

Conceptual principles of ensuring the rights of servicemen in administrative proceedings

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Abstract. The relevance of this topic is stipulated by the need to improve judicial mechanisms for the protection of the rights of servicemen, taking into account changes in legislation related to martial law, the need to harmonise national legislation with international standards, and the growing public demand for transparent protection of the rights of servicemen. The purpose of this study was to comprehensively examine the approaches to ensuring the rights of servicemen in the administrative proceedings. The study used a comparative method of analysing the legislative provisions and court practice governing the administrative protection of military personnel's rights. A systematic analysis of court decisions in cases involving military personnel is carried out. The author identifies the main obstacles to effective protection of the rights of this category of persons, among which is the lack of special procedural guarantees. Recommendations are made to improve the legal framework to enhance the level of judicial protection of the military. The study also analysed the international experience of such countries as the United States, the United Kingdom, Canada, Turkey, and Israel. The study showed that in the United States, the rights of the military are protected through specialized military courts, as well as through civilian courts, where the rights of military personnel are protected under human rights laws and federal legislation. In the UK and Canada, case law actively promotes the protection of the military in administrative proceedings.

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In Turkey and Israel, the existence of military courts allows for prompt resolution of discipline and service issues. At the same time, the protection of the rights of servicemen in these countries is based on national human rights legislation, and only the member states of the Council of Europe that have ratified the European Convention on Human Rights take into account the precedents of the European Court of Human Rights in their case law. The findings of the study confirmed the importance of adapting the best international practices to build an effective system of administrative judicial protection of the rights of servicemen in Ukraine, in particular through the implementation of international standards and the creation of specialized legal institutions for the military

Keywords: disciplinary liability; social protection; appeal against decisions; territorial centre for recruitment and social support; protection against discrimination; martial law

Introduction

Ensuring the rights of servicemen in the current situation is of particular importance, given the threat to Ukraine's national security and stability caused by the war. The armed forces are crucial for national defense, protecting the country's sovereignty and territorial integrity. The military, as a special group of citizens, must comply with additional service restrictions and norms due to the specifics of their activities and the increased risk of performing their duties in wartime. This, in turn, creates the need to introduce special legal guarantees and protective mechanisms, especially in situations where the military face administrative disputes in the course of performing their duties.

The existing legal framework does not always fully cover the aspects of protecting the rights of this category of citizens in administrative proceedings. The procedure for reviewing administrative cases involving military personnel often does not take into account the specifics of their activities, which leads to restrictions on access to judicial protection. In addition, military personnel often have difficulties in appealing against decisions, actions, or inaction of state authorities and their officials related to social security, labour relations, the implementation of benefits, etc. (Spytska, 2023). Effective protection of the rights of servicemen in administrative proceedings is not only a matter of observance of fundamental human rights, but also an important factor for ensuring proper morale and combat capability.

The work of A.A. Radchuk (2023) is devoted to the protection of the rights of servicemen in administrative courts of Ukraine, which has become increasingly important since the beginning of Russia's large-scale aggression against Ukraine. The author emphasizes the need for a comprehensive approach to the legal protection of servicemen, including the establishment of specialized military courts, improvement of legislation and consideration of international experience, which will help to improve the effectiveness of social guarantees for servicemen and ensure law and order in Ukraine. The study by V. Teremetskyi *et al.* (2024) focuses on the social protection of the rights of servicemen through administrative proceedings. The study points out the obligation of the authorities to prove the legitimacy of their actions, the possibility of applying exemplary decisions, exemption of plaintiffs from court fees and simplified or written consideration of cases. The study by D.A. Schlueter and L. Schenck (2020) considers the possibility of limiting the discretionary powers of unit commanders to open cases and initiate litigation in cases of serious violations. The authors conclude that such a restriction is a necessary step to minimize potential conflicts of interest, ensure fairness and uphold the rule of law in military structures.

The legal aspects of the restriction of fundamental rights and freedoms of the military during martial law in Ukraine, as well as the regulations governing additional guarantees

and restrictions on their rights, were studied by Y. Poltiev and L. Medvid (2023). The study concluded that additional guarantees and restrictions are needed due to the specifics of military service. A similar issue was investigated by L.I. Mazurenko (2023), who focused on the analysis of the problems of social security of servicemen and their families in Ukraine, in particular in the context of fulfilling obligations after Ukraine's accession to the EU and the armed aggression of the Russian Federation.

The risks of discharging servicemen diagnosed with chronic diseases are investigated by D.A. Nelson *et al.* (2022). The authors conclude that such diseases increase the likelihood of dismissal, which indicates possible discrimination on the basis of health status, and also requires the use of administrative and legal mechanisms to protect the rights of servicemen. A similar issue was addressed by N. McClean (2021). The author investigated the dismissal of military personnel for minor violations related to mental health issues, which disproportionately affects military personnel of darker skin colour and complicates their reintegration into civilian life. The author emphasizes the need for reforms that would take into account the collateral consequences of dismissal due to mental health problems, which is related to the topic of this study on the need for fair consideration of such cases.

The analysed works of the authors cover key aspects of legal protection of military personnel under martial law. The studies cover the issues of limiting and guaranteeing the constitutional rights of the military, social protection, legal support in criminal proceedings, as well as harmonization of national legislation with the standards of the EU and the North Atlantic Treaty Organization (NATO). The authors emphasize the imperfections of the existing mechanisms, the need to improve them, and the establishment of military justice and the introduction of specialization of lawyers. In general, the authors highlight the importance of ensuring a comprehensive approach to the protection of the rights of the military through the development of concepts and adaptation of international standards.

This study provided a comprehensive analysis of the conceptual approaches to ensuring the rights of servicemen in administrative proceedings. To achieve this goal, the following tasks were identified: to analyse the key legal documents regulating administrative proceedings against military personnel in Ukraine, the USA, the UK, Canada, Turkey, and Israel; to identify challenges and deficiencies in the legal processes related to safeguarding the rights of military personnel in the specified countries.

Materials and methods

The study of the conceptual framework for ensuring the rights of servicemen in administrative proceedings was

based on a comparative legal analysis of the legislation of Ukraine, the USA, the UK, Canada, Turkey, and Israel. The main focus of the study is on the use of the comparative legal method, which included a systematic study of legal acts, court practice and administrative procedures in these countries. The key criteria for comparison were: organization of administrative proceedings, peculiarities of regulation of disciplinary and administrative disputes, rights, and obligations of servicemen in court proceedings, peculiarities of military justice, influence of international law and standards. The study used additional methods, in particular: system analysis to study the legal framework of each country, and the method of legal comparativism, which focuses on comparing legal systems and approaches of different countries to identify common features and unique solutions in the regulation of administrative proceedings against military personnel.

For the purpose of this research, the author used the legal acts of Ukraine relating to the conceptual framework of the rights of servicemen in administrative proceedings. The Constitution of Ukraine (1996) was used to analyse the content of the fundamental rights and freedoms of servicemen, which helped to reveal the essence of constitutional guarantees and principles of protection of the rights of servicemen within the general system of human rights. The Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991) was used to analyse the regulation of social protection of servicemen and members of their families, which helped to reveal the content of legal guarantees, support mechanisms and social benefits. The analysis of the provisions of the Law of Ukraine No. 3551-XII "On the Status of War Veterans and Guarantees of Their Social Protection" (1993) allowed studying the issue of benefits for war veterans and guarantees of their social protection. Also, the Law of Ukraine No. 2232-XII "On Military Duty and Military Service" (1992) was studied and the concept of military duty was analysed, which helped to determine the legal status of persons performing military service and their obligations to perform their duties.

In addition, the Code of Administrative Procedure of Ukraine (2005) was analysed in terms of opening, suspending and closing of lawsuits, which helped to understand the peculiarities of judicial protection of the rights of servicemen and their ability to protect their rights through administrative courts. Also, the Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine" (1999) was analysed, namely the concept of military discipline and duties, which helps to reveal the rules of conduct, relationships, and responsibilities of servicemen in the conditions of service.

In addition to Ukrainian legislation, the legal acts of the United States, the United Kingdom, Canada, Turkey, and Israel were also analysed, as these countries have a developed system of legal protection of servicemen and extensive experience in regulating their rights, which allows comparing different approaches and standards in this area. The Armed Forces Act of Great Britain (2006) helped to define the basic principles of regulating the legal status of military personnel within military jurisdiction and organizing disciplinary procedures. The Human Rights Act (1998) provided an opportunity to assess the integration of international human rights standards into the UK domestic legal system, in particular in relation to military personnel. The National Defence Act of Canada (1985) was used to study the responsibility of

military courts and the guarantee of defence rights within the Canadian system of military jurisdiction.

Law of Turkey No. 353 "On Establishment of Military Courts and Tribunal Procedure" (1963) allowed analysing the peculiarities of the functioning of military courts and their role in ensuring the rights of military personnel. The analysis of Israeli Law No. 5715 "Military Justice Law" (1955) allowed studying the specifics of disciplinary and criminal procedures and to identify basic rights, including protection from discrimination. In the United States, the rights of persons liable for military service in the field of administrative justice were studied through the analysis of the Constitution of the United States (1787), the Administrative Procedure Act (1946), and the Uniform Code of Military Justice (2019). The relevant legal acts allowed defining the mechanisms for appealing disciplinary decisions, expanding the ability of servicemen to apply to federal courts and the US Military Court of Appeals to review decisions.

In addition, precedents of court cases were used for a deeper understanding of the application of the law on the protection of the rights of servicemen in administrative proceedings: Case No. 38184/03 "Matyjek v. Poland" (2007), Cases No. 71412/01 and No. 78166/01 "Behrami and Behrami v. France and Saramati v. France, Germany, and Norway" (2007), Case No. 82-167 "Chappell v. Wallace" (1983), Case "Engel and Others v. the Netherlands" (1976), Case No. 84-1097 "Goldman v. Weinberger" (1986), Case No. 10-56634 "Log Cabin Republicans v. United States, *et al.*" (2011), Case No. 71-2408 "Minds v. Seaman" (1971), Case No. 14-556 "Obergefell v. Hodges" (2015), Case No. 4870/02 "Gül and others v. Turkey" (2010), Case No. 22103 "R. v. G  n  reux" (1992), Case No. 35755 "R. v. Moriarity" (2015), Case "Smith and others v. Ministry of Defence" (2013). The analysis of judicial practice helped to identify the peculiarities and shortcomings of law enforcement, as well as the main problems faced by servicemen in exercising their rights. The precedents made it possible to assess the impact of the current legislation on the protection of social and legal guarantees for military personnel and their families.

The study also used statistics on court decisions of Ukraine for the period from 24 February 2022 to June 2023 (Judiciary of Ukraine, 2024), which made it possible to assess the dynamics and nature of cases related to the protection of the rights of servicemen. The statistics allowed us to identify the most common types of court cases, their outcomes and existing problems of law enforcement.

Results

In today's environment, protecting the rights of servicemen and women is especially important given the growing risks and challenges they face. The state and society should provide reliable legal support for the military, in particular through the experience of human rights organizations, the system of free legal aid and hotlines of state institutions. However, significant shortcomings have been identified in the functioning of the military justice system, which negatively affects the ability to ensure the rights of servicemen. High-quality and transparent military justice is the basis not only for protecting the rights of the military, but also for maintaining the combat capability of the army and the trust of citizens (Herrasti *et al.*, 2021). One of the available remedies for servicemen is the hotlines of the Ministry of Defence of Ukraine, the Ukrainian Parliament Commissioner for Human

Rights, the government, and the Territorial Defence Forces Command, which allow them to file complaints, suggestions, or requests. In addition to state initiatives, NGOs play an active role in providing legal advice and assistance to the military in legal support of cases.

An analysis of the register of court cases since 24 February 2022 shows that 65% of servicemen and women apply for administrative issues related to unauthorized leaving of the unit, failure to report to the territorial recruitment centre, dismissal from service, medical issues and appeals against decisions of the military medical commission, as well as social and pension payments (Judiciary of Ukraine, 2024). Currently, there is no procedure that effectively informs servicemen about their rights and provides protection if necessary. Contacting the hotline of the Ministry of Defence of Ukraine usually involves providing advice or clarification, and in complex cases, processing within 30 days with further referral to the relevant authorized structure. The absence of a special structure for the systematic resolution of legal issues of the military indicates the insufficient effectiveness of the existing system of protection provided for by Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine" (1999).

Another problem is the social hierarchy among military personnel, which creates privileges for certain categories. For example, legal services at military units are focused on supporting the command, due to their professional dependence on it (Yaselska, 2022). This limits the possibilities for independent legal assistance to military personnel who fear potential consequences for their statements. As a result, many military personnel are forced to rely on personal contacts instead of centralised legal support.

Ukrainian military personnel, including those in the Armed Forces, Security Service, Border Guard Service, and National Guard, face potential administrative and criminal liability. However, the penalties imposed may not always align with the actual harm caused by their actions (Dashkivska, 2023). Furthermore, the administrative process lacks transparency and often fails to consider the unique realities of military service, such as prolonged medical treatment or health-related limitations (Volodenkova *et al.*, 2023).

The issue of protecting the rights of servicemen and women, in particular members of vulnerable groups such as LGBTQI+, is of particular importance in the modern military environment. The right to administrative protection for such categories of military personnel is fundamental, as the rejection and discriminatory practices they often face can significantly affect their professional development and the morale of military units. N.V. Shelever (2024) notes that commanders are limited to transferring affected soldiers to other units, while perpetrators go unpunished. This indicates structural deficiencies in the current approaches to protecting the rights of servicemen and women in Ukraine and highlights the importance of establishing effective administrative protection mechanisms to prevent such situations.

One of the most important ways of protecting the rights of servicemen is through the judicial process, which is designed to ensure an objective and impartial consideration of cases concerning the legal status of the military. Administrative proceedings are focused on resolving a wide range of issues related to social guarantees, labour rights and pensions for servicemen (Mikhnevych *et al.*, 2023). However, the constant increase in the number of administrative appeals in

Ukraine, which exceeded 20,000 cases in 2023 alone, places new demands on the system of legal support for the military, emphasizing the need for conceptual changes in approaches to the judicial review of such cases (Judiciary of Ukraine, 2024). The main problem is the overloading of administrative courts, which leads to delays in the consideration of cases, the lack of specialized procedures for the prompt resolution of military issues, and the insufficient number of qualified specialists who understand the specifics of military service. This requires reforming administrative justice to create more effective mechanisms to protect the rights of servicemen, such as appealing to courts of general jurisdiction.

The Constitution of Ukraine (1996) (Article 55) enshrines the right to judicial protection of every citizen, including military personnel. However, in practical terms, this right is not always fully realised due to insufficiently detailed provisions on procedural support in administrative proceedings for the military. In particular, the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991), although defining social guarantees, does not contain provisions that take into account the specifics of military service in terms of access to justice in the context of hostilities or mobilisation. The provisions of the Code of Administrative Procedure of Ukraine (2005) are often inconsistent with the provisions of specialized legislation, such as the Law of Ukraine No. 2232-XII "On Military Duty and Military Service" (1992). For example, Article 12 of this law guarantees military personnel the right to defend their interests in accordance with the established procedure, but the Code of Administrative Procedure of Ukraine does not contain special procedures for the prompt consideration of cases of military personnel in crisis situations. This inconsistency limits the effectiveness of judicial protection of the military in real life.

It is also worth paying attention to the compliance of by-laws with the provisions of the Constitution of Ukraine (1996) (Article 55). For example, certain provisions of the Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991), which restrict the right of military to family leave unless it is provided for in a specific situation. This is contrary to the principle of equality of opportunity enshrined in the Constitution of Ukraine (1996) and can be seen as a violation of human rights. These gaps create risks of legal arbitrariness, especially in cases where the by-laws are not consistent with constitutional principles or are applied selectively, which requires amendments to address such gaps and ensure legal balance.

In addition to national legislation, the legal status of servicemen is influenced by international standards. In particular, the European Convention on Human Rights (1950) (Article 6) and the case law of the European Court of Human Rights provide guarantees of a fair trial for the military. Among such cases is Case No. 38184/03 "Matyjek v. Poland" (2007). In this case, a serviceman appealed against a decision that restricted his access to court because of his status. The Court determined that the restriction of access to justice for the military must be justified and not contradict the principles of proportionality and legal certainty. The Court noted that the exclusion of military personnel from the general jurisdiction of civilian courts must be carefully justified and provide for alternative legal mechanisms (paragraph 48 of the judgment). This case confirms that the rights of the military to access justice must be protected even in the

specific circumstances of their service. This is a benchmark for reforming administrative justice in countries, including Ukraine, to ensure effective access to judicial protection for military personnel.

Another example is the Case “Engel and Others v. the Netherlands” (1976). In this case, it was determined that disciplinary measures applied to the military should not be arbitrary. The Court emphasised the need to comply with procedural guarantees in disciplinary cases. The Court noted that “Military courts must ensure the rights to a defence and a fair hearing, especially where disciplinary measures may have serious consequences for the military personnel” (paragraph 82 of the judgment). This judgment is relevant for Ukraine as it highlights the need to improve the by-laws governing disciplinary sanctions and to introduce effective judicial oversight of their application. Another example is Cases No. 71412/01 and No. 78166/01 “Behrami and Behrami v. France and Saramati v. France, Germany, and Norway” (2007), which concerned the responsibility of the military in international operations and the determination of the jurisdiction of the courts over their actions. The Court ruled that even in difficult conditions of military service, international human rights standards must be observed. “The rights of military personnel and civilians during international missions must be ensured within the jurisdiction of the respective States” (paragraph 147 of the judgment). The judgement sets standards for the protection of the rights of military personnel performing their duties outside the national territory.

Taking into account the precedents of the European Court of Human Rights, Ukrainian legislation and administrative proceedings should ensure: real access of the military to judicial protection, including the possibility of appealing against disciplinary sanctions; proportionality of measures applied to the military with procedural guarantees; adaptation of national norms to the standards established by international case law.

Thus, the consolidation and systematisation of relevant legal acts play an important role in building a coherent system of protection of the rights of servicemen and increasing the efficiency of the functioning of military justice in Ukraine. According to the provisions of Article 294 of the Code of Ukraine on Administrative Offences (1996), a person subject to an administrative penalty has the right to appeal the judge's decision within ten days of its adoption. If the appeal is filed later than the deadline, the appellate court returns it to the applicant, unless the applicant requests an extension of the deadline or if such an extension is denied. In this case, if there are valid reasons justifying the missed deadline, the applicant may file a motion for its extension, which is usually

granted by the appellate courts. The above provisions of the Code of Ukraine on Administrative Offences (1996) demonstrate the mechanism for appealing against administrative penalties, which is a key aspect for the implementation of the right to a fair trial enshrined in both national legislation and international legal standards (in particular, Article 6 of the European Convention on Human Rights (1950)).

Since the beginning of the full-scale war unleashed by Russia against Ukraine, there has been an increase in the number of administrative offences among military personnel. In 2023, the courts heard more than 20,000 cases related to military offences, due to an increase in the number of military personnel. The number of appeals remains low, with only 869 cases in appeal proceedings according to court statistics, as servicemen mostly plead guilty to administrative violations (Judiciary of Ukraine, 2024). In addition, decisions on issues related to negligent performance of official duties in Ukraine often do not sufficiently explain the concept of “negligence”, which makes it difficult to objectively analyse the circumstances of the case and the fairness of the decision. Court decisions in cases involving negligent performance of duties by military personnel demonstrate deficiencies in the substantiation of the concept of “negligence”, which complicates objective analysis and may affect the fairness of the decisions. For example, in the Ruling of the Malynovskiy District Court of Odesa in Case No. 521/5259/22 (2022), a serviceman was found guilty of negligent performance of duty. However, the court's reasoning was limited to the guilty plea and the protocol on administrative offence, without a detailed analysis of the circumstances that could have influenced his behaviour, such as the level of training, stress factors or the duration of service during a special period.

A similar situation is reflected in the Decision of the Tyshmenytsia District Court of Ivano-Frankivsk Region in Case No. 352/632/22 (2022), where falling asleep on duty was qualified as negligent attitude to service in a special period. However, the concept of “negligence” in the decisions did not receive a clear definition or assessment criteria that could take into account subjective (psychophysical state) and objective factors (organization of service, duty regime).

The lack of detail in the concept of “negligence” creates a risk of subjective interpretation of offences, complicating the unity of judicial practice. This points to the need to develop a regulatory definition of the concept and create unified criteria that will help ensure the objectivity and fairness of court decisions. The data in table 1 indicate a high level of administrative offences in the military sphere, highlighting the need to further improve approaches to the regulation and judicial review of such cases.

Table 1. Statistics of court decisions for the period from 24 February 2022 to June 2013

Article.	Number of resolutions
Article 172-10 (Refusal to comply with the lawful demands of a commander)	1105
Article 172-11 (Unauthorised leaving of a military unit or place of service)	7964
Article 172-12 (Negligent destruction or damage to military property, with material liability)	26
Article 172-15 (Negligent attitude to military service)	2974

Source: Judiciary of Ukraine (2024)

International experience demonstrates the effectiveness of different approaches to protecting the rights of servicemen. In order to study effective practices, it is important

to pay attention to the experience of such countries as the USA, the UK, Canada, Turkey, and Israel. Despite the differences in historical development, socio-cultural and political

conditions, the analysis of a wide range of approaches to military justice in these countries can provide Ukraine with useful guidelines for the development of its own system. The study of different legal traditions and models helps to identify common features of military justice that can be used to develop relevant standards and practices in Ukraine.

The United Kingdom, Canada, the United States, and Turkey are all members of the North Atlantic Treaty Organization (NATO). Notably, the UK, the US, and Canada were among the founding members of NATO, while Turkey joined later in 1952. However, NATO membership mainly promotes military cooperation, and military justice standards are usually based on the domestic legislation of each country, rather than on uniform NATO norms. This leads to individual peculiarities of military justice in each of the states under consideration, in accordance with their national traditions.

The legal status of servicemen and women in different countries varies significantly depending on legal traditions and political conditions (Abdrasulov *et al.*, 2024). In the United States, this status is determined by the Uniform Code of Military Justice (2019), in particular Article 31 (10 U.S.C. §831), which guarantees the right of military personnel to legal defence and prohibits coercion to self-incrimination. It is important that the judicial institutions, namely: Court of Appeals for the Armed Forces, are independent and ensure transparency of decisions. In addition, the U.S. Court of Military Appeals is the highest court of law for military disciplinary cases (Garibian *et al.*, 2020). A similar approach can be observed in Canada, where the National Defence Act of Canada (1985), in Article 249, provides for the possibility of appealing decisions of military courts to the Supreme Court. The court specializes in reviewing disciplinary violations, administrative complaints, and oversees the implementation of military norms and standards (Mandle & Pearson, 2023). This indicates a high level of independence of judiciary. In contrast, in Turkey, control over military affairs is exercised by internal bodies through the Turkish Law No. 353 “On Establishment of Military Courts and Tribunal Procedure” (1963), which is emphasised in Article 112, which states that orders are binding without the right to appeal. This approach limits the ability of the military to defend their rights.

Conflict resolution mechanisms in different countries show significant differences. In the United Kingdom, under the Armed Forces Act of 2006, Article 42 establishes investigative procedures that meet civilian law standards. This ensures civilian oversight of military affairs, as well as the possibility of recourse to the ombudsman. In Turkey, however, military affairs remain closed to external bodies, making independent monitoring impossible and restricting the rights of those serving.

Compliance with international standards also varies. Israel, based on the Military Justice Law (1955), enshrines in Article 4 the right of the military to appeal decisions to the Supreme Court, which ensures that the principles of justice are upheld. The Israeli legal system allows soldiers to appeal decisions of lower military courts to the Military Court of Appeal in matters of discipline, dismissal, and other service matters. In cases of serious human rights violations or issues of constitutional significance, soldiers can appeal to the Israeli Supreme Court, which acts as the highest court and often guarantees their rights in complex or controversial situations (Aizenberg, 2022). In their decisions, Israeli courts often refer to international jurisprudence on the rights of the

military, in particular the precedents of the European Court of Human Rights, to ensure that the protection of rights is in line with international standards (Clifford, 2019). Canada also demonstrates the integration of international law, in particular through the mechanisms for monitoring the physical and psychological health of military personnel provided for in the articles of the National Defence Act of Canada (1985). Turkey, on the other hand, faces criticism from international organizations due to the closed nature of its system and cases of human rights violations.

The approach to discipline in the United States and Turkey illustrates two opposing models. In the United States, disciplinary measures are governed by transparent procedures under the Uniform Code of Military Justice (2019), which guarantee defence rights and legal assistance to the military. Instead, in Turkey, strict requirements for the execution of orders and internal control, as enshrined in Article 112 of Turkish Law No. 353 “On Establishment of Military Courts and Tribunal Procedure” (1963), make the system less flexible and prone to abuse. Thus, Turkey demonstrates an example of strict control, while the United States emphasised a balance of discipline and military rights. This analysis highlighted that the integration of the principles of judicial independence, transparency of procedures and international standards, as in the US, Canada and Israel, can serve as a guide for improving the military justice system in Ukraine.

Case law in the UK, Canada, Turkey, the US, and Israel demonstrates different approaches to protecting the rights of military personnel, reflecting national legal traditions and international standards. In the UK, case law has significantly contributed to the protection of the military. In the Case “Smith and others v Ministry of Defence” (2013), the Supreme Court ruled that military personnel on duty abroad are entitled to the protection provided by the European Convention on Human Rights (1950). The court recognised that Article 2 of the European Convention on Human Rights (right to life) obliges the state to ensure adequate measures to protect the military, even in a war zone, if this does not contradict the legitimate interests of the state. In the same case, the court also drew attention to Article 14 of the European Convention on Human Rights (prohibition of discrimination), finding that discrimination based on sexual orientation is a violation of the rights of military personnel. These decisions became the basis for recognizing the right of the military to equal access to justice.

In Canada, judicial practice actively ensures the rights of military personnel through the mechanisms enshrined in the Canadian Charter of Rights and Freedoms (1982). In Case No. 22103 “R. v. G  n  reux” (1992), the Supreme Court ruled that military courts must be independent and impartial, even within the internal hierarchy of the military system. This decision emphasised the importance of a fair trial, as well as the observance of the fundamental rights of the military. In the case of Case No. 35755 “R. v. Moriarty” (2015), the court determined that the norms of military legislation should not contradict the Charter, and that servicemen have the right to equality before the law and protection of their rights in all conditions of service.

In Turkey, jurisprudence on the military is often criticised for its limited access to justice. In Case No. 4870/02 “G  l and others v. Turkey” (2010), the European Court of Human Rights found that Turkey had violated the right of a military personnel to a fair court proceeding. The Court

stressed that the closed nature of military courts in Turkey contradicts the principles of transparency and independence. This decision has become a precedent for improving the protection of military personnel's rights in countries where military justice is controlled exclusively by domestic authorities.

In the United States, the case law takes into account the uniqueness of military service, but at the same time ensures the protection of fundamental rights. In Case No. 71-2408 "Mindes v. Seaman" (1971), the court established criteria for reviewing administrative decisions related to military service. The court noted that intervention is possible only in cases where constitutional rights are violated, or serious administrative errors are committed. In Case No. 84-1097 "Goldman v. Weinberger" (1986), the Supreme Court found a restriction on the wearing of religious headgear (kippah) in the service to be lawful, but this decision later led to legislative changes that expanded the rights of religious minorities in military institutions.

For LGBT+ servicemen and women, their rights are protected in both civilian and military proceedings, where administrative courts hear cases of discrimination based on sexual orientation or gender identity. The Uniform Code of Military Justice (2019) provides basic rights for all military personnel, but certain groups, including LGBT+ service members, have faced restrictions due to previous policies, such as the Repeal of "Don't Ask, Don't Tell" (2024), which was in effect in 2011. After its repeal, LGBT+ individuals gained the right to serve openly, which guaranteed them the ability to protect their rights and challenge discrimination administratively. One of the most famous cases on the rights of LGBT+ military personnel is Case No. 10-56634 "Log Cabin Republicans v. United States, *et al.*" (2011), filed in 2004 against the "Don't Ask, Don't Tell" policy. In 2010, a federal court in California ruled the policy unconstitutional, which was an important step in ensuring the rights of LGBT+ military personnel in administrative proceedings. As a result, the policy was repealed, setting a precedent for protecting the rights of LGBT+ military personnel and creating a basis for further discrimination lawsuits. In Israel, judicial practice is focused on balancing military interests with human rights. Military courts operate under Israeli Military Justice Law No. 5715 (1955), but their decisions can be appealed to the Israeli Supreme Court, which actively integrates the principles of international law.

Comparative analysis shows that judicial practice in the UK, Canada, and the US ensures transparency, independence, and the possibility of appealing decisions. In Turkey and Israel, there is limited access to judicial protection, but international bodies such as the European Court of Human Rights play an important role in setting precedents for the protection of military personnel. Ukraine should take into account the experience of the UK and Canada to create an effective military justice system that meets international standards.

In each of the countries under consideration, the system of administrative protection of the rights of servicemen is formed on the basis of national legislation and court precedents, which allows for the adaptation of legal mechanisms to the specifics of military service. The experience of these countries can be useful for Ukraine in creating an effective system of protection of the rights of servicemen, including the development of specialized judicial institutions, strengthening the regulation of legal procedures and integrating international human rights standards. This will

allow Ukraine to create a legal framework that takes into account the specifics of military service and ensures access to fair for servicemen.

Discussion

This study of the conceptual framework for ensuring the rights of servicemen in administrative proceedings is important for enhancing the effectiveness of legal protection of the military in Ukraine, especially in the context of armed conflict. The results obtained indicate the need to modernize the legal acts regulating the judicial protection of the rights of servicemen, in particular, by improving the mechanisms of administrative proceedings. The study reveals significant gaps in legal regulation that may create obstacles to the exercise of military personnel's rights in cases of conflicts with the command, discriminatory actions and other offences. Comparison with the work of authors such as D.A. Schlueter and L. Schenck (2023), who study the reform of military justice in the United States, demonstrates similar problems with abuse of power and lack of transparency in the activities of military institutions. The authors suggest reducing the influence of commanders on the judicial decision-making process to ensure the objectivity and independence of military tribunals. Their conclusions are relevant for Ukraine, where there is also a need to reduce the influence of commanders on the judicial defence of the military, especially in the context of administrative disputes. However, it is necessary to take into account the features of the Ukrainian military system, where the creation of a fully independent system of military courts may be limited by resources and require adaptation to national realities.

The findings and conclusions of this study and J. Gerhards *et al.* (2024) have similarities and differences that demonstrate different perspectives on the issue of servicemen's rights. In their conclusions, the authors emphasize that the restriction of personal autonomy of servicemen in the course of performing their duties or training can significantly affect their human dignity and moral choices. The authors conclude that in order to ensure effective protection of rights, it is necessary to reconsider approaches to military discipline, which are often based on strict hierarchy and subordination, which in turn can restrict individual rights and moral autonomy. Instead, this study aims to examine the practical mechanisms for protecting the rights of servicemen and women by comparing the legislation and case law of different countries. The conclusions emphasize that the most effective models are those that ensure the independence of military courts, access to civilian justice, compliance with international standards and the possibility of appealing disciplinary decisions. For example, the case law of the UK and Canada shows that independent judicial institutions contribute to better respect for the rights of the military, while in Turkey, the secrecy of military cases creates obstacles to legal protection (Berdar, 2023). The results of both studies agree that human dignity should be the basis for the development of legal mechanisms in the military sphere. At the same time, the conclusions highlight the need for specific institutional changes and improvement of legislation, while J. Gerhards *et al.* emphasize the need for moral and ethical transformations in the military culture. Thus, both studies complement each other, offering both conceptual and practical guidelines for improving the protection of the rights of servicemen and women.

The findings of the study also correlate with the work of S. Westergard (2019), who points out the need to protect servicemen from discrimination in the army. In the context of the study of the situation in the United States, the author focuses on the exclusion of the military from anti-discrimination legislation, in particular Title VII of the Civil Rights Act (1964), which effectively deprives them of the opportunity to challenge cases of discrimination. Although the issue of Ukrainian anti-discrimination legislation has not been studied, it is worth agreeing with the author's conclusions, as it does create gaps in the legal protection of servicemen and women who face discrimination. In the context of the Ukrainian legal system, this issue requires special attention and further research, as even without a direct study of anti-discrimination legislation, other gaps in ensuring the rights of the military, including access to court and effective protection of their rights, have been identified.

The results of this study also have some similarities with the work of C.M. Machain (2024), who studied the impact of legal and organizational mechanisms on the protection of military rights in the international context. The author argues that support for national legal instruments is much more effective in protecting the rights of the military than external programmes. This is especially important for Ukraine, where the creation and adaptation of effective domestic legal instruments is an integral part of stabilizing the social and legal system.

The study by W. Sandholtz (2016) emphasizes the importance of domestic legal mechanisms for the protection of the rights of military personnel in armed conflict. The author points out that external military assistance does not always strengthen human rights protection systems, and in some cases may even weaken national legal structures. This correlates with the findings of the current study, which also highlights the importance of improving the national administrative justice system in Ukraine. The findings of this study confirm that the establishment of an effective administrative system to protect the rights of the military is a key factor in ensuring social stability, especially in times of war. It also emphasizes the importance of adapting legal standards to the specific conditions of Ukraine without significant external interference, which is critical for the long-term strengthening of national legal structures. The analysis of S.R. Bell *et al.* (2022) demonstrates that the interaction between civilians and the military in conflict can directly affect the level of human rights protection, including the rights of military personnel. The authors point out that tensions in these relations can worsen human rights protection, and therefore propose to expand legislative oversight of the observance of military rights through administrative proceedings. This is in line with current findings that indicate the need to improve the administrative system in Ukraine to reduce the risks of violations of the rights of servicemen and women and to ensure adequate legal protection. Thus, the results of the authors' study are consistent with the findings of this study regarding the importance of improving internal mechanisms of legal protection. However, this study additionally focuses on ensuring access to court for the military in cases of discrimination, abuse of power and other offences, which is an important component of effective administrative justice in the context of current socio-political challenges.

The findings of the study by R.S. Surber (2024) point to the importance of the human dignity of military personnel

as a key element of legal protection. The author considers military training as a process that potentially violates human dignity by limiting autonomous choice, in particular in relation to morally significant issues such as decisions to take a life. Using a deontological approach, the author emphasizes the need to amend international law to strengthen the protection of military autonomy.

It is worth agreeing with the author's conclusions, namely the need for global legal changes to strengthen respect for the human dignity of the military, as this study also recognizes the importance of ensuring the human dignity of servicemen and women, but shifts the focus to improving administrative justice as a means of protecting their rights. Despite the differences in approach, both studies agree that the protection of human dignity is central to ensuring the rights of servicemen and women. However, this study adds to this aspect the practical implementation through national institutions, which is in line with the specifics of the current legal situation in Ukraine.

Thus, the results obtained indicate the need for a comprehensive reform of the Ukrainian administrative justice system, in particular through the expansion of the jurisdiction of civil courts, the establishment of independent monitoring bodies and the integration of international standards. Further research should be aimed at a deeper study of the experience of countries where such reforms have already been implemented, as well as at analysing the effectiveness of these approaches in a practical context.

Conclusions

The conclusions drawn from this study emphasize the importance of effective enforcement of the rights of servicemen through administrative proceedings, which is a key element of their social and legal protection. The study made it possible to examine the conceptual framework for ensuring the rights of servicemen in administrative proceedings by comparing the legislation of Ukraine, the USA, the UK, Turkey, Israel, and Canada.

The analysis of Ukrainian legislation showed that the country's legal framework creates the necessary preconditions for ensuring the rights of the military, in particular in the areas of social protection, appealing against disciplinary decisions and protection in cases of dismissal from service. At the same time, the study revealed the need to improve the mechanisms of access to administrative justice for servicemen and women, in particular in the context of war actions.

A comparative analysis of international experience has highlighted a number of strengths of other countries' legal systems. In Israel, military personnel have the right to apply to civilian courts in cases of human rights violations, which is ensured through specialized legislation on military justice. Turkey has an effective system of independent monitoring that guarantees the observance of the rights of the military, including recourse to the courts in cases of discrimination. In the United States, the military has the possibility of appealing to the Federal Courts, which guarantees the objectivity and independence of the judicial process. British practice focuses on the rights of the military in the context of protection against discrimination through access to civilian courts. The Canadian system demonstrates an example of a clear division of jurisdiction between military and civilian courts, which increases the effectiveness of legal protection.

The results obtained allowed us to summarize several important principles that can be applied to improve the Ukrainian administrative justice system, in particular in the context of ensuring the rights of military personnel. One of these principles is the expediency of granting military personnel the right to apply to civilian courts in matters that go beyond the specifics of military service. This includes, in particular, issues of social guarantees, pensions, medical services and other aspects related to the civil rights of the military. Access to civilian courts will ensure a more objective and independent resolution of disputes, which is an important element of legal protection. It is equally important to introduce a system of independent monitoring of the observance of the rights of the military. Such a system would allow not only to monitor the enforcement of court decisions, but also to verify compliance with human rights standards in administrative proceedings, especially in the context of disciplinary procedures and social security for military personnel. This may include the establishment of specialized bodies or commissions that would regularly assess the state of the rights of the military, audit the relevant procedures and facilitate the prompt remedy of identified violations.

Overall, the implementation of these principles will contribute to a significant improvement of administrative justice in Ukraine, ensuring more effective and fair protection of the rights of servicemen and women, as well as facilitating the integration of the Ukrainian legal system into the international legal space.

Further research should focus on the impact of European standards on the legal provision of military personnel, as well as on the development of more detailed mechanisms for appealing disciplinary decisions. In addition, the effectiveness of legal aid mechanisms in the context of should be considered. Limitations include the limited access to information on the military, both in Ukraine and in other countries, and the fact that due to the ongoing conflict, statistics are constantly changing, as well as new cases and appeals from servicemen related to violations of their rights.

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Conflict of interest

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Анотація. Актуальність цієї теми зумовлена потребою вдосконалення судових механізмів захисту прав військовослужбовців з урахуванням змін у законодавстві, пов'язаних із воєнним станом, необхідністю гармонізації національного законодавства з міжнародними стандартами, зростанням суспільного запиту на прозорий захист прав військовослужбовців. Метою цього дослідження було всебічне вивчення підходів до забезпечення прав військовослужбовців у процесі адміністративного судочинства. У межах дослідження застосовано порівняльний метод аналізу законодавчих норм та судової практики, що регулюють адміністративний захист прав військових. Проведено системний аналіз судових рішень у справах за участі військовослужбовців. Виявлено основні перешкоди для ефективного захисту прав цієї категорії осіб, серед яких виділяється нестача спеціальних процесуальних гарантій. Розроблено рекомендації щодо вдосконалення нормативно-правової бази для посилення рівня судового захисту військових. Також було здійснено аналіз міжнародного досвіду таких країн, як США, Велика Британія, Канада, Туреччина та Ізраїль. Дослідження показало, що у США захист прав військових забезпечується через спеціалізовані військові суди, а також шляхом звернення до цивільних судів, де права військовослужбовців захищені на підставі законів про права людини та федерального законодавства. У Великій Британії та Канаді прецедентне право активно сприяє захисту військових у рамках адміністративного судочинства. У Туреччині та Ізраїлі існування військових судів дозволяє оперативно вирішувати питання дисципліни та службових обов'язків. Водночас, захист прав військовослужбовців у цих країнах базується на національному законодавстві про права людини, і лише держави-члени Ради Європи, які ратифікували European Convention on Human Rights, враховують прецеденти Європейського суду з прав людини у своїй судовій практиці. Висновки дослідження підтверджують важливість адаптації кращих міжнародних практик для побудови ефективної системи адміністративного судового захисту прав військовослужбовців в Україні, зокрема через впровадження міжнародних стандартів і створення спеціалізованих правових інститутів для військових.

Ключові слова: дисциплінарна відповідальність; соціальний захист; оскарження рішень; територіальний центр комплектування та соціальної підтримки; захист від дискримінації; воєнний стан