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CONSTITUTIONAL AND LEGAL STATUS OF THE MILITARY OMBUDSMAN: DOCTRINAL RESEARCH

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Karapetian A.R. Constitutional and legal status of the military ombudsman: doctrinal studies.

The article provides a comprehensive constitutional and legal analysis of the legal status of the military ombudsman as a newly established specialized subject of parliamentary control in the field of protection of servicemen's rights. The study focuses on clarifying the legal nature of this institution, its place within the system of democratic civilian control over the security and defense sector, and its correlation with the classical model of the parliamentary ombudsman. The provisions of special legislation defining the tasks, powers, guarantees of independence and forms of activity of the military ombudsman are examined, as well as problematic aspects of the normative consolidation of its competence.

Special attention is given to the review of doctrinal approaches of Ukrainian scholars to defining the content of the legal status of the military ombudsman, particularly with regard to the principles of independence, institutional autonomy, access to information, and limits of interference in military administration. The positions of researchers concerning the legal nature of the acts of response issued by the military ombudsman and their actual binding force are analyzed. The works of foreign scholars devoted to parliamentary commissioners in the military sphere are also examined, which makes it possible to identify common features and distinctions of the national model in a comparative legal perspective.

The article further outlines academic approaches to the protection of servicemen's rights, including issues related to the safeguarding of personal non-property rights that acquire particular significance under martial law. The necessity of further theoretical elaboration of the constitutional foundations of the military ombudsman's activity and improvement of mechanisms for the implementation of its powers in order to enhance the effectiveness of guarantees of servicemen's rights is substantiated.

Additionally, it is argued that the development of a coherent doctrine of the constitutional and legal status of the military ombudsman requires a clear definition of its institutional autonomy, procedural guarantees of independence, and correlation with other subjects of parliamentary and judicial control. Emphasis is placed on the need to systematize scholarly approaches to understanding the functional purpose of this institution as a preventive mechanism for ensuring the rights of servicemen, operating outside judicial procedures while interacting with them. The importance of clarifying the scope of the military ombudsman's discretion and the legal consequences of its recommendations is underlined as a prerequisite for strengthening the effectiveness of parliamentary control in the defense sphere.

Key words: military ombudsman, constitutional and legal status, parliamentary control, democratic civilian control, servicemen's rights, guarantees of independence, specialized ombudsman, security and defense sector, acts of response, legal protection mechanism.

Карапетян А.Р. Конституційно-правовий статус військового омбудсмана: доктринальні дослідження.

У статті здійснено комплексний конституційно-правовий аналіз правового статусу військового омбудсмана як новітнього спеціалізованого суб'єкта парламентського контролю у сфері забезпечення прав військовослужбовців. Дослідження зосереджене на з'ясуванні правової природи цього інституту, його місця у системі демократичного цивільного контролю над сектором безпеки і оборони та співвідношення з класичною моделлю парламентського омбудсмана. Проаналізовано положення спеціального законодавства, яким визначено завдання, повноваження, гарантії незалежності та форми діяльності військового омбудсмана, а також окреслено проблемні аспекти нормативного закріплення його компетенції.

Окрему увагу приділено огляду наукових підходів українських учених до визначення змісту правового статусу військового омбудсмана, зокрема в частині принципів незалежності, автономії, доступу до інформації та меж втручання у діяльність органів військового управління. Розкрито позиції дослідників щодо юридичної природи актів реагування військового омбудсмана та їх

фактичної імперативності. Здійснено аналіз праць зарубіжних авторів, присвячених функціонуванню парламентських комісарів у військовій сфері, що дозволило виокремити спільні риси та відмінності національної моделі.

У статті також висвітлено наукові підходи до захисту прав військовослужбовців, включно з питаннями забезпечення особистих немайнових прав, що набувають особливої значущості в умовах воєнного стану. Обґрунтовано необхідність подальшого теоретичного осмислення конституційних засад діяльності військового омбудсмана та вдосконалення механізмів реалізації його повноважень з метою підвищення ефективності гарантій прав військовослужбовців.

Додатково аргументовано, що формування цілісної доктрини конституційно-правового статусу військового омбудсмана потребує чіткого визначення його інституційної автономії, процесуальних гарантій незалежності та співвідношення з іншими суб'єктами парламентського і судового контролю. Акцентовано на необхідності систематизації наукових підходів до розуміння функціонального призначення цього інституту як превентивного механізму забезпечення прав військовослужбовців, що діє поза межами юрисдикційної процедури, але у взаємодії з нею. Підкреслено значення теоретичного уточнення меж дискреції військового омбудсмана та правових наслідків його рекомендацій для підвищення реальної дієвості парламентського контролю у сфері оборони.

Ключові слова: військовий омбудсман, конституційно-правовий статус, парламентський контроль, демократичний цивільний контроль, права військовослужбовців, гарантії незалежності, спеціалізований омбудсман, сектор безпеки і оборони, акти реагування, правовий механізм захисту.

Formulation of the problem.

The relevance of researching the legal status of the military ombudsman in Ukraine is обусловлена a number of fundamental and applied factors arising from the current state of the legal system [1; 2], the State's defence policy, and the intensive development of human rights protection institutions under the conditions of the armed aggression of the Russian Federation.

The introduction of the institution of the military ombudsman constitutes a novelty of national legislation that establishes an independent legal mechanism for the protection of the rights and legitimate interests of servicemen and other persons who operate under specific legal and socio-political conditions connected with the defence of the State. The Law of Ukraine "On the Military Ombudsman" of 17 September 2025 No. 4603-IX [3], adopted by the Verkhovna Rada of Ukraine, consolidated this institution within the system of State bodies and clearly defined its legal status, powers, and competence, which previously had not been subject to separate legislative regulation.

Until 2025, Ukraine had no special legislative institution of a military ombudsman; issues concerning the protection of servicemen's rights were predominantly addressed through the Verkhovna Rada of Ukraine Commissioner for Human Rights or via general mechanisms of administrative and judicial protection. However, the adoption of the Law of Ukraine "On the Military Ombudsman" on 17 September 2025 established a distinct legal institution formalizing democratic civilian oversight of the security and defence sector, with clearly defined powers regarding the protection of rights related to service, mobilization, social guarantees, and other areas where they may be violated under conditions of war or military service.

Under conditions of prolonged martial law, the State must ensure effective and practical remedies for the protection of the rights of servicemen, reservists, members of voluntary territorial community formations, persons performing tasks of territorial defence and resistance movement, as well as law enforcement units engaged in combat operations. Prior to this, there had been no legislatively established body exercising democratic civilian control over the observance of their rights within the security and defence sector. The introduction of the position of the military ombudsman eliminates this legal lacuna.

The study of legislative novelties in the context of the legal status of the military ombudsman makes it possible to identify gaps and contradictions in the current legislation, to assess their impact on the realization of servicemen's rights, and to elaborate recommendations for improving the legal regulation of this institution in both wartime and post-war periods.

Thus, the relevance of the topic is determined by substantial changes in the legislation of Ukraine, the previous absence of a legally enshrined specialized mechanism for the protection of servicemen's rights, the need to establish effective democratic control over the security and defence sector, as well as the general necessity to adapt the legal system to the requirements of contemporary society and international standards.

The state of development of this problem. An analysis of academic literature demonstrates that the legal status of the military ombudsman as a separate institution within the legal system of Ukraine has become the subject of research only in the most recent publications, which emerged during the period

of active legislative work on the establishment of this institution. Unlike established institutions such as the general ombudsman or national human rights protection mechanisms, the military ombudsman has not yet formed a broad classical scholarly tradition, which imposes particular responsibility upon contemporary scholars in shaping theoretical and legal approaches.

The content of academic publications reveals two main groups of research: those directly devoted to the military ombudsman, its status, powers, and guarantees; and broader works on the protection of servicemen's rights, in which the issue of the military ombudsman or the legal position of servicemen is examined as one of the elements of human rights protection under martial law.

Presenting main material.

A comprehensive constitutional and legal analysis of the legal status of the military ombudsman as a novel specialized subject of parliamentary control in the sphere of ensuring the rights of servicemen presupposes clarification of its institutional nature, functional purpose, and systemic connections within the mechanism of democratic civilian control over the security and defence sector. Such analysis must be carried out through the prism of constitutional provisions concerning the human being, his or her life and dignity as the highest social value, the principle of the rule of law, the obligation of the State to affirm and ensure human rights and freedoms, as well as through the constitutional function of parliamentary control as an integral element of the system of checks and balances.

The legal nature of the military ombudsman is обусловлена its derivation from parliamentary control exercised by the Verkhovna Rada of Ukraine in the forms determined by the Constitution and laws. At the same time, unlike the classical model of the parliamentary ombudsman, which possesses a universal mandate to protect human and civil rights and freedoms in public-law relations, the military ombudsman is characterized by special subject-matter competence limited to the sphere of military service and the legal status of servicemen. It is precisely this specialization that shapes it as an institutionally separate yet functionally integrated element of the system of democratic civilian control.

Within the structure of such control, the military ombudsman occupies an intermediate but independent position between political-parliamentary forms of oversight (hearing of reports, establishment of temporary investigative commissions, parliamentary inquiries) and jurisdictional mechanisms of protection (administrative and judicial appeals). Its activity has a preventive and corrective character: it does not replace the court or bodies of military administration, but conducts an independent assessment of compliance with the rights of servicemen, responds to violations, and initiates their elimination within the procedures prescribed by law. Therefore, the institution of the military ombudsman constitutes a form of institutionalization of specialized parliamentary control under conditions of increased concentration of public authority in the defence sphere.

The analysis of the provisions of special legislation indicates that the legal status of the military ombudsman is defined through the totality of its tasks, powers, guarantees of independence, and forms of activity. The key tasks include facilitating the realization and protection of the rights of servicemen, participating in the improvement of the normative regulation of military service, and monitoring compliance with rights in military units and other military formations. The powers include the right of unhindered access to military facilities, obtaining necessary information and documents, receiving and examining individual and collective appeals, and submitting acts of response and recommendations to competent authorities.

Guarantees of independence of the military ombudsman are secured through a special procedure of appointment and dismissal, defined terms of office, prohibition of interference in his or her activities, and the obligation of military administration bodies to provide information and facilitate the implementation of control functions. The existence of such guarantees is intended to minimize the risks of influence by the executive branch and to ensure the impartial nature of control activity, which is fundamental in the military sphere, where a hierarchical model of subordination prevails.

At the same time, the normative consolidation of the competence of the military ombudsman is not devoid of problematic aspects. First and foremost, this concerns the issue of correlation between his or her powers and those of the Verkhovna Rada of Ukraine Commissioner for Human Rights, which requires clear delineation of spheres of responsibility in order to prevent duplication of functions or, conversely, the emergence of gaps in protection. The nature of the acts of response of the military ombudsman remains debatable: their recommendatory character determines that the effectiveness of their implementation depends on an appropriate level of legal culture and political responsibility of public authorities. In this context, the question arises as to the expediency of introducing additional procedures for monitoring the implementation of recommendations and mechanisms of parliamentary response in cases of their systematic disregard.

Therefore, the military ombudsman appears as the newest institutional element of the constitutional mechanism for the protection of human rights in the sphere of military service, combining features of

parliamentary control, specialization, and functional autonomy. Its legal status has a comprehensive character and requires further doctrinal specification with due regard to the constitutional principles of the rule of law, proportionality of restrictions of rights during wartime, and ensuring a balance between the requirements of military discipline and guarantees of the fundamental rights of servicemen.

In the article by V. V. Chernobuk "Legal Status of the Military Ombudsman in Ukraine," the first systematic formalized interpretation of the institution of the military ombudsman is proposed, including conceptual characteristics, functional tasks, and guarantees of independence [4]. Chernobuk considers the ombudsman primarily as a specialized form of democratic civilian control over the security and defence sector, which ensures the right of servicemen to condemnation of unlawful actions, protection, and restoration of violated rights [4]. The author draws attention to generally recognized fundamental principles, including independence, impartiality, access to information, and procedural guarantees, which constitute basic standards for establishing the functional status of the ombudsman. This research is important from the standpoint of conceptualizing the institution of the ombudsman precisely within the military environment, where traditional human rights protection mechanisms may be limited by the specificity of the legal status of servicemen during the period of martial law. However, the comparative analysis with other models (Western European or North American) remains insufficiently developed, which complicates the assessment of the universality of the proposed approaches.

M. S. Sarnavskiy focuses on the key component of the ombudsman's status - independence - considering it not only as a legal standard but also as a socio-legal condition for the effectiveness of activity [5]. The author emphasizes that the independence of the ombudsman must be ensured not only by constitutional declarations but also by a complex of procedural and organizational guarantees, including budgetary autonomy, absence of political influence, and access to classified information on defence security issues [5]. The scholar analyses not only legislative norms but also functional manifestations of independence in the practice of international ombudsmen, which provides valuable guidance for Ukraine. Nevertheless, the work does not fully disclose the legal imperative character of the implementation of the ombudsman's conclusions, that is, how compulsory execution of recommendations is ensured in interaction with military structures.

Koval O.P., in her publication, provides a critical assessment of the emergence of the institution of the military ombudsman against the backdrop of increasing complaints by servicemen regarding violations of their rights [6]. The author is interested not so much in the formal construction as in the functional effect of introducing the institution: whether the ombudsman is capable of filling the legal lacuna concerning the protection of rights in the military environment, especially during an armed conflict. O. Koval emphasizes that traditional legal mechanisms often do not function effectively in the military sphere, and that the ombudsman institution may serve as a systemic means of ensuring rights [6]. However, the study does not comprehensively analyse the interaction of the ombudsman with other human rights bodies and courts, which limits the practical applicability of the proposed ideas.

Palieieva Yu. S. makes an important contribution to the study of the role of the ombudsman in human rights protection by analysing the international experience of specialized ombudsmen, including in European and North American countries. The author examines various mechanisms for organizing and exercising ombudsman powers, including issues of access to information, guarantees of independence, and procedures of interaction with military structures [7]. This research provides valuable guidance for adapting best international practices into Ukrainian legislation. However, in global practice, universal standards regarding the compulsory execution of ombudsman prescriptions remain insufficiently developed, which creates a scientific gap.

In the article by O. V. Martselyak "The Military Ombudsman as an Institutional Guarantee of the Protection of Servicemen's Rights (Foreign Experience)," a comparative analysis of ombudsman models in other countries is carried out, particularly regarding: legislative consolidation of the ombudsman's status in different jurisdictions; its place within the system of State power (parliamentary models versus executive structures); functional approaches to independence, powers, and accountability [8].

The author emphasizes that the institutional inclusion of the ombudsman contributes to democratic control over military structures, strengthening trust between the military and the State, and comprehensive protection of rights. This is important for Ukraine, where the establishment of the ombudsman institution partially compensates for the weakness of other mechanisms for the protection of rights in the defence sector.

The issue of protection of servicemen's rights encompasses not only the ombudsman mechanism but also specific categories of rights that acquire particular significance under martial law. In human rights scholarship, considerable attention is paid to reproductive rights as an integral component of human rights. In particular, in the journal "Nashe Pravo," Professors L. Deshko and O. Vasylenko, in the

article "Compensation for Moral Damage as a Guarantee of Protection of Reproductive Rights and Other Rights of the Person in the Field of Health Care," demonstrate that legal compensation mechanisms play an important role in ensuring the real substance of constitutional rights to health and reproductive autonomy in situations where State medical policy fails to provide adequate guarantees [9]. The scholars have also published another article [10]. These scientific works convincingly demonstrate that the role of the military ombudsman in protecting the reproductive rights of servicemen is significant, since his or her response may be faster than judicial protection.

Despite the fact that domestic scientific research already addresses certain aspects of the legal status of the military ombudsman and reproductive rights, a number of significant gaps remain: insufficient comparative analysis — most studies focus on Ukrainian conditions without deep explication of international standards and practices, which limits the possibility of implementing best models. Procedural issues of interaction also require thorough legal analysis; there are no systematic empirical studies measuring the impact of the ombudsman on the protection of servicemen's rights. Notwithstanding academic articles, the issue of reproductive rights of servicemen as a separate category of human rights has not received sufficient theoretical substantiation, nor has the potential for their protection by the military ombudsman been researched.

In the works of Hans Gammeltoft-Hansen, in particular in the monograph "The Danish Ombudsman" [11], the model of specialized control over public administration activity, including the Armed Forces of Denmark, is disclosed. The author substantiates that ombudsman control in the military sphere is permissible only provided there is a clear distinction between assessment of administrative legality and inadmissibility of interference in strategic and operational decisions of command. This approach has methodological significance for shaping the Ukrainian model of the military ombudsman, as it outlines the limits of control within the security and defence sector.

In Victor Pickl's study "The Ombudsman in Europe and the Military Sector" (published within the framework of DCAF materials), a comparative analysis of institutions of parliamentary commissioners for the rights of servicemen in European States is carried out [12]. The author singles out the German model as the most institutionalized, where the Parliamentary Commissioner acts as an auxiliary body of parliament with extended control powers over the Bundeswehr. The comparative aspect makes it possible to identify key structural elements of status: independence, the right of direct appeal by servicemen, and mandatory reporting to parliament.

In German legal doctrine, in particular in commentaries to the Basic Law of the Federal Republic of Germany regarding the status of the Parliamentary Commissioner for the Armed Forces, the constitutional nature of this institution is emphasized as a guarantee of parliamentary control over the armed forces in a democratic State. Analysis of the German model demonstrates that constitutional entrenchment of the institution ensures its stability, functional autonomy, and a high level of trust among servicemen [13].

In general, doctrinal studies demonstrate that for Ukraine the key unresolved issues remain: constitutional legitimation of the military ombudsman; determination of the correlation between his or her acts of response and jurisdictional procedures; as well as the development of procedural guarantees preventing the use of secrecy regime as an instrument for limiting parliamentary control.

Conclusions.

The institution of the military ombudsman constitutes the newest element of the human rights protection system in Ukraine and is distinguished by specific guarantees of independence and powers necessary in the context of martial law and defence activity. Contemporary research provides theoretical and conceptual foundations but requires systematic comparison with foreign models in order to develop universal standards of legal status.

Reproductive rights of servicemen and mechanisms for their realization during wartime represent a new dimension of legal protection that must be integrated into the general system of guarantees of servicemen's rights. The role of the military ombudsman in ensuring such rights requires further doctrinal and empirical substantiation.

Comprehensive constitutional and legal analysis confirms that the military ombudsman is a specialized subject of parliamentary control combining features of specialization, functional autonomy, and preventive-corrective influence. Its effective functioning depends on clear delineation of competence, strengthening procedural guarantees of independence, ensuring real implementation of acts of response, and balancing military discipline with the protection of fundamental rights.

Further empirical research and the development of procedural mechanisms ensuring the execution of the military ombudsman's recommendations within the legal framework are essential for strengthening democratic civilian control over the security and defence sector and enhancing trust among servicemen in human rights protection institutions.

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