

## **Military courts of honorary officers in the military justice system**

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The judicial system in Ukraine as an independent and full-fledged branch of government currently exists exclusively in a formal context. In the course of reforms to update judges and courts, a large number of problems arise that require the search for new forms of legal proceedings, new approaches to determining the severity of an offence and the complexity of a court case. In particular, this article draws attention to the procedural features of the judicial review of military matters. The purpose of our scientific research is to analyze the formation of military courts of honorary officers as an alternative institution for resolving legal conflicts, their development, defining the jurisdiction and prospects for the resumption of these courts. It is researched the history of initiation and development of the institute of military courts of officer's honour, their jurisdiction, organization of activity, the procedure in cases and decision-making procedure, place of courts of officer's honour in the system of authorities of military proceedings. The Ukrainian and foreign experience of the activity of the court of officer's honour is analyzed.

**Keywords:** court of honorary officers, military jurisdiction, court proceedings, army, navy

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### **INTRODUCTION**

The judicial reform implemented in Ukraine is aimed at restoring and increasing citizens' confidence in judges and courts. Symmetrically with the increasing role of the court as a defense organ, as a tool for restoring violated rights and freedoms, the pressure on judges is increasing, who in the opinion of society do not always cope with their functions (Pestsov & Timashov 2019). It is a question of resumption of the military justice authorities in the Armed Forces, as the courts of general jurisdiction delay the consideration of military cases. According to E. Sidorov (2016): "Ordinary courts are not able to dispense justice at the proper level for the functioning of the Armed Forces of Ukraine. I emphasize once again: not "capable of dispensing justice", and "unable to administer justice at the proper, necessary level". The reason for this is the specificity of the composition of war crimes, the workload of judges in other categories of court cases. In addition to this reason, one more reason should be pointed out – the lack of preparedness of judges of general jurisdiction courts to consider war crimes, or offenses committed by military personnel during military service. Most judges have no experience of military service or participation in hostilities.

In our opinion, it is advisable to pay attention to the procedural features of the judicial consideration of military cases. For example, in the context of hostilities, the interrogation of military personnel as a witness in the courtroom is almost impossible. Judicial proceedings by military judges in the context of hostilities can be carried out directly at the front. In order to eliminate these negative phenomena, it is necessary to search for new forms of legal proceedings, corresponding to the severity of the offense and the complexity of the court case. One of the directions of such a search could be a system of military courts of honorary officers. However, the idea of creating a system of courts of honorary officers has not yet found practical implementation. The reason for this is the imperfection of the system of legal regulation and ensuring the state of law and order, the lack of coordinated actions among the military justice authorities, the lack of co-financing sources, the lack of qualified personnel, the lack of a mechanism for the responsibility of judges of the court of officer's honor, as well as defining their legal status (Blistiv 2017).

In this regard, the analysis of the Ukrainian experience of the activity of these courts would be not only interesting as a scientific product, but also useful in its practical implementation for democratization and transparency of the judiciary. The object of study is the military courts of honorary officers as alternative institutions for resolving legal conflicts in the military justice system. The subject of scientific research is the military court of honorary officers. Many scholars have studied the history of initiation and development of the institute of military courts of honorary officers (Onokolov 2010, Grigoriev 2010, Tuganov 2013). Among them are A. Kurabtseva (2012), N. Petukhov (2010), V. Shagaev (2007), A. Fedorov (1950). However, all of them considered the activities of the court of honorary officers in a historical aspect, without affecting the particularities of the procedure for considering cases in such courts, the problems

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of recruiting judges, as well as the activities of the courts of officer honor in other countries.

### **THE FEATURES OF THE FUNCTIONING OF MILITARY COURTS IN THE DEVELOPED STATES OF THE 19TH CENTURY**

Military courts of honorary officers arose in Prussia in 1808. Their initiation is associated with the adoption of Friedrich-Wilhelm III Order “On the Punishment of Officers” (Demeter 2011). Its essence was that an officer who was convicted of drunkenness or who led a dissolute life, or did not observe subordination, could be convicted on the basis of a decision of 75% of the vote of the total officer corps of a military unit before being deprived of the right to upgrade to the next rank. Each officer could turn to a “court of honor” for help. Subsequently, the jurisdiction of the courts of officer’s honor was expanded; the judges considered all violations of the officer’s rules of conduct, with the exception of criminal offenses. It should be noted that in the process of reforming the courts of honor, two bodies were established: the Tribunal de Honor with executive functions (should not be convened to resolve the conflict, but to determine the boundaries within which the dispute caused damage to the honor of the profession) and the tribunal of conscience (performed the function of mediation with the aim of peaceful settlement of the conflict). The 1874 regulations glorified the spirit of officers, introduced a new concept of officer’s honor, eliminated the inconsistency of the previous system of courts of honor, but did not include a practical mechanism for resolving conflicts.

In Austria, the Court of Honorary Officers appeared in 1867, operating in two organizational forms: the officers’ meeting and the court of honor. The officers’ meeting resolved the issue of bringing the officer to the court of honor. The officer meeting to resolve the issue of competence in the court of honorary officers consisted of all officers of the military unit, if the case concerned the chief officer; the officer meeting consisted of all the division’s headquarters officers, if the matter concerned the headquarters officer; the cases of the generals were considered by the officers meeting, which consisted of all generals who were at the time of the convocation in Vienna. Each officers’ meeting elected 3 people from its entourage to a special commission (for senior officers a commission was elected for 1 year, for staff officers and generals the commission was elected specifically for each case). The special commission carried out a preliminary investigation into the disapproving acts. Consideration of the case on the merits and decision-making was carried out by the council of honor, which consisted of members of a special commission and an additional 5 people appointed by senior officers. The litigation in the courts of honor was not public. Convictions against the accused were submitted for approval to the Supreme Authority and were not subject to appeal.

The institution of the court of honorary officers is not unfamiliar to the Ukrainian military justice system. The legal basis for the formation of a court of honorary officers was the “Military Charter of Peter I of March 30, 1716”,

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according to which: "Military courts considered only disputes among officers, soldiers and other persons belonging to the troops" (Kurabtseva 2012, Preobrazhensky & Novitskaya 1997). Legislative acts introduced by Peter I became the legal basis for the further development of the court of honorary officers. The final form and legal consolidation of the court of officer honor was formalized in the Disciplinary Statute (1888). According to Art. 134 of the Disciplinary Statute (1888), the courts of honorary officers were formed in regiments (consisting of 7 people), separate battalions, artillery brigades (consisting of 5 people), and could be formed in other separate military units. The composition of the court changed every year before the end of the summer camp. The voting procedure was secret by submitting a sheet of paper without its signature, which recorded the names of members and candidates to the court of honorary officers. Persons who were members of the court could be re-elected. Officers, who were under investigation or under trial could not be elected members of the court and candidates, were detained in the brig. The obligatory condition for election as a member of the court or a candidate was moral and official integrity. The votes counting was carried out by the regimental adjutant. The officer with the highest number of votes was considered an elected member of the court. The election results were announced in an order for the military unit.

Article 130 of the Disciplinary Statute (1888) defined the jurisdiction of the court: "To protect the dignity of military service, officers are seen in disapproving conduct or acts that are not subject to the criminal law, but incompatible with the concept of military honor and valor of an officer rank or expose an officer to a lack of moral rules and nobility, and also considered quarrels between officers". The decision to consider an unapproved act by officer or other misconduct of officer in the court of honorary officers was made by the commander of the military unit. The beginning of the litigation was preceded by an inquiry, which was carried out by order of the commander of the military unit or by the court directly with the mandatory notification of the commander. Inquiries are held both by the full court, and by its individual members. Inquiry is conducted in the form of an oral interview and obtaining certificates. The accused could give written explanations at his own request or if the interviewee is absent at the duty station.

During the inquiry, the explanations of indicted were heard. The results of the inquiry were reported to the commander of the military unit, and then makes a decision on the appointment or not appointment of a court hearing in relation to the accused officer. The hearing was secret. Written proceedings were conducted in the absence of scribes. The actions of the court consisted in reviewing the evidence gathered and hearing the explanations of accused. If the accused did not appear without good reason, the court was entitled to accept a verdict in absentia. The case was discussed after receiving explanations from the accused, but in his absence. No more than one day was allotted for consideration of the case and sentencing. The verdict is adopted by a majority vote of the members of the court by open ballot. The court verdict was announced

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immediately. The court of officer's honor could take one of the following decisions: on the acquittal of the accused; conduct explanatory work or reprimand; on the removal of the accused from the regiment.

In the structure of the Navy there were also courts of officer's honor, but they were called the courts of captains. In the "Naval Disciplinary Statute" of July 25, 1824, it was noted that all naval chief officers are subject to the trial of captains. A court of captains was formed at each naval division, each water detachment of at least 5 people, chaired by the junior flag officer of the division or detachment (Kurabtseva 2012). If the case was considered in relation to an officer of the naval artillery corps or naval navigators, then a senior officer in the division or detachment, or port, an officer of the corresponding specialty, necessarily took part in the court. Inquiries, preliminary collection of information, attempts to reconcile the parties to the conflict were carried out by a board of mediators. A council of mediators was created for each consolidated division or each consolidated detachment. This council consisted of representatives of each crew, elected by all senior officers of the crew.

The court of captains was convened by order of the senior flag officer of the division, or the commander of the combined detachment. The trial was not public, the explanations of the representatives of the council of mediators and the explanations of the accused were heard. The court decides to remove the officer from the crew or his acquittal. The decision is made by a majority vote. An opinion supported by the crew commander or the commander of the military unit of the accused was adopted with an equal number of votes. If the commander of the accused was not present in court, then the opinion of the chairman of the court session was taken into account. In the further reform of the courts of captains decision-making became secret, the trial itself should not last more than 24 hours. With an equal number of votes, the accused is considered acquitted. The acquitted officer remained in the crew or team, about which an appropriate order was issued.

## **ANALYSIS OF THE LEGAL ACTIVITIES OF THE COURTS OF HONORARY OFFICERS DURING THE SOVIET PERIOD**

During the Soviet period, the army also had courts of honorary officers. According to the Regulation "On Comradely Courts of Honorary Officers in the Armed Forces of the USSR" dated September 25, 1980, the courts of honorary officers is an elected body of the officer public in the Armed Forces of the USSR, the task of which is to protect the honor and dignity of the officer rank, and to actively assist commanders (chiefs) in the education of officers composition in the spirit of the requirements of the moral code, strict and exact compliance with it (Decree of the Presidium... 1980). According to the Regulation "On Comradely Courts of Honorary Officers in the Armed Forces of the USSR" dated September 25, 1980, courts of honorary officers are an elected body of officers community in the Armed Forces of the USSR, whose task is to protect the honor and dignity of the officer rank, and to actively assist commanders (chiefs) in the education of officers composition in the spirit of the requirements

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of the code of ethics, strict and precise observance of the Constitution and laws, military oath, military regulations and orders, promoting the consolidation of the officer team, creating an atmosphere of intolerance towards violators of military discipline in it (Decree of the Presidium... 1980).

The leadership of the comradely court of honorary officers was carried out by the head of the military unit, institution, establishment, in which the court was formed. The commander provided daily assistance in creating appropriate conditions for the activities of the court, organizing the training of officers who were members of the court of honorary officers. The courts of honorary officers were formed in regiments and on ships to deal with misdemeanors and offenses by junior officers; in divisions and naval bases, courts of honorary officers were established to consider misdemeanors and offenses by high-ranking officers; courts of honorary officers in corps, armies, flotillas and navies, military districts, military educational institutions were created to consider misdemeanors and offenses by junior and some senior officers (Chistyakov 1976). The jurisdiction of comradely courts of honorary officers extended to cases of: misconduct that is not worthy of the rank of officer; violation by officers of military discipline and public order; dishonest attitude of an officer to official duties; inappropriate behavior of the officer in the family and failure to fulfill child-rearing responsibilities; offenses committed by an officer may, by law, be referred to a comradely court; violations of legislation on nature protection, if these actions do not provide for criminal liability.

The comradely court of honorary officers considers cases that are closed in criminal proceedings and according to the law are transferred to comradely court of honorary officers. Comradely courts of honorary officers consisted of 7-9 people: for junior officers candidates for comradely courts were elected by the general meeting of junior and senior officers, for senior officers such candidates were elected by the general meeting of senior officers. 1-2 senior officers were to be elected to the comradely courts of honorary officers in the cases of junior officers. The commanders of military units, military educational institutions and establishments and their deputies were not elected to the court. Officers, who have served in one military unit for at least 6 months and are respected in the team, were an example of impeccable behavior in the service, in public places and in everyday life could be elected to the court. Meetings for the election of comradely court of honorary officers are convened by the commander. The meeting is considered legitimate if there are more than half of the total number of officers. In case of impossibility to convene a general meeting of officers, court elections were held by a meeting of representatives from each unit of the military unit. Court elections were held at the beginning of the school year in the Armed Forces for a term of 2 years. Voting was open. The candidate with the highest number of votes was considered elected to the court, provided that more than half of those present at the meeting voted for him. The meeting of officers may prematurely terminate the powers of members of the court if they have not justified the trust. The issue of recalling a member of the court was decided by a vote.

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The members of the court elected the chairman and deputy chairman of the court, and the duties of the secretary were performed by the members of the court in turn. Cases in a comradesly court of honorary officer were examined on the basis of a decision of the head of the military unit, which was taken on his own initiative on the basis of reports from state bodies or public organizations, or the determination of a meeting of officers on the basis of a statement from the victim or at the suggestion of the court itself. The court of honorary officers considered cases of at least 3 people (in any case, the number of judges for consideration should have been odd), which the chairman of the court recruited in turn, as well as in the presence of the accused officer. Before the start of the court's consideration of the case, the chairman of the court or on his behalf one of the members of the court checked the received materials, interviewed the accused, the victims, witnesses, and requested the necessary documents. Based on the results of the audit, a report was compiled indicating the factual circumstances of the case, the reasons for the misconduct, and information about the accused officer. The results of the audit and the subsequent conclusion were introduced to the accused, the victim, the plaintiff. The victim and the plaintiff have the right to petition for additional verification of certain facts and call witnesses. In case of refusal to satisfy the petition, the chairman of the court is obliged to indicate the reasons of refusal. The refusal of the chairman of the court did not deprive the victim or the plaintiff of the right to resubmit the petition during the court hearing.

The case is considered by the court no more than 15 days from the date of receipt of the case by the court. Cases of petty hooliganism, petty theft, petty speculation were examined by the court of honorary officers up to 10 days from the date of receipt of documents by the court. The time and place of the court hearing was determined by the chairman of the court in agreement with the chief of the military unit and notified in advance to the officers. The presence of the accused at a meeting of the comradesly court of honorary officers was mandatory. The chairman and members of the court who are directly or indirectly interested in the outcome of the case are required to declare recusation. The issue of challenge (recusation) of a member of the court was decided by the entire composition of the court that examined the case. If in deciding on the issue of challenge (recusation) the votes of the members of the court were distributed equally, then the member of the court on whom the challenge was declared was considered as allotted. After the opening of hearing, the presiding judge shall ascertain in the presence of the officers summoned to the court, explain the rights of the accused, the victim and the plaintiff: to lodge challenges, participate in the examination of evidence, file petitions, and ask questions. After solving organizational issues, the presiding judge announces the essence of the misconduct or offense based on the results of the audit, listens to the explanations of the accused, victim, plaintiff and witnesses, considers the documents necessary for the case. If, during the consideration of the case, circumstances are revealed that indicate the need for criminal prosecution of the officer, the court

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shall petition the commander of the military unit to send the case materials to the military prosecutor.

In the course of the proceedings, the secretary keeps a record. The protocol shall contain information on the composition of the court, the essence of the case, the time and place of the consideration, the actions of the court, the content of the explanations and statements, the petitions submitted and the decisions taken thereon. The protocol is signed by the presiding judge and the secretary. At the end of the proceedings, the court moves to a separate room for decision-making. If it is necessary to obtain additional information, the court has the right to resume the hearing or postpone it to another time. The decision of the comradely court of officers' honor is made by a majority vote. In making a decision, the court of officers' honor is guided by current legislation, awareness of their public duty and military duties. When establishing the guilt of an officer, the court could apply one of the following types of public influence: warning, public shaming, public censure, appeal for demotion to a post or military rank, request for the expulsion of an officer who is studying from a higher educational institution; application for exemption from military service.

The court decision indicated the time and place of the case, the name and composition of the court, information about the accused, the content of the offense, the type of public influence, or justification, the time and procedure for appealing the decision. Decision is signed by all members of the court. If one of the members of the court does not agree with the decision adopted, he is entitled to set forth his own opinion in writing, which is not announced, but is attached to the case file. The decision is announced at a court hearing and then passed to the commander of the military unit. All case files are stored at the headquarters of the military unit until the ending period of expunging conviction or until measures to ensure public influence are removed, then these materials are subject to destruction. The court of honorary officers informs about accepted decisions received from the military prosecutor's office or the military tribunal within 10 days. An officer by whom a decision was made by a comradely court of honorary officers is entitled to appeal it within 7 days. The complaint was considered up to 7 days, and in case of verification of the complaint – up to 15 days. If the commander of a military unit considers the complaint substantiated or finds himself that the court's decision is contrary to the law or the circumstances of the case, he cancels the previous decision or sends the case for a new trial to the court of honorary officers of the officers, or closes the proceedings.

## **CONCLUSION**

The Institute of Military Courts of Honorary Officer gives reason to assert that the courts of officer honor when considering cases and making decisions were guided by the principles of justice, which meet modern requirements in the field of legal proceedings. The resumption of the courts of honorary officers will simplify and expedite the proceedings, as well as relieve the courts of general jurisdiction from excessive workload. These courts will improve the effectiveness of interaction and coordination of military justice authorities and

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ensure compliance with the rule of law and discipline in the Armed Forces. Military courts of honorary officers will increase personnel potential, improve the level of legal education among officers.

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