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Mechanisms for Ensuring Democratic Civilian Control in the Sphere of Administrative Responsibility of Military Personnel

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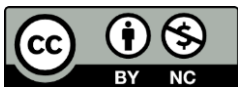
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The article provides a comprehensive theoretical justification and offers practical recommendations for developing a system of democratic civilian control over the administrative responsibility of military personnel in Ukraine. The relevance of the research is determined by the need to transform the security and defense sector in accordance with NATO standards and the requirements of the martial law legal regime. The author states that the current system of administrative responsibility is characterized by “legal dualism”, caused by contradictions between the Code of Ukraine on Administrative Offenses and the Disciplinary Statute, which creates a basis for excessive command discretion and violation of the rights of military personnel as “citizens in uniform”. The work proposes and details six strategic control mechanisms. First, the institutionalization of the Military Ombudsman based on the German model as a body of parliamentary oversight is substantiated. Second, the strengthening of judicial supervision through the specialization of civilian judges is proposed, which will ensure professional consideration of cases while maintaining independence from the military hierarchy. The third mechanism is identified as the transformation of the Military Law Enforcement Service into a full-fledged Military Police with procedural independence, which will allow for the separation of investigative and decision-making functions. The fourth aspect highlights the digitalization of records through the Unified Electronic Register, ensuring the transparency of statistics for civil society. The fifth element is identified as the development of military advocacy and free legal aid based on the Canadian model. The final mechanism is the codification of legislation through the adoption of the Code of Military Justice of Ukraine. It is proven that the implementation of these mechanisms will ensure the transition from a punitive to a service-oriented model, where the strengthening of discipline is based on the principles of justice and the rule of law. The study’s conclusions can be used in reforming the regulatory and legal framework of Ukraine and implementing Euro-Atlantic standards into the daily activities of the Armed Forces.




KEYWORDS

administrative responsibility, military personnel, democratic civilian control, military ombudsman, military justice, NATO standards, human rights, Military Police, judicial oversight, codification.



Механізми забезпечення демократичного цивільного контролю у сфері адміністративної відповідальності військовослужбовців

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У статті здійснено комплексне теоретичне обґрунтування та розроблено практичні рекомендації щодо розбудови системи демократичного цивільного контролю у сфері адміністративної відповідальності військовослужбовців України. Актуальність дослідження зумовлена необхідністю трансформації сектору безпеки і оборони відповідно до стандартів НАТО та вимогами правового режиму воєнного стану. Автор констатує, що чинна система адміністративної відповідальності характеризується «правовим дуалізмом», зумовленим суперечностями між Кодексом України про адміністративні правопорушення та Дисциплінарним статутом, що створює підґрунтя для надмірної дискреції командування та порушення прав військовослужбовців як «громадян у формі». У роботі запропоновано та деталізовано шість стратегічних механізмів контролю. По-перше, обґрунтовано інституціоналізацію Військового омбудсмена за німецьким зразком як органу парламентського нагляду. По-друге, запропоновано посилення судового нагляду через спеціалізацію цивільних суддів, що забезпечить фаховий розгляд справ при збереженні незалежності від військової ієрархії. Третім механізмом визначено трансформацію Військової служби правопорядку у повноцінну Військову поліцію з процесуальною незалежністю, що дозволить розмежувати функції слідства та прийняття рішень. Четвертим аспектом висвітлено цифровізацію обліку через Єдиний електронний реєстр, що забезпечує прозорість статистики для цивільного суспільства. П'ятим елементом визначено розвиток військової адвокатури та безоплатної правничої допомоги за канадською моделлю. Завершальним механізмом названо кодифікацію законодавства шляхом ухвалення Кодексу військової юстиції України. Доведено, що впровадження цих механізмів забезпечить перехід від репресивної до сервісно-орієнтованої моделі, де зміцнення дисципліни ґрунтується на принципах справедливості та законності. Висновки дослідження можуть бути використані при реформуванні нормативно-правової бази України та впровадженні євроатлантичних стандартів у повсякденну діяльність Збройних Сил.



КЛЮЧОВІ СЛОВА

адміністративна відповідальність, військовослужбовці, демократичний цивільний контроль, військовий омбудсмен, військова юстиція, стандарти НАТО, права людини, Військова поліція, судовий нагляд, кодифікація.

1. Introduction

The transformation of Ukraine's security and defense sector in accordance with the standards of the North Atlantic Treaty Organization (NATO) is not only a strategic priority of state policy, but also a requirement of the Constitution of Ukraine. This process requires not only technical re-equipment and interoperability of troops, but also a radical revision of the philosophy of relations in the system "state - army - serviceman". In the context of the full-scale armed aggression of the Russian Federation against Ukraine, the issue of maintaining a high level of military discipline and law and order is becoming a critical factor in maintaining the combat capability of units. However, in a democratic society, the strengthening of discipline cannot be implemented by leveling fundamental human rights.

The relevance of the topic is due to the need to overcome outdated post-Soviet approaches to the legal responsibility of persons in uniform. The administrative responsibility of military personnel, being at the complex intersection of military administration and public law, is currently characterized by a number of systemic contradictions. The main problem remains the high level of subjectivism and discretion of the command staff, which, in the absence of effective mechanisms of external democratic oversight, creates risks of abuse of power. This issue becomes especially acute during the legal regime of martial law, when the expansion of commanders' powers to impose penalties must be balanced by transparent procedures of civilian control.

Modern realities require scientific understanding and practical implementation of mechanisms that would allow the implementation of the concept of "citizen in uniform". This implies that a serviceman, performing his duty to protect sovereignty, does not lose his basic constitutional rights, and restrictions on these rights in the course of administrative or disciplinary proceedings must be proportionate, lawful and controlled by civilian institutions. This actualizes the need to develop effective institutional and procedural mechanisms that would guarantee respect for the rights of military personnel and ensure transparency of prosecution procedures, which is an integral part of democratic civilian control according to NATO standards. The lack of such mechanisms not only undermines trust in army institutions but also creates obstacles to Ukraine's full Euro-Atlantic integration.

2. Literature Review

The problems of legal responsibility of the military and democratic control over the armed forces were studied in the works of T. Averochkina and T. Bilous-Osin, who focused on the legal nature of administrative offenses in the military sphere [1]. The issues of administrative and legal support of defense and national security were thoroughly worked out by V. Pashynskyi [7; 8]. A significant contribution to the conceptualization of the institution of the military ombudsman and civilian supervision was made by O. Martseliak and Y. Polyansky [6; 9]. Certain aspects of adaptation of the foreign experience of NATO countries in the field of military justice were covered in the works of M. Belaniuk and M. Komissarov [2; 4]. The theoretical foundations of administrative coercion and its features in public law were analyzed by T. Kolomojets [3]. Despite significant scientific achievements, the issue of mechanisms for ensuring democratic civil control in administrative liability procedures requires further extended analysis, especially in the context of eliminating corruption risks and strengthening judicial control.

3. Problem Statement

The purpose of the study is to comprehensively substantiate the mechanisms of democratic civilian control in the field of administrative responsibility of military personnel, to identify priority areas of institutional reform and to develop proposals for improving procedural guarantees for the protection of military rights in Ukraine.

4. Methods and Materials

The methodological basis of the study is a comprehensive analysis of the normative legal acts of Ukraine (the Code of Administrative Offenses, the Disciplinary Statute), NATO standards and the scientific achievements of domestic scientists (T. Averochkina, V. Pashynsky, O. Martselyak, etc.) on the

legal nature of military offenses and civilian supervision. The paper uses a comparative legal method to adapt the experience of Germany and Canada (ombudsman and military advocacy institutions), a system-structural approach to identify contradictions in legislation, as well as a method of legal modeling to justify the creation of the Military Police and the Code of Military Justice. The study is based on the concept of “citizen in uniform”, which allowed, through the synthesis of theory and international practice, the development of six strategic control mechanisms aimed at the transition to a service-oriented model of protecting the rights of military personnel.

5. Results and Discussion

Ensuring democratic civilian control in the field of administrative responsibility of military personnel in Ukraine at the present stage faces the problem of “legal dualism” enshrined in Article 15 of the Code of Administrative Offenses [10]. This provision creates a situation in which a significant part of offenses is considered under the Disciplinary Statute without proper external control filters [5].

The first and strategic priority mechanism for ensuring democratic civilian control in the field of administrative responsibility of military personnel is the institutionalization of the position of the Military Ombudsman (Commissioner of the Verkhovna Rada of Ukraine for the Rights of Military Personnel). World experience convincingly proves that in the absence of specialized parliamentary oversight, the military system is prone to self-isolation and corporate tightness, which often leads to concealment of offenses or subjectivism when imposing penalties.

In particular, the experience of Germany, where the institution of the Plenipotentiary Bundestag for the Armed Forces (*Wehrbeauftragter*) has been operating for more than half a century, shows that parliamentary oversight is the highest and most effective form of civilian control over the observance of the rule of law in the army [6]. The German model is based on the concept of “citizen in uniform”, where the ombudsman acts as an auxiliary body of the parliament, ensuring that the serviceman does not become a disenfranchised object of military power. Implementation of a similar institution in Ukraine will allow the transfer of the consideration of conflict situations in the field of administrative responsibility from a purely departmental plane to a public law plane.

In the context of administrative and disciplinary practice, the Military Ombudsman should act not only as a passive recipient of complaints, but as an active subject of control over the legality of procedures. Its functional purpose in this area should be expanded in the following areas:

1. The powers of the Ombudsman should include the right to initiate an investigation of any decision of the commander to impose an administrative or disciplinary sanction. This is especially true in cases of “dualism of responsibility”, where the commander has the right to choose between a strict disciplinary measure and the transfer of materials to court. The Ombudsman should audit such decisions for discrimination, bias or lack of adequate evidence.

2. As an instrument of civilian supervision, the Ombudsman should have a legally enshrined prerogative to visit military units, places of detention of arrested persons (guardhouses) and familiarize himself with the materials of official investigations without prior agreement with the General Staff or the Ministry of Defense. This allows for “sudden control”, which is most effective in detecting systemic violations of the rights of subordinates.

3. In cases where the administrative penalty is based on a subjective assessment (“negligent attitude”, “disobedience”), the Ombudsman acts as an independent arbitrator who assesses the proportionality of the punishment to the offense committed.

As Y. Polyansky rightly notes, the institutionalization of such a commissioner creates the so-called “external security circuit” around the armed forces [9]. This circuit acts as a safeguard that makes it impossible for the military system to be corporately closed, where human rights violations can be justified by “military necessity.” The creation of such a mechanism in Ukraine will not only bring the national military justice system in line with NATO standards but also increase the level of internal trust in the troops, since each soldier will have a guarantee of protection from arbitrariness through an independent civilian authority.

Thus, the Military Ombudsman becomes a link between the closed army environment and a democratic society, ensuring the real accountability of the military command to the highest representative body of the state — the Verkhovna Rada of Ukraine.

The second strategic mechanism of democratic civilian control is the strengthening of judicial supervision through the introduction of the institute of specialization of civilian judges. The analysis of

the historical context shows that the liquidation of the system of military courts in Ukraine, although positioned as a step towards the demilitarization of justice, led to the emergence of a significant vacuum of professional expertise. As M. Belaniuk rightly notes, the dispersion of cases of administrative offenses military among judges of general jurisdiction significantly reduced the quality of judicial proceedings in this area [2]. Civilian judges, having no experience of being in a military structure and a deep understanding of the nature of statutory relations, the specifics of subordination or the conditions for performing combat missions, often demonstrate a formalized approach. This leads to decisions that do not take into account the real context of the offense, which, on the one hand, can neutralize measures to maintain discipline, and on the other hand, does not allow an objective assessment of the legality of the actions of the command.

At the same time, it is the preservation of the consideration of such cases in civilian jurisdiction that is the key guarantor of the democratic system, since it ensures the consideration of the case by a body that is beyond the influence of the Ministry of Defense and the military hierarchy. An effective way to resolve the existing contradiction is to introduce a clear specialization of judges in military administrative cases within the existing general judicial system. This model allows maintaining the institutional independence of the court from the army command, while ensuring the appropriate level of professional competence of justice. Specialized judges, undergoing appropriate training and regular training, will be able to adequately assess the limits of the commander's discretion, distinguish between objective needs of military necessity and manifestations of subjective arbitrariness, which is a prerequisite for the implementation of the principle of legal certainty in the armed forces.

Of particular importance in the system of democratic control is the legislative consolidation of unconditional judicial review of any penalties that provide for the restriction of the freedom of a serviceman, in particular, arrest with detention in a guardhouse. In accordance with the case-law of the European Court of Human Rights and the fundamental principles of the rule of law, which are the basis of NATO standards, any deprivation of liberty should be under strict judicial control [4]. Under the legal regime of martial law, when the powers of commanders to maintain order naturally expand, the judicial body must act as an independent "procedural filter." Ensuring the right to appeal the decision on arrest to a specialized civilian judge guarantees that the serviceman does not turn into a disenfranchised object of disciplinary authority, but remains a "citizen in uniform", whose rights to liberty and personal integrity are protected by an independent branch of government.

The third fundamental mechanism for ensuring democratic civilian control is a clear institutional delineation of the functions of detection, investigation and decision-making in cases of offenses. The modern domestic model of administrative and disciplinary practice is characterized by an excessive concentration of quasi-judicial powers in the hands of commanders (chiefs). of the person forming the prosecution (prosecutor) and the subject of imposing a penalty (judge) fundamentally contradicts the principles of objectivity and impartiality. Such an approach creates favorable conditions for the "illegal influence of the command", where procedural actions are subject not to the requirements of the law, but to the subjective vision of expediency or personal sympathies of the leader, which is unacceptable for a legal system that seeks integration into the Euro-Atlantic security space.

The consequences of the absence of such a distinction have a clearly expressed negative practical dimension. As S. Vitvitskyi and M. Veselov note in their research, the quality of primary administrative materials compiled by commanders without proper legal training remains extremely low [12]. Lack of skills in collecting evidence, violation of procedures for recording explanations and neglect of the formal requirements of the Code of Administrative Offenses lead to the fact that about 30% of cases of military administrative offenses are closed by courts due to the absence of corpus delicti or due to procedural defects. This not only undermines the inevitability of responsibility but also demonstrates the institutional weakness of the current Military Law Enforcement Service (VSP), which is currently deprived of full-fledged law enforcement prerogatives and remains a service structure within the army vertical, unable to act as an independent filter against violations.

The solution to this problem is the uncontested transformation of the VSP into a full-fledged Military Police with clearly defined procedural independence. The new model should be based on the principle of "functional autonomy": the body conducting inquiries and investigations of an administrative offense should be subordinate to the Ministry of Defense only in administrative and resource aspects, while in procedural activities it should be under the supervision of the Civil Prosecutor's Office (Specialized Prosecutor's Office in the Field of Defence). Such a distinction will make it possible to professionalize the process of documenting offenses, where the fact will be recorded by

legally competent law enforcement officers, and not line commanders. This will create a credible institutional barrier against commanders' arbitrariness, ensure the objectivity of the evidence base, and ensure that every decision to prosecute is based on a solid legal foundation, and not on the voluntarism of the superior.

The fourth strategic aspect of the development of the system of democratic civilian control is digitalization and ensuring transparency of the accounting of offenses. In the modern conditions of the information society, traditional paper methods of recording administrative offenses in the armed forces have exhausted their resources, since they do not allow for operational supervision and create preconditions for hiding or falsifying data at the level of individual units. Introduction of the Unified Electronic Register of Military Administrative Offenses should become a technological foundation for an external audit of army disciplinary practice. Such a register will allow not only to consolidate information on the state of legality in the troops, but also to ensure the traceability of each proceeding – from the moment of drawing up the protocol to the actual execution of the penalty, which is a prerequisite for minimizing corruption risks and eliminating the practice of “selective justice” within military formations.

The functional value of such a digital system lies in the ability to monitor the dynamics of penalties in real time, which is a powerful tool for both parliamentary and departmental control. The analytical modules of the system should automatically identify the so-called “anomalous indicators” — cases when a particular military unit has an atypically high number of penalties for certain articles (for example, for “disobedience” or “negligent attitude”). Such statistical deviation should serve as an unconditional basis for the appointment of an unscheduled inspection by the Ministry of Defense or the initiation of an investigation by the Military Ombudsman. In this way, digitalization transforms statistics from formal reporting into an active mechanism for early warning of systemic abuses, allowing civilian institutions to respond to conflicts even before they become irreversible [3].

In addition to the control function, the transparency of accounting is a determining factor in the fight against latent negative phenomena, such as “hazing” and unreasonable pressure on personnel. The presence of objective digital data, to which bodies independent of the command have access, creates a psychological safeguard against abuse of power: the commander, realizing that information about the penalty imposed by him instantly becomes visible to external controllers, is forced to strictly adhere to procedural norms. At the same time, as the researchers note, it is critically important to maintain a balance between transparency and security [11]. The technical architecture of the register should provide reliable encryption and restrict access to data constituting state secrets (location, number), but depersonalized statistical reports should be open for public monitoring. This will ensure the legitimacy of military administration in the eyes of society and ensure that administrative responsibility is used as an instrument of law and order and not as a means of repression.

The fifth defining element of the system of democratic control is the development of advocacy institutions and expanding the access of military personnel to free legal aid. Effective civilian oversight of the army is impossible without the active participation of the human rights community, which acts as an external arbiter in relations between the state and the military. For Ukraine is the introduction of the Canadian model is where specialized defense advocates function as an autonomous structure, completely independent of the military hierarchy and chain of command [11].

The presence of a lawyer already at the stage of the initial official investigation acts as a form of preventive civil control. The professional presence of the defense attorney creates a “procedural filter” that forces commanders to strictly adhere to the standards of proof and the requirements of the law, avoiding subjectivism. Thus, legal aid transforms administrative proceedings from a closed departmental procedure into a competitive process, where every step of officials is subjected to legal audit. This strengthens law and order in the troops and ensures that administrative responsibility is implemented exclusively within democratic standards.

The final systemic mechanism for ensuring democratic control is the comprehensive codification of the legislation on the responsibility of military personnel through the adoption of a single Code of Military Justice of Ukraine. The current state of regulatory regulation is characterized by the dispersion of norms between general administrative legislation and outdated military statutes, which creates “gray zones” for legal voluntarism. Distinction is possible only through the introduction of a clear three-level gradation of misdemeanors: into purely disciplinary (violation of internal regulations), administrative (public law torts) and criminal [7].

Such legislative certainty is a powerful tool for civilian supervision, since it actually determines the boundaries of commander's power. When each offense has a clearly defined composition and an appropriate sanction, the space for the commander's subjective discretion is significantly narrowed, which minimizes the risks of using responsibility as a means of personal revenge or psychological pressure. The codification allows for the establishment of uniform standards of proof and procedural frameworks that are transparent to external controllers — from the Military Ombudsman to civil society organizations.

Moreover, the creation of a coherent Code of Military Justice is a fundamental requirement of a democratic society and a prerequisite for integration into NATO. Clear legislation performs the function of a "social contract" within the army: a serviceman knows exactly the scope of his responsibility, and society receives an effective tool for supervising that the military hierarchy acts exclusively in the legal field. This transforms military discipline from an instrument of coercion to an instrument of law and order based on the principles of justice and legality.

6. Conclusions

As a result of the study, it has been established that the existing system of administrative responsibility of military personnel in Ukraine, built on the legal dualism of Article 15 of the Code of Administrative Offenses and the norms of the Disciplinary Statute, does not fully comply with the standards of democratic civilian control and NATO principles. It is substantiated that overcoming systemic shortcomings – excessive discretion of the command and low procedural transparency – is possible only through the introduction of a comprehensive model of the "triangle of control", which includes:

1. Parliamentary oversight – through the institutionalization of the Military Ombudsman on the German model, which provides a direct channel for the protection of the rights of military personnel outside the chain of command.

2. Specialized justice – through the introduction of specialization of civilian judges, which guarantees professional and at the same time independent of the military hierarchy judicial supervision over decisions on imposing penalties.

3. Institutional autonomy of the investigation – through the transformation of the VSP into the Military Police with procedural independence, which delineates the functions of recording a misdemeanor and making a decision on punishment.

It is substantiated that the digitalization of the registration of offenses and the expansion of the institution of military advocacy transform administrative proceedings from a closed departmental procedure into a competitive process controlled by civil society. The final step of the reform should be the adoption of the Code of Military Justice of Ukraine, which clearly defines the boundaries of command power and will ensure the transition to a service-oriented model of "citizen in uniform". The implementation of the proposed mechanisms will strengthen military discipline not through coercion, but through the establishment of justice and legality, which is a key prerequisite for Ukraine's Euro-Atlantic integration.

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