing hatred often does not survive very long in personal close encounters with the enemy, in which soldiers often find a shared humanity. Propaganda dehumanizes, but at the first close contact the toxic shell of dehumanization is shattered and only the human is left again. For example, I interviewed two consecutive respondents, with one (a member of the Azov Regiment) showing "complete sympathy for the other side's guys" while the respondent immediately following reported "complete hatred of all Russians for what they have done and committed here." It remains my speculation that due to such categorical intensity of response and the emotion evident in his nonverbal signals, this respondent suffered from severe post-traumatic syndrome

Professionals fighting at Avdiivka in turn reported complete indifference to the humanity of the other side and referred to Russian soldiers as "meat for exchange," stating in a completely unemotional and pragmatic manner that they do not shoot prisoners because they exchange them for their men. The treatment of prisoners is again a tragic example of culturally determined patterns of behavior. While Ukraine treats prisoners overwhelmingly in accordance with the conventions,[51] the Russian military often punishes Ukrainians for their continued resistance with various forms of torture. I believe that there is some attempt here to restore the originally anchored worldview of Russia's superiority over Ukraine through the maximum humiliation of Ukrainian fighters.

Torture, humiliation, and the most barbaric forms of dehumanization, including sexualized violence, very often end in the suicide of returning Ukrainian prisoners. As my interviewee, a machine gunner in the assault group at Avdiivka, put it: "My friend came back, hugged his mother, went upstairs and hanged himself there. He wrote a letter saying that after the Russians did to him, he was unable to continue living."

50 [*Holmes 2011: 320*].

51 Naturally, there is no verified source material for this claim. But apart from the purely observable condition of the prisoners exchanged, I draw on the testimony of my respondents. They too, in *off-record* interviews, admitted possible variations, particularly in the first lines of defenders at the front, but generally agreed that prisoners even in the first lines and further back from the front-line attack and defense corps were treated within convention.

Dehumanization as a result of de-humanization

This brings us to the strongest and often spontaneously mentioned factors that cause the dehumanization of the enemy and promote destructiveness and its "unproblematic" psychological acceptance. First and foremost is the simple phenomenon of belief in justice.[52] Ukraine was invaded, the soldiers cited the perfectly logical need to defend their families, homes, and country. This serves to both combat and dehumanize. However, two other factors are most often cited for the perfect dehumanization of the Russian aggressors. The first is precisely the torture of prisoners as a manifestation of the inhumanity of the "Neanderthals";[53] the second is the attacks on civilian targets. Indeed, the widespread killing of prisoners by the Russian army (respondents reported observing this via drones) and especially their brutal and indeed most appallingly inhumane methods of torture have resulted in the complete dehumanization of Russian adversaries. Thus, we have the perception of the enemy as "meat for exchange," at best. The widely documented bombing of infrastructure and civilian targets resulting in the deaths of children, women, and the elderly, the torture of civilians, the kidnapping of children, the Bucha, the Izjum, and similar documented atrocities of the Russian army then fulfill the very etymological basis of the word "atrocity" referring to the loss of humanity and the transformation to a lower form of life – animals. The darkened eyes of my interviewees, the change in tone, facial expressions, and expressions revealed Russian war crimes as the source of the most strongly perceived loss of humanity of the adversary, which otherwise contains compassion, belonging, and empathy. Through the loss of humanity, the subject loses the right to bear these attributes of humanity and turns into a dehumanized materialized object. "Soldiers are supposed to fight soldiers, not kill children," as one of my respondents put it. The Russians, with their war crimes and acts of inhumanity to the Ukrainian defenders, have themselves renounced the status of human, ceased to exhibit the attributes of humanity, and turned their offenses against the most defenseless into a dehumanized category relegated outside of humanity itself.

52 Just world factor, for more see [*Newman 2002: 54*].

53 As one of my respondents put it.

Euphemisms as a detoxification of language

Regarding another frequent linguistic element that facilitates dehumanization and the perpetration of violent acts, including killing – euphemisms – the word "work" is used most often on the Ukrainian side. Thus, the defenders going into battle do not go to fight but to work when they kill the enemy, using not explicit expressions but quite spontaneously the word "work," "we worked," etc., which correlates quite interestingly with the same expression used by my respondents committing crimes in the Rwandan genocide.[54] Again, of course, I am not directly comparing the legitimacy of these two groups of respondents by this comparison, just that both studies clearly indicate the human need for euphemistic terms for the act of killing as a basic cultural taboo in virtually all human societies. Euphemisms are one of the most important linguistic categories to facilitate the often so incomprehensible moral conversion of people exposed to other situational influences in various explosions of mass violence – including war, of course. Indeed, through the constant use of euphemistic linguistic code, reality is somehow transformed and the irrevocability of killing or being killed as the ultimate goal is pushed beyond ordinary reasoning into the structures of the human subconscious. Language is then not a disturbing element that would always again objectively mirror reality and thus activate the conscience of the perpetrators, or in this case the soldiers.

The act of killing, distance as an analgesic

This brings us to the actual processing of the act of killing. First of all, it is necessary to recall that modern warfare makes it possible to kill the enemy at almost any distance. Various operators are able to activate modern weapon systems and thus kill the enemy in countries thousands of miles away without even laying eyes on him. However, even such massive technological advances will not make the need for infantry unnecessary, as is sadly evident in the current war in Ukraine. Sophisticated weapon systems with adequate precision are in short supply for such a vast battlefield. Moreover, not all countries have them. Even the most advanced weapon systems cannot solve what infantry and reconnaissance personnel can. The surprise for me personally was that the warfare in the

54 [*Kolman 2024*].

twenty-first century is almost the same as at Verdun. As one of my interviewees, a member of an elite Ukrainian reconnaissance unit, said, "We are fighting buried in the trenches over the same senseless mud as in World War I, only with drones flying overhead." For research on dehumanization, then, the difference between killing at a distance and killing at close range is significant.

Killing the enemy remotely, for example by means of missiles, does not impose an immediate or subsequent significant psychological burden on soldiers and service personnel. Dave Grossman [*2009: 8*] literally states that in his years of study, he has not found a single instance among his respondents where people killing remotely have questioned or refused an order. Similarly, medium-range killing (typically infantry or light weapons fire at an adversary some tens of meters away) exhibits two mechanisms to buffer psychological stress. The first is so-called *group dissolution*, or group exoneration, where the attack is led by the entire group and thus it is not clear who specifically hit whom. This buffers the destructive effects on the individual psyche of the soldiers through an illusory, yet functional, dispersal of blame among the individual participants in the group or crowd.[55] The second mechanism that dampens feelings of guilt is then the inability to recognize and identify at medium range the enemy's intervention and the linear consequence between one's own act and one's death. This mechanism was frequently cited by my interviewees.

The most devastating to the human psyche is close range *combat*, face-to-face killing. Here one can neither illusorily nor rationally deny clear responsibility for the death of another human being. In terms of form, research suggests that firearms are the most acceptable. However, even here the destructive effects on the human psyche must be tempered. For example, the *Einsatzgruppen* who murdered women, the elderly, and children in the so-called Wild East often turned their victims around and shot them in the back of the head so as not to have to face their gaze. The frequent use of blindfolds in military executions plays the same role. The firing squad uses the aforementioned group acquittal as well as the avoidance of the executioners' gaze into the eyes of the condemned as the most intense activator of interspecies solidarity, or in less academic terms, shared humanity. The same role of increased emotional distance is played by the hoods often used in abductions. Evidence shows that when hoods are used, hostages

55 More on this topic by Gustave Le Bon [*1946*].

are more likely to be killed.[56] In terms of weapons, then, the use of so-called cold weapons, i.e. knives and bayonets, is significantly more psychologically challenging, and the greatest aversion we have as humans, according to various studies, is to killing by stabbing. Soldiers preferred to slash with field blades, use rifles as clubs, or hack the enemy rather than stab him with a bayonet. In World War I, for example, bayonet fighting accounted for only about 0.1% of all combat.[57] Of my respondents, only one respondent who had to use a dagger in a sudden situation during the survey reported this form of experience. According to him, he is also the only one in his area who used a cold weapon in combat. It also confirms a significantly different and more complex psychological response to this form of killing than the use of a firearm.

The act of killing and the psychological response is of course highly individual and marked by the situational context. The phases tend to be successive. A strong feeling of omnipotence, a certain manic phase occurring immediately after the act of killing at close range, which is then often followed by a mirror effect – an emotional slump often accompanied with nausea and vomiting. Strong remorse follows, and the final stage is some type of psychological defense – rationalization, displacement, or negation. I can confirm these different phases based on the testimonies of my interviewees – both from among the perpetrators of the mass killings in Rwanda, Africa,[58] and from members of combat units in Russia and Ukraine. In the African prison in Kigali, the mass murderers interviewed were mentally collapsing under the weight of remorse, testifying about nightmares and the danger of being killed as they groaned in their sleep suffering from severe post-traumatic stress disorder. A member of the so-called Wagner group in this research reported that after the first attack and the first killing, he was unable to eat for four days and excrete for several days.[59] That's how severe his post-traumatic physical reaction was. The men describing their experiences exhibited what is known in Anglophone literature as the *thousand yard stare*, where they look as if through you, the physical world, detached in the grip of PTSD from "our" world and reality and buried in the bowels of their own tormented memories. On the

56 [*Grossman 2009: 161*].

57 [*Kershaw 2017: 75*].

58 [*Kolman 2024*].

59 The fact that perpetrators are often victims themselves has been described by a number of scholars based on their research, the most authoritative being Ervin Staub [*1989: 6*].

other hand, some respondents report that they have experienced nothing of the sort, which again only points to a highly individualized psychological response to the act of killing. They often mention that the commanding officer kept telling them that they were not killing but defending themselves, which led to a better acceptance of the first acts of direct combat and the act of killing in particular.

Conclusion

My field research thus reveals a simple fact, as hopeful as it is tragic, about the human species and its capacity to kill. Outside of the roughly one percent of clinically diagnosable psychopaths who are able to participate in mass violence or warfare without a normal psychological response due to their zero capacity for empathy, killing another human being is virtually never an act we as humans are able to simply deal with. Political regimes initiating mass violence as well as government and military administrations in war conflicts must use a wide variety of tools to legitimize killing and to dehumanize the enemy/victim. So too must the military, which transforms the individual human being exhibiting ingrained moral boundaries through its resocialization machinery into a "uni-form" submitting to the orders of a higher abstract entity represented by the command and the military in general. Even for the Ukrainian defenders, to whom the author of this study owes a deep debt of gratitude, killing the enemy is not a matter with which they simply cope. Some, though not all, show an understanding that the other side is not just a dehumanized entity, but often men like them lying in the mud of the trenches for all sorts of reasons that brought them into this fight in the first place, where the criminal Kremlin regime is in . Others see Russian soldiers as merely dehumanized objects, materialized matter "flesh to be exchanged" or discharged to preserve Ukraine as a country.

Applied research has shown that depriving another person of life thus remains a fundamental cultural taboo, and without various mechanisms of dehumanization, we as humans are unable to kill at close range without the often highly destructive psychological reactions that follow. Post-traumatic stress disorder is actually an indication of a "healthy" psyche, the result of internalized moral values that we as a society have delivered with permanence through socialization into a person's inner psyche, only to then be interrupted for a period of time by situational influences. Dehumanization and related situational factors thus remain

a basic essential necessity, a precondition for being able to kill the other, as for a brief almost ephemeral period of time we cease or, in the case of the military, are artificially forced to cease, recognizing a shared humanity with other brightly contoured members of our own species.

It remains a tragedy of war that soldiers are the executors of both orders and the acts of killing, as well as the subsequent victims of post-traumatic disorders as a psychological response to those traumatic experiences. Additionally, a society's gratitude towards its heroes often does not survive too long after the victory parades and the patriotic uplift filled with euphoric emotions. And these men, used by the regimes and the times, then often live out their lives on the margins of a rescued society that has artificially imposed inhumanity on them for a brief period of time, only to have their original and briefly muted inherent ethical norms and humanity subsequently bring back agonizing memories and reignite the traumas they experienced. For as Jan Urban says: He who has passed through war remains forever a visitor in peace.[60]

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60 [*Urban 2017: 101*].

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