



Центр  
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NATIONAL  
ENDOWMENT  
FOR  
DEMOCRACY

SUPPORTING FREEDOM AROUND THE WORLD

**"Combat immunity" as one of the guarantees  
of protection of the rights of servicemen.  
Open issues of the Ukrainian system of military justice.**

## **Analytical report**

of the Centre for Defence Strategies with the support  
of the National Endowment for Democracy (NED)

Project:  
Strengthening Legislative Framework and Preventing Impunity  
for Human Rights Violations

Kyiv 2021

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# SUMMARY

- Despite the 8th year of Russian aggression, the issue of "combat immunity" remains unresolved.
- In fact, for almost every decision and combat order, a military commander is at risk of being prosecuted for negligence/misdemeanour in military service.
- The constant search for perpetrators among the Ukrainian Armed Forces command, not considering the circumstances of combat operations, plays in favour of Russia's hybrid information warfare.
- The study of international experience in this regard proves that the principle of combat immunity limits the liability of the military command for the consequences of combat orders issued, including when casualties were suffered, or property was damaged.

## BACKGROUND

According to the official statistics of Ukraine's State Bureau of Investigation (SBI), a vast share of its criminal proceedings concerns war crimes<sup>1</sup>. That is more than 250 criminal proceedings for the period 2020-2021. In particular, among them: 30 servicemen are charged with negligence (Article 425 of the Criminal Code of Ukraine), 18 servicemen are charged with abuse of power or official authority (Article 426-1 of the Criminal Code of Ukraine).

Thus, while the jurisdiction of the SBI covers a large category of cases under the provisions of the Criminal Procedure Code (Article 216), war crimes take SBI's substantial time and attention.

According to Prosecutor General of Ukraine Iryna Venediktova, during March-October 2020, units (specialized prosecutor's offices in the military and defence spheres) sent 1,523 indictments to the Court for war crimes. 2,104 people were prosecuted, including 1,612 servicemen of the Armed Forces of Ukraine and other military formations, 394 senior officers, and 84 law enforcement officers<sup>2</sup>.

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1. [dbr.gov.ua/news/katastrofa-an-26-vibuhi-na-svatovomu-zakupivlya-neyakisnih-bronezhiletiv-ta-40-richnih-shin-dlya-btr-rezultati-rozsliduvannya-dbr-vijskovih-zlochiv-za-2020-2021-roki](https://dbr.gov.ua/news/katastrofa-an-26-vibuhi-na-svatovomu-zakupivlya-neyakisnih-bronezhiletiv-ta-40-richnih-shin-dlya-btr-rezultati-rozsliduvannya-dbr-vijskovih-zlochiv-za-2020-2021-roki)

2. [www.gp.gov.ua/ua/news?\\_m=publications&\\_c=view&\\_t=rec&id=283732](https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec&id=283732)

In this analytical paper, we address that, taking into consideration the international experience, the criminal proceedings in the military sphere should be thoroughly investigated by law enforcement and judiciously studied by the courts, considering the specifics of military service and military planning, combat operations planning and other decisions, especially in the actual conditions of war.

The case of General Viktor Nazarov is the strongest example of the requirement for a careful study of all the peculiarities of the circumstances of the case, in particular, the actions of military commanders during combat missions<sup>3</sup>.

In early 2021, military experts, including three retired U.S. generals and diplomats, called on the Office of the President of Ukraine, the Verkhovna Rada of Ukraine, the Supreme Court, and the National Security and Defence Council of Ukraine to study General Viktor Nazarov's case in detail and ensure that civilian courts were in the capacity to judge the military for issuing combat orders<sup>4</sup>. Independent experts supported the study of former U.S. Secretary of Defence, President of The Potomac Foundation, Dr Philip Karber, and retired lieutenant general, ex-commander of the U.S. Army in Europe Ben Hodges. On December 22, in the Kyiv Post piece, they pointed out the possible consequences of the conviction of General Viktor Nazarov. He was found the guilty killing of 49 Ukrainian servicemen during IL-76 plane downing on June 17, 2014. The plane was shot down at the Luhansk airport by Russian-backed militants. Nazarov, at the time, was chief of staff of the anti-terrorist operation. According to Hodges and Karber, the Nazarov case and other cases, which are being run by civilian courts against combat commanders for their orders, undermine Ukrainian national security.

The authors and signatories proposed to the Ukrainian authorities, inter alia, the following steps:

- Study Nazarov's case in detail, taking into account the concern of a large number of experienced Ukrainian combat officers and commanders, as well as Ukraine's application for NATO membership. The case needs to be reconsidered in the context of Western practice;
- Ensure that military officers are judged on their combat orders during the war in a military court, with a military judge and a jury composed of officers with combat experience.

The Criminal Court of Cassation of the Supreme Court on 21.05.2021 cancelled the court decisions and closed the criminal proceedings in connection with the absence of composition of a criminal offence.

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3. [www.bbc.com/ukrainian/news-57202648](http://www.bbc.com/ukrainian/news-57202648)

4. [www.radiosvoboda.org/a/news-experty-ssha-sprava-henerala-nazarova/31042292.html](http://www.radiosvoboda.org/a/news-experty-ssha-sprava-henerala-nazarova/31042292.html)

The decision of the Court of cassation is based on the fact that the lower Court's conclusion that General Nazarov had the opportunity to prevent criminal acts of terrorists, which resulted in the downing of the IL-76-MD and 49 killing servicemen of the Armed Forces MIA, is "incorrect"<sup>5</sup>.

Failure to take into account the specifics of military service in combat action decision-making when planning military operations leads to the fact that servicemen are not fully protected in such cases.

As a conscience, being under the constant threat of criminal prosecution and witnessing the example of a long wait for justice, servicemen may lose the determination and confidence necessary in combat action. Moreover, the constant search for perpetrators among the Ukrainian Armed Forces command, not considering the circumstances of combat operations, plays in favour of Russia's hybrid information warfare.

Unlike many NATO countries that have profound military justice systems, Ukraine lacks one. As SJD Pavlo Bohutsky rightly remarks: "[...] A similar situation is with the administration of justice in criminal offences committed in the defence sphere - we do not have military courts, we have general courts that take military cases on par with the other cases. Proceedings do not have any priority last for years. The military and defence components are practically not taken into account. The issue of extraterritoriality, proximity to the Armed Forces, military formations have not been resolved at all."<sup>6</sup>

Pavlo Bogutsky emphasizes that delays of proactive and consistent legislative decisions on establishing the military justice system, which must operate effectively both in peacetime and in special periods, do not meet real military threats. This, in fact, destroys the system of the legal support of national security in general and military security, in particular<sup>7</sup>.

Serhiy Melnyk, head of the Military Law Institute at the Yaroslav the Wise National Law University, states that "foreign experience convincingly proves that only a comprehensive system of military justice and coordinated interaction [of its components] allow us to successfully defend the rule of law and legality in the military sphere."<sup>8</sup>

Notably, the punishment for "negligence" (Article 367 of the Criminal Code) in construction, industrial production, during technical work, ranges from 2 to 5 years, while the punishment for "negligence in military service" (Article 425 of the Criminal Code) is from 3 to 7 years.

It is objectively simpler and more predictable to protect against the occurrence of severe consequences during the performance of the construction works or other technological

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5. [supreme.court.gov.ua/supreme/pres-centr/news/1123699/](https://supreme.court.gov.ua/supreme/pres-centr/news/1123699/)

6. [armyinform.com.ua/2021/06/vidnovlennya-systemy-vijskovoyi-yustyciyi-v-ukrayini-argumenty-za-i-shho-slid-zrobyty/](https://armyinform.com.ua/2021/06/vidnovlennya-systemy-vijskovoyi-yustyciyi-v-ukrayini-argumenty-za-i-shho-slid-zrobyty/)

7. [ippi.org.ua/sites/default/files/rozvitok\\_zakonodavstva\\_ukrayini\\_u\\_sferi\\_oboroni\\_maket.pdf](https://ippi.org.ua/sites/default/files/rozvitok_zakonodavstva_ukrayini_u_sferi_oboroni_maket.pdf) (с. 25)

8. [ukrainepravo.com/scientific-thought/legal\\_analyst/s-melnyk-vijskova-yustytsiya-analiz-i-perspektyvy-reformuvannya/](https://ukrainepravo.com/scientific-thought/legal_analyst/s-melnyk-vijskova-yustytsiya-analiz-i-perspektyvy-reformuvannya/)

processes and to practically minimize or eliminate them by following the rules of labour protection. In comparison, calculating every step, possible circumstances, unforeseen events, and consequences during hostilities is not as easy as it may seem. Despite the possibilities of intelligence /recon, planning, and proper training, conducting combat operations is always a task with many unknowns.

The development of combat action plans (planning) requires a complex process of creating options to perform key tasks identified by the commander in the circumstances of possible constraints identified during the assessment. The process includes the deployment of troops to carry out the task, the organization of cooperation to achieve its implementation under these constraints, and the inevitable limits of available resources. In particular, the time limits, forces, and means for carrying out the relevant tasks, as well as the use of means of the complex defeat of the enemy, will be determined for the operation<sup>9</sup>.

As David J. Corry points out, in modern warfare, the military must be capable of exercising their initiative and making instantaneous decisions<sup>10</sup>.

The issue of "combat immunity" remains legislatively unresolved, despite the 8th year of the war and Russian aggression and the number of servicemen who went through the war. A very down-to-earth example is zero results in Google when entering "combat immunity" or "cases that exclude the criminal liability of the military during combat operations" in Ukrainian.

Perhaps the only material related to this topic is the article of the Minister of Defence of Ukraine (2019-2020) Andriy Zagorodniuk, in which he states: "Since our country aims at NATO membership, which is enshrined in particular in the Constitution of Ukraine, in the absence of our own methods, we must use the experience of [NATO] member countries. In countries, especially those with combat actions, these issues are regulated.

There is the principle of combat immunity, which limits the responsibility of the military leadership for the consequences of orders in a combat situation, including those that led to casualties or damage to property."<sup>11</sup>

These findings evoke a call to improve the legislation to specify and detail the accounts for liability, considering the peculiarities of commanders' decision-making in combat and considering that in combat, the possible risks can be minimized but not eliminated.

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9. [www.mil.gov.ua/content/books/process0808.pdf](http://www.mil.gov.ua/content/books/process0808.pdf) (p. 31)

10. [digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1879&context=ohlj](http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1879&context=ohlj) (pages 113-114)

11. [www.pravda.com.ua/columns/2021/01/13/7279826/](http://www.pravda.com.ua/columns/2021/01/13/7279826/)

# INTERNATIONAL EXPERIENCE

## United Kingdom

It is provided (Crown Proceedings (Armed Forces) Act 1987) that the Armed Forces may be excluded from liability in tort<sup>12</sup> in the event of threats to national security and military operations outside the United Kingdom in cases involving the waiver of military liability for death, injury, or trauma to another person in combat duty. In addition, it is noted that the Crown (state) is not liable in tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown if—(a)at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown [...] <sup>13</sup>

Appropriate judicial control has been established in these circumstances. Therefore, only the Court can establish individual cases when immunity does not extend to the members of the Armed Forces.

The principle of combat immunity stipulates that there is no common law liability for negligence in respect of acts or omissions on the part of those who are actually engaged in armed combat. This approach is confirmed by the court rulings and, accordingly, is part of the domestic law of the United Kingdom<sup>14</sup>.

For example, in *Richard Mulcahy v Ministry of Defence*<sup>15</sup>, the Court of Appeals ruled that the Armed Forces were not required to exercise excessive caution in possible combat casualties and injuries in the performance of combat missions and operations.

Another well-known lawsuit is *Smith and others v. Department of Defence*<sup>16</sup>. The Court ruling, in this case, is fundamental in the definition and application of the concept of "combat immunity", as it is decided by the Supreme Court and must be taken into account by the courts in resolving such cases. In this case, the Court did indeed narrow down the cases under the "combat immunity" but did not question the existence of the "combat immunity" principle itself.

"The fact remains that for a nation to be free and to live in peace, it must employ men and women who are prepared to commit violent acts on its behalf. Since the Second World War, and in all probability for many decades before that, 1968 was the only year in which a British Serviceman was not killed in action."<sup>17</sup>

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12. [www.legislation.gov.uk/ukpga/1987/25/pdfs/ukpga\\_19870025\\_en.pdf](http://www.legislation.gov.uk/ukpga/1987/25/pdfs/ukpga_19870025_en.pdf)

13. [www.legislation.gov.uk/ukpga/Geo6/10-11/44/ni/enacted](http://www.legislation.gov.uk/ukpga/Geo6/10-11/44/ni/enacted) (section 10)

14. [publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writev/futureops/law06.htm](http://publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writev/futureops/law06.htm) (PART 1 Law)

15. [www.bailii.org/ew/cases/EWCA/Civ/1996/1323.html](http://www.bailii.org/ew/cases/EWCA/Civ/1996/1323.html)

16. [justice.org.uk/smith-others-v-ministry-defence-2013/](http://justice.org.uk/smith-others-v-ministry-defence-2013/)

17. [policyexchange.org.uk/wp-content/uploads/2016/09/the-fog-of-law.pdf](http://policyexchange.org.uk/wp-content/uploads/2016/09/the-fog-of-law.pdf) ("The fog of Law", p. 55)

# United States of America

Article 2680 (J) of Code 28 (Judiciary and Judicial Procedure)<sup>18</sup> establishes the immunity of the Government of the United States of America from any claim arising out of the combatant activities of the military or naval forces or the Coast Guard during the time of war.

In *Feres v United States*, the Supreme Court ruled, inter alia, that Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service<sup>19</sup>.

U.S. courts have ruled that military immunity during combat operations should free military commanders from the doubts and uncertainty inherent in potential subsection to civil suit<sup>20</sup>.

The basic principles and interpretations of the (tort) liability (or lack thereof) of commanders and servicemen in the United States are set out in the Law of Armed Conflict Deskbook<sup>21</sup>, the Operational Law<sup>22</sup> And court decisions.

These documents provide flexibility and stipulate a detailed analysis and study of all the circumstances in which the commander acted and what conditions he was guided by.

The next example is the "Rendulic rule"<sup>23</sup>. The "Rendulic case" concerns a commander's liability for mistakes in war. The Tribunal observed that Rendulic's judgment may have been faulty but was not criminal. As stated in the decision, "[T]he conditions, as they appeared to the defendant at the time were sufficient upon which he could honestly conclude that urgent military necessity warranted the decision made." (Hostage Case at 1297)<sup>24</sup>.

The Rendulic case also stands for a broader standard regarding liability for battlefield acts: commanders and personnel should be evaluated based on information reasonably available at the time of decision. In recently ratifying several LOAC treaties, the U.S. Senate attached understandings that "any decision by any military commander, military personnel, or any other person responsible for planning, authorizing, or executing military action shall only be judged on the basis of that person's assessment of the information

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18. [www.govinfo.gov/content/pkg/USCODE-2011-title28/pdf/USCODE-2011-title28-partVI-chap171-sec2680.pdf](http://www.govinfo.gov/content/pkg/USCODE-2011-title28/pdf/USCODE-2011-title28-partVI-chap171-sec2680.pdf) (p. 2)

19. [internationalcrimesdatabase.org/Case/1001/Feres-v-United-States/](http://internationalcrimesdatabase.org/Case/1001/Feres-v-United-States/) (Court's holding and analysis)

20. [sgp.fas.org/crs/misc/R45732.pdf](http://sgp.fas.org/crs/misc/R45732.pdf) (pp. 21-32)

21. [www.loc.gov/rr/frd/Military\\_Law/pdf/LOAC-Deskbook-2015\\_Ch9.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2015_Ch9.pdf)

22. [www.loc.gov/rr/frd/Military\\_Law/pdf/operational-law-handbook\\_2020.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2020.pdf)

23. [www.loc.gov/rr/frd/Military\\_Law/pdf/LOAC-Deskbook-2015\\_Ch9.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2015_Ch9.pdf) (p.35)

24. Rendulic did not entirely escape judgment. The Tribunal convicted him on other charges and sentenced him to twenty years in prison. See ROBERT H. JACKSON CENTER, NUREMBERG CASE # 7 HOSTAGES, at [www.youtube.com/watch?v=RtwOgQEpgCo](http://www.youtube.com/watch?v=RtwOgQEpgCo) (video of Rendulic sentencing, starting at 0:50)



reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken."<sup>25</sup>.

This principle works to protect commanders and servicemen from (tort) liability for conducting military operations for consequences that could not have been foreseen in the planning or direct conduct of such combat action.

Another interesting case from the Operational law. During the first Gulf War (191), U.S. troops discovered a bunker in Baghdad that they identified as a military objective: barbed wire surrounded the complex, camouflage concealed its location, and armed sentries guarded its entrance and exit points. However, when planning the operation, the military was not aware that the upper floors of the bunker were being used by Iraqi civilians as the shelter as nighttime sleeping quarters. The bunker was bombed, killing more than 300 civilians. Such actions by the U.S. military were not in violation of international law of armed conflict. The command reasonably concluded on the basis of the data available at the time of the planning that the target was a military target, and therefore, despite the civilian casualties, the action was lawful<sup>26</sup>.

The place, time, circumstances, and available information at the time of the operations are important factors that need to be investigated in each individual situation that precedes the decision of the commander.

In any case, the assessment of the commander's liability requires an assessment of whether the action was reasonable at the time of the decision<sup>27</sup>.

## Canada

The law provides that the Government is not liable "in time of peace or of war, for the purpose of the defence of Canada or of training, or maintaining the efficiency of, the Canadian Forces."<sup>28</sup>.

One of the key tenets of the Canadian Armed Forces Code of Ethics is the principle of unlimited liability<sup>29</sup>, which means that servicemen understand that "all members accept and understand that they are subject to being lawfully ordered into harm's way under conditions that could lead to the loss of their lives"<sup>30</sup>.

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25. [www.loc.gov/rr/frd/Military\\_Law/pdf/operational-law-handbook\\_2020.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2020.pdf) (c. p. 58)

26. [www.loc.gov/rr/frd/Military\\_Law/pdf/LOAC-Deskbook-2015\\_Ch9.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2015_Ch9.pdf) (e. p. 58)

27. [tjaglcspublic.army.mil/command-prosecutorial-authority-and-the-uniform-code-of-military-justice#\\_edn60](http://tjaglcspublic.army.mil/command-prosecutorial-authority-and-the-uniform-code-of-military-justice#_edn60)

28. [laws-lois.justice.gc.ca/eng/acts/c-50/FullText.html](http://laws-lois.justice.gc.ca/eng/acts/c-50/FullText.html) (section 8)

29. [www.legal-tools.org/doc/c7b14f/pdf/](http://www.legal-tools.org/doc/c7b14f/pdf/) (p. 26)

30. [www.legal-tools.org/doc/c7b14f/pdf/](http://www.legal-tools.org/doc/c7b14f/pdf/) (p. 26)

A feature of Canada, like some other countries, is the advanced system of military justice and law. For example, Section 5 of the Canadian Criminal Code<sup>31</sup> states that "Nothing in this Act affects any law relating to the government of the Canadian Forces."

This legal provision does not mean that servicemen cannot be prosecuted in accordance with the provisions of the Criminal Code. In this case, the point is that servicemen are not exempt from the Criminal Code, but they are exempt from the procedures found under the Criminal Code if the military decides to try a member for a *Criminal Code offence* before a military tribunal<sup>32</sup>.

Thus, complex, important, high-profile, and other military cases should be heard by military courts.

The liability of servicemen is regulated in accordance with the National Defence Act and the Code of Service Discipline, which is the second part of the Act<sup>33</sup>.

In Canada, there is a well-known statement by Lord Mansfield, who said that "[...]a case involving questions of military discipline and military duty alone are cognizable only by a military tribunal, and not by a court of law."<sup>34</sup>

## Israel

The State of Israel is immune from tort liability for losses it inflicts during battle, even if combatants inflicted the loss negligently<sup>35</sup>.

Israel, as the state, "is not civilly liable for an act done in the course of a war operation of the Israel Defence Forces."<sup>36</sup>

The Israeli Penal Law<sup>37</sup> states that "no person shall bear criminal responsibility for an act, which he committed under any of the following circumstances: (1) he was lawfully obligated or authorized to commit it; (2) he committed it under the order of a competent authority, which he was obligated to obey under Law unless the order was obviously unlawful; [...]"

These provisions, as well as the clause providing for the right to self-defence<sup>38</sup>. Also, apply to members of defence forces.

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31. [laws-lois.justice.gc.ca/eng/acts/c-46/page-3.html#docCont](https://laws-lois.justice.gc.ca/eng/acts/c-46/page-3.html#docCont) (Part I, section 5)

32. [www.ideablawg.ca/blog/2013/11/10/section-5-the-criminal-code-and-the-canadian-forces-episode.html](http://www.ideablawg.ca/blog/2013/11/10/section-5-the-criminal-code-and-the-canadian-forces-episode.html)

33. [laws-lois.justice.gc.ca/eng/acts/N-5/index.html](https://laws-lois.justice.gc.ca/eng/acts/N-5/index.html)

34. [digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1879&context=ohlj](http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1879&context=ohlj) (p. 72)

35. [www.ejiltalk.org/the-war-on-compensation-troubling-signs-for-civilian-casualties-in-the-gaza-strip/](http://www.ejiltalk.org/the-war-on-compensation-troubling-signs-for-civilian-casualties-in-the-gaza-strip/)

36. [www.adalah.org/uploads/oldfiles/features/compensation/law-e.pdf](http://www.adalah.org/uploads/oldfiles/features/compensation/law-e.pdf) (section 5, p. 2)

37. [www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf](http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf) (section 34M, p. 14)

38. [www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf](http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf) (section 34J, p. 13)

## France

Article 16 of the French General Military Statute (Le statut général des militaires français)<sup>39</sup> states that servicemen are not criminally liable under Article 121-3 of the French Penal Code<sup>40</sup> For unintentional acts committed in the performance of their duties in connection with taking into account the difficulties that may arise in performing complex tasks assigned to them by law.

It implies a release from liability for felony or negligence (misdemeanour) in the absence of an intent to commit it.

In this case, French law takes into account the complex, unforeseen circumstances that may arise during combat missions and provides a flexible approach to identify cases where liability arises or may not occur, given the individual cases that may occur during hostilities (combat action).

The study of international experience proves that the principle of combat immunity limits the liability of the military command for the consequences of combat orders issued, including when casualties were suffered, or property was damaged. In our opinion, the existing international experience should be taken into account while addressing the issue of liability and improving the Ukrainian legislation.

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39. [www.legifrance.gouv.fr/jorf/id/JORFTEXT000000808186](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000808186) (Article 16)

40. [www.legislationline.org/download/id/3316/file/France\\_Criminal%20Code%20updated%20on%2012-10-2005.pdf](http://www.legislationline.org/download/id/3316/file/France_Criminal%20Code%20updated%20on%2012-10-2005.pdf) (Article 121-3, page 3)

# CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis and study of the international experience, it is proposed **at the legislative level** to clarify the grounds for liability, as well as to regulate the grounds that release the military commanders for such liability (combat immunity) during the planning and conducting military (combat) operations.

1. Thus, to include the definition of "combat immunity" (*in Article 1 of the Law of Ukraine "On Defence of Ukraine"*), namely:

**"Combat immunity is the principle according to which the military command and servicemen are released from the liability for the consequences of the use of weapons, combat and other equipment during the repel/deterrence of armed aggression against Ukraine, armed conflict, hostilities, military actions, participation in counter-terrorism activities except in cases of violation of the requirements of the legislation of Ukraine or norms of international law, the binding nature of which has been approved by the Verkhovna Rada of Ukraine."**

2. To legislate (provide in the law) the obligation of all servicemen to adhere to the principles and norms of international humanitarian law (by amending *Article 17 of the Law of Ukraine "On Defence of Ukraine"* and *Article 59 of the Statute of the Internal Service of the Armed Forces of Ukraine*), namely:

**"The commander is obliged to know, follow personally and demand from the subordinate personnel strict observance of the norms of international humanitarian law.**

**In repelling/deterrence of armed aggression against Ukraine, armed conflict, hostilities, military actions, and participation in counter-terrorism activities, the military command and military personnel must adhere to the universally recognized principles and norms of international law and the rules of engagement. "**

3. To introduce in the legislation the principle of granting immunity to the command and military personnel from criminal liability for the consequences of the use of force during hostilities that could not have been foreseen in planning and carrying out such tasks, losses in men, equipment or other military property, if such actions were not intentional criminal acts having the character of a war crime or a crime against humanity (provided for in *Article 425 of the Criminal Code of Ukraine, Article 20 of the Law of Ukraine "On Defence of Ukraine", Article 45 Disciplinary Statute of the Armed Forces of Ukraine* and supplementing the *Statute of the Internal Service of the Armed Forces of Ukraine* with a new *Article 26-1*), namely:

**"Military officials (members of the Armed Forces of Ukraine ) are not subject to criminal liability for the consequences of the use of weapons, combat and other equipment, loss of personnel, military equipment or other military property during the repel/deterrence of armed aggression against Ukraine, armed conflict, hostilities, military actions, participation in counter-terrorism activities except in cases of issuing or carrying out clearly criminally illegal orders, intentional violation of the laws of Ukraine, universally recognized principles and norms of international law and rules of engagement, or committing criminal acts of war crimes or crimes against humanity."**

In addition, in order to fully and comprehensively consider cases related to military service, it is necessary to consider ways to ensure the proper functioning of a full-fledged military justice system in Ukraine. The system should include: the legal service of the Armed Forces of Ukraine, the military prosecutor's office, the military police, courts with relevant military chambers, colleges, and/or specializations, and the military bar.

This recommendation is reinforced by the study of the international experience, which proves that the application of the principle of "combat immunity" requires a professional and thorough study of every detail of the circumstances that took place during the planning and conduct of military operations.