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# **Military Justice in Ukraine: A Guidance Note**

**Mindia Vashakmadze**

**Security Sector Reform Working Group: Military Justice 1**



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## I. Legal background

From 1993 to 2010, specialised military courts formed part of the general court system of Ukraine.<sup>1</sup> Military courts were abolished according to the Law of Ukraine “On the Judicial System and the Status of Judges” of 7 July 2010. Presidential Order 900/2010 of 14 September 2010 further specified this.<sup>2</sup> Since 2014, there have been several suggestions to reinstate military courts to maintain discipline and good order in the armed forces of Ukraine, which are currently involved in ongoing armed conflict in the East of the country. Since then, some Ukrainian parliamentarians have drafted related legislative proposals and brought them to the attention of the relevant committees of the Verkhovna Rada.<sup>3</sup>

Several approaches to military justice have been considered in Ukraine.<sup>4</sup> The Military Prosecutor’s Office has recommended creating a military justice system subordinate to the Ministry of Defence (MoD).<sup>5</sup> Other proposals place military courts within the system of general judiciary; reinstating the same structure of military justice that existed before 2010. The respective proponents of these initiatives claim that disciplinary and criminal offences are on the rise in the armed forces and various volunteer battalions engaged in combat against separatist elements in the East of Ukraine. While harsher punishments for certain service-related offences

have been introduced,<sup>6</sup> it has been argued that the courts of general jurisdiction face serious difficulties in dealing with service-related offences and have proved unable to maintain discipline and good order in the armed forces. The government’s reform plans related to the justice sector do not, however, envisage the re-establishment of military courts. A draft law on the restoration of military courts was removed from the agenda of the Ukrainian legislature on 21 February 2017.<sup>7</sup> Moreover, strategic documents on security sector reform do not foresee the reinstatement of military courts.

This paper briefly reviews the possibility of restoring military courts in Ukraine in light of recent international practice. After summarising this practice, it attempts to apply it to Ukrainian proposals regarding the reinstatement of military courts. The paper also provides recommendations for further consideration, exploring how lessons learnt from the practice of other states, as well as recent trends and developments in military justice, can guide the process of drafting related legislation on military justice.

## II. Why a distinct system of military justice?

Before proceeding, the fundamental question as to *why* a distinct military justice system needs to be reinstated in Ukraine requires further examination. The primary function of a military

justice system is to ensure discipline and good order in the armed forces. However, models of military justice can vary according to national circumstances and legal frameworks. Possible alternatives to address current challenges in the Ukrainian Armed Forces and volunteer armed units—namely, rising crime rates—should also be analysed. According to some Ukrainian experts, an alternative to the establishment of military courts could be to create a model in which general courts remain responsible for military offences. In such a case, the specialisation of individual judges within the general courts would be of particular importance. Additionally, in some countries, a hybrid system exists in which military tribunals operate only as first instance courts; while appeals are considered in civilian courts.

The legislative initiatives that have been under review in Ukraine demonstrate a preference for the incorporation of military courts into the system of ordinary judiciary. This solution would be in line with current trends in military justice—namely, the increasing civilianisation of military justice. However, the specific wartime needs of the Ukrainian Armed Forces should also be taken into consideration. This raises a further question as to whether the reinstatement of military courts should be seen as a temporary solution to meet the immediate needs of the army, currently engaged in active combat; or rather lead to the creation of a model of military justice which can also function effectively in peacetime; delivering

justice in the armed forces after the end of the current conflict.

**If a decision is taken to restore military courts, it should be clearly indicated for what purpose such a system is to be introduced. Standing military courts should be able to effectively function in emergencies and peacetime alike. If military tribunals are, however, only established to deal with military offences for the duration of the armed conflict, the legal framework should be amended accordingly.**

### **III. Structure and territorial organisation**

The advantages and shortcomings of the territorial organisation of military justice in Ukraine prior to 2010 should be carefully reviewed and taken into account during any reform process. The structure and organisation of the system should be adjusted to the current context. The courts should therefore operate in regions adjacent to the conflict zone in order to ensure the swift delivery of justice. This does not mean, however, that there should be no military courts in other regions of the country. A temporary territorial organisation can operate in Ukraine to meet the specific requirements of its armed force and to ensure effective accountability in the conflict zone, as long as the armed conflict continues. If, however, the military justice system is intended to operate beyond the cessation of hostilities, the structure should be

adapted according to the peacetime deployments of the armed forces in different regions of the country.

One option is to create first instance military courts and civilian appellate authorities. This model would not only ensure not civilian supremacy, but also correspond to current trends in military justice, as well as to various recommendations made by international institutions. According to the Venice Commission, for instance:

“...in a democratic country the military has to be integrated into society and not kept apart. Democracies therefore provide for the possibility of appeals from military courts to civilian courts.”<sup>8</sup>

Moreover, the number of courts and judges should be determined according to the requirements of the armed forces.<sup>9</sup>

**It is thus recommended to adapt the organisation of military justice to the structure and deployment of the Ukrainian Armed Forces to ensure that the swift delivery of justice in respective armed units is possible.**

#### **IV. Education and training of military judges**

Military judges require proper training carried out at specialised schools for military lawyers or at general training centres for the judiciary.<sup>10</sup> It is preferable to deliver such training not under the

supervision of the MoD, but rather to integrate it into the system of general legal training for judges while maintaining a strong focus on military law issues (covering military order and discipline, military criminal code, disciplinary and other offences). Establishing such a system for continuous training would, however, require substantial resources. Those who oppose the reinstatement of military courts contend that it would be preferable—both with respect to sustainability and financial viability—to train the same number of civilian judges to deal with military offences at general courts, rather than train and hire new military judges.<sup>11</sup>

However, some argue that there remain an insufficient number of professional lawyers in the Military Prosecutor’s Office and other law enforcement agencies who could be employed as military judges. Further, others suggest that the current system of professional training for military lawyers could be improved. Such a revised training regime, could, for example, be delivered at the Yaroslav Mudriy National Law University.

**It is recommended to consider and discuss both possibilities, and to pay sufficient attention to the availability and allocation of financial resources at the early stages of reform. The training curricula should be carefully designed to cover all relevant areas of law including domestic military law, human rights law and international humanitarian law.**



## V. Ensuring judicial independence and a fair trial

Judicial independence and impartiality play a crucial role in ensuring the legitimacy of and public confidence in the military justice system. According to the case law of the European Court of Human Rights (ECtHR), it is essential to guarantee the individual and institutional independence of military judges. The Court defines clear criteria for such independence and impartiality:

“...in order to establish whether a tribunal can be considered as ‘independent’ regard must be paid...to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body present an appearance of independence.”<sup>12</sup>

In addition, the UN Human Rights Committee’s General Comment 32 to Article 14 of the ICCPR states that the requirement of independence refer to:

“...the procedure and qualifications for the appointment of judges, and guarantees concerning their security of tenure, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch or legislature.”<sup>13</sup>

It is essential that the full independence of military courts from the chain of command is guaranteed. The judicial independence of military judges can be effectively guaranteed within the system of general courts when the same set of principles of judicial independence also apply to military judges, including with respect to judicial appointments, accountability and career development. This is in line with the requirements of the ECtHR and its relevant case law, as well as other international human rights obligations of which Ukraine is party.<sup>14</sup> Moreover, the same principles of judicial accountability should apply to both military and civilian judges. The Code of Judicial Ethics (adopted in 2013) should be equally applicable to members of military courts.

According to the jurisprudence of the ECtHR, military judges should not be subordinated to the chain of command with respect to matters relating to the exercise of their judicial competences. At the same time, a formal subordination of military judges to the Ministry of Defence does not indicate that their judicial independence needs to be automatically questioned (if there are other guarantees of independence; if no active interference on the part of the MoD takes place, and if no accountability for their judicial activities in the MoD is required). Military judges hold military ranks (i.e. they may formally retain their status as members of the armed forces). This does not

indicate that they are dependent on or influenced by the executive. However, certain institutional guarantees should be established in order to ensure effective judicial independence. Military officials operating as judges should be free of any reporting obligations and accountability requirements to the chain of command. In the context of a country in transition, such as Ukraine, a preferable solution may be to create a system of military courts that is entirely independent of the executive (i.e. the MoD and the chain of command) and that operates within the system of general courts.

According to international standards, military judges should not only be independent, but also impartial. The participation of civilians in the composition of military courts may reinforce such impartiality. The 'Principles Governing the Administration of Justice through Military Tribunals' equally state that:

“...the presence of civilian judges in the composition of military tribunals can only reinforce the impartiality of such tribunals.”<sup>15</sup>

An appearance of independence is also crucial to ensure the public legitimacy of the judiciary. What are the circumstances that can undermine such an appearance of independence? In the Case of *Miroshnik v. Ukraine* (2008), the ECtHR expressed a view on the subordination of military judges to the Ministry of Defence. In this case, the Court pointed out that “a hearing before an

independent tribunal is an essential component [of the right to a fair trial]”. According to the Court, such tribunals must inspire confidence in the public and those involved in the proceedings. Moreover, the Court also commented on the structure and nature of the subordination of Ukrainian military judges to the MoD. Until 2002, the financing and maintenance of military courts was the responsibility of the MoD. The Court pointed out that this situation:

“.....gave objective grounds for the applicant to doubt whether the military courts complied with the requirement of independence when dealing with his claim against the Ministry of Defence.”<sup>16</sup>

It is recommended that Ukraine finance the system of military justice from the budget of the ordinary judiciary.

Proceedings in military courts can be fully compatible with the fundamental principles of a fair trial enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 14 of the ICCPR. Moreover, the principle according to which no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees has been recognised as a norm of customary international law applicable in both international and non-international armed conflicts.<sup>17</sup>

Guarantees for judicial independence are a requirement of a fair trial. In a case against

Ukraine, the ECtHR stressed that there was no basis for it to conclude that the judges adjudicating the applicant's civil claims, although military servicemen with the rank of officer, had acted in the interests of the Armed Forces or the Ministry of Defence (MoD).<sup>18</sup> Although they were subordinated to the MoD, the applicable law expressly prohibited them from carrying out any duties other than adjudication of cases. Further, no evidence indicated that they reported on their performance to any military official. Thus, it is essential that military judges are not accountable for their professional activities to the military leadership (chain of command) or the Minister of Defence. In this case, the Court also paid special attention to the existing procedural and institutional guarantees by stating the following:

“Indeed, procedures concerning their appointment, promotion, disciplining and removal were similar to those in place for their civilian counterparts. Similarly, according to the applicable law, the military courts themselves were integrated into the system of ordinary courts of general jurisdiction and operated under the same rules of procedure as the ordinary courts in the determination of criminal cases. In addition, under this model, the Supreme Court included a Military Panel. Responsibility for administering military courts was vested in

the State Judicial Administration (also in charge of ordinary courts).”<sup>19</sup>

The Court concluded that in this case, there was no argument demonstrating that the judges in question lacked independence or were biased.

If the domestic legal order allows for summary trials, it is essential to ensure judicial review of such trials. According to the ECtHR, disciplinary sanctions involving the deprivation of liberty should be imposed or reviewed by a judicial body. The ECtHR has interpreted the lack of such review for summary trials as a violation of one's right to liberty and security.<sup>20</sup>

**It is recommended that the institution responsible for ensuring the disciplinary accountability of military judges, and which has the power to discipline and remove a judge, is independent. It is also recommended that funding for military courts is provided from the general budget of the judiciary. Logistical and administrative support should preferably remain within the competence of civilian authorities. General guarantees of judicial independence should also be introduced in legislation and be fully applicable to military judges. The legal drafters should elaborate a checklist of institutional and procedural guarantees of a fair trial in line with the requirements of the ECHR and the ICCPR. It is essential that to ensure that the draft laws to be discussed in parliament meet these requirements as well as fundamental international standards.**

## VI. Scope of military jurisdiction

Certain conclusions can be drawn from the practice of several Member States of the Council of Europe (CoE) with respect to the scope of jurisdiction of military courts. The jurisdiction of military courts has become subject to limitations in a number of CoE Member States. Ideally, military courts should only deal with military offences—that is, offences committed by military service personnel (on active duty) and directed against military discipline and good order, and the operational effectiveness of the armed forces.

Before 2010, military courts in Ukraine had jurisdiction over service-offences and ordinary offences committed by servicepersons. Thus they enjoyed broad jurisdiction.

Taking into account contemporary human rights law and recent state practice, it is recommended to define clear limitations on military jurisdiction in order to avoid a conflict of jurisdictions and to ensure the effective functioning of military courts. As a guiding principle, military jurisdiction should be limited to criminal offences of a military nature. There should be a clear understanding of military crimes, disciplinary and administrative violations. The scope of jurisdiction should be defined in legislation and any overlaps avoided. Procedural rules such as *ne bis in idem* (the prohibition of double punishment) should be respected; and any

possible overlap of rules on disciplinary and criminal liability should be avoided. It is equally important that minor offences are not criminalised—rather, they should be qualified as disciplinary violations.

Offences committed by military servicepersons and which fall under the general Criminal Code should be tried in a civilian court. The Ukrainian Criminal Procedural Code should not subject criminal offences (including offences envisaged in the General Criminal Code) committed by servicepersons to military jurisdiction. This would broaden military jurisdiction to ordinary (civilian) offences that are not of a military nature.

Military trials of civilians should remain within the jurisdiction of ordinary courts. This is in conformity with contemporary developments and the requirements of international human rights law.<sup>21</sup> Any trial of civilians (even of those affiliated with the armed forces in some way) must be strictly justified. According to the position of the ECtHR, civilians can only be subject to military jurisdiction if there are certain compelling reasons. Such trials should be based on a clear and foreseeable legal basis and the rationale for trying civilians in military courts must be substantiated in each specific case.<sup>22</sup> UN human rights monitoring bodies express a similar view: civilians should only be subject to military trials in exceptional cases—namely, when those civilians in question are closely associated with the armed forces “by virtue of their function

and/or their geographic presence”<sup>23</sup> and are located in areas where there are no courts of general jurisdiction. Given the absence of civilian courts in the conflict-affected areas of Eastern Ukraine, authorities may consider trying civilians in military courts. This, however, should only be done if absolutely necessary, and relevant procedural guarantees should remain applicable.

Criminal offences directed against the security of the state, such as terrorist acts, should not fall within military jurisdiction, as this contravenes the requirements of international human rights law, as well as current developments in military justice.

It is recommended that broadly defined offences against state security be excluded from the scope of military jurisdiction. This is in line with international best practice—namely, the narrowing of the scope of military criminal offences to service-connected offences. Civilian offences which threaten national security or involve organised crime should be dealt with in civilian courts. However, while corruption may in certain cases affect the functioning of the military; it is not a crime of military nature. For this reason, corruption should not fall under military jurisdiction.

It should also be clarified as to whether retired military personnel and members of other militarised structures should be subject to military jurisdiction or not. Ideally, they should be tried in general courts. Military jurisdiction should

not be extended to conscientious objectors and discharged personnel; these should fall under the jurisdiction of civilian courts.

It is also necessary to clarify whether militias operating under the control of the Ministry of Internal Affairs of Ukraine should fall under the jurisdiction of military courts, if reinstated. This issue reflects wider challenges in the Ukrainian security sector, in which competences and tasks still need to be clearly formulated and separated between various (militarised) agencies. The law should exclude the police and security agencies (intelligence) from the jurisdiction of military courts. A general requirement is to establish a clear separation of competences between the armed forces, police and intelligence agencies. This can be done by introducing a new law, or a relevant provision in the constitution.

**It is recommended to exclude civilians, general offences committed by servicepersons, broadly defined security-related offences and grave human rights violations from the scope of military jurisdiction. The definition of civilians for the purposes of military jurisdiction needs to be clarified in legislation.**

## VII. Military prosecution

The Military Prosecutor’s Office of Ukraine was abolished in 2012. It was then restored in 2014, and remains responsible for supporting indictments in court and carrying out pre-trial investigations. A separate Military Prosecutor’s

Office (created in 2015) is responsible for the counterterrorist operation in the East of Ukraine, as well as for carrying out investigations and prosecuting military criminal offences committed within the conflict zone. The legal basis for the operation of the Military Prosecutor's Office, however, requires revision. Currently, the Order of the General Prosecutor No. 12 of 29 August 2014 regulates its functioning. This Order is not in line with the current legal framework. Moreover, the legal framework for the operation of the military prosecution should be established in a separate law adopted by parliament.

According to international standards, the Military Prosecutor's Office should be an independent agency responsible for conducting the investigation and prosecution of military criminal offences. However, the Ukrainian military prosecutor has a rather broad jurisdiction, extending to cases of corruption, for example. As such, its jurisdiction goes beyond purely military offences. This requires revision. The law should clearly prescribe such competencies to ensure legal certainty. Personal management and other organisational issues should also remain within the competence of the general prosecution system.

Members of the Military Prosecutor's Office can be recruited from the civilian prosecution service if they have relevant training in military criminal law. The investigation officers at the Military Prosecutor's Office should be familiar with the

specifics of the military. If, as proposed, a decision is taken to create a military police, the law should establish a framework for their interaction with the Military Prosecutor's Office during the investigation phase.

**It is recommended to apply the general guarantees for prosecutorial independence to military prosecutors. Their competences should be limited and clearly defined by legislation. The competences of all agencies involved in investigations into military offences should be defined and allocated between different agencies by the law.**

## VIII. Military police

It is essential to ensure the effective investigation of military offences. It has been argued that civilian investigators are not able to work effectively with the armed forces and are unable to adequately deal with military offences. As a consequence, a considerable number of cases are still pending trial. Some have therefore proposed the creation of a separate military police institution, responsible for preliminary investigations into military criminal offences in the armed forces. Proposals on the creation of such a structure are yet to be discussed in a consistent manner by the legislature. As such, legislative proposals are still under consideration, while the legal basis for the operation of the military police is yet to be established.

**It is recommended to consolidate all proposals and discuss the relevant procedural aspects of the operation of military police. Its relationship with civilian investigatory structures and investigation officers of the military prosecutor's office also require clarification. It is vital that all these structures are able to cooperate effectively, and avoid duplication of competencies or tasks.**

## **IX. Conclusions and recommendations**

1. The discussion on the reinstatement of the military justice system in Ukraine should be framed within the context of current justice and security sector reform efforts.
2. The reasons for the abolishment of military courts in 2010 should be taken into consideration if the planned reinstatement of military courts moves forward.
3. The purpose of reinstating the military justice system requires careful analysis. The primary task of the system should be to ensure discipline and good order in the armed forces, thus contributing to the effective operation of the military.
4. It is recommended that some form of civilian supremacy over the system is assured. This can be achieved through introducing a hybrid system—namely, first instance military courts and civilian courts at the appellate level.
5. It is equally essential to clarify the scope of jurisdiction in advance. This will to a significant extent depend on current security sector reforms and a clear separation of competencies between different security sector agencies—the police, intelligence services and armed forces. It is recommended that civilian police and intelligence agencies do not fall under the jurisdiction of military courts.
6. The judicial accountability of volunteer battalions and militias needs to be discussed and clarified.
7. Crimes against state security (such as terrorism) should fall within the jurisdiction of civilian courts. Moreover, the somewhat vague definition of a crime against state security should be revised to be more specific.
8. Offences committed by service personnel that can be prosecuted under the General Criminal Code should fall within the competence of the general courts.
9. Military tribunals should not try civilians. Any exceptions should be clearly defined in the legislation on military justice.
11. Agencies responsible for ensuring the accountability of military judges should be independent. The proposal to create a State Office for Military Justice can be considered. However, judicial accountability can be ensured through a civilian judicial council also responsible for the courts of general jurisdiction.

**12.** It is necessary to ensure that the reinstatement of military courts, and all related legislative proposals, are widely discussed and different proposals consolidated, if possible. Other segments of society, not only the armed forces, should be involved in such discussions (involving civilian and military experts, the expert community and civil society). Institutions involved in the legislative process should take into account the practice of the European Court of Human Rights and UN human rights monitoring bodies to ensure that military justice reform is carried out in line with relevant international standards.

**13.** The legal framework for the operation of the military prosecution should be revised and brought into line with the domestic law currently in force. The competences of the military prosecution should be limited to those military offences strictly defined by law.

**14.** Once created, the military police should have the power to investigate military offences committed by servicepersons while on duty. It is recommended that open questions be clarified until work on the various legal proposals is complete.



## Endnotes

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- <sup>1</sup> This system included garrison military courts, regional military courts, a naval court of appeal, military chamber and military collegium with the same function as cassation and supreme courts (13 first instance courts and 2 appellate courts).
- <sup>2</sup> An official Government document from 2006 on the Ukrainian court system and fair trial contained an overly negative assessment of the Ukrainian military justice system. According to this document “there shall not be military courts within the judiciary of Ukraine. Military judges have a special status, deliver military service, have military ranks and receive benefits for their service. This is in contravention with the status of a judge, is not in accordance with the requirements of the judicial independence and impartiality and is not in line with the European standards as interpreted by the European Court of Human Rights [translated by author]”.
- <sup>3</sup> Some representatives of the judiciary and the executive remain in favour of reinstating military courts. For instance, some members of the Ukrainian Supreme Court are supportive of the restoration of the military justice system. The Ukrainian Head of State has also voiced his support for the re-establishment of military courts, with plans to create a State Office for Military Jurisdiction. See: “Poroshenko wants to offer restoration of special military courts in accordance with existing world practice”, Interfax-Ukraine 29 March 2017, available at <http://en.interfax.com.ua/news/general/412310.html>; “Военнослужащие требуют Порошенко создать военные суды”, TSN 31 March 2017. Online at: <https://ru.tsn.ua/ukrayina/voennosluzhaschie-trebuyut-u-poroshenko-sozdat-voennye-sudy-833352.html>.
- <sup>4</sup> “Судьи и депутаты привели аргументы в поддержку создания военных судов на Украине”, Юридическая Практика, 10 September 2015; “Для чего нужна военная юстиция”, 26 January 2017, at <http://www.golos.com.ua/rus/article/283226>; “Быть ли военным судам в Украине, Матиос предлагает создать в Украине систему военной юстиции по Израильскому образцу”, 5 April 2017. Online at: <http://sud.ua/ru/news/publication/104240-byt-li-voennym-sudam-v-ukraine>; <https://www.unian.net/war/1861746-matios-predlagaet-sozdat-v-ukraine-sistemu-voennoy-yustitsii-po-izraiskomu-obraztsu.html>.
- <sup>5</sup> Online at: <https://www.unian.net/war/1861746-matios-predlagaet-sozdat-v-ukraine-sistemu-voennoy-yustitsii-po-izraiskomu-obraztsu.html>
- <sup>6</sup> See “Poroshenko signs law on servicemen’s harsher punishment for service violations”, 14 April 2017, see at <http://en.interfax.com.ua/news/general/415943.html>; and “Рада усилила ответственность за нарушения на службе и ввела админответственность за „самоволку””, 16 April 2017. Online at: <http://interfax.com.ua/news/general/409478.html>.
- <sup>7</sup> Further information available online at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54668](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54668).
- <sup>8</sup> Venice Commission, Opinion on the draft law of Ukraine on the judicial system, CDL-INF(2000)005, p. 4.
- <sup>9</sup> One suggestion from Ukrainian experts is to appoint forty military judges in six military courts. According to this model, there would be one appellate military court consisting of military officers of higher ranks; at the same time, this court would operate as a first instance court for cases involving high-ranking military officers.
- <sup>10</sup> Before 2010, military judges serving in Ukrainian military courts were obliged to complete a special training programme at the Military Institute of the Ministry of Defence in Moscow, and were all military servicepersons.
- <sup>11</sup> “Почему в Украине нельзя восстановить военные суды – аргументы эксперта”, 3 April 2017. Online at: [https://humanrights.org.ua/ru/material/pochemu\\_v\\_ukraine\\_nelzja\\_vosstanovit\\_vojennyje\\_sudy\\_argumenty\\_eksperta](https://humanrights.org.ua/ru/material/pochemu_v_ukraine_nelzja_vosstanovit_vojennyje_sudy_argumenty_eksperta); and “Восстановить военные суды невозможно, это противоречит Конституции, - экс-военный судья”, Громадське радіо, 30 March 2017. Online at: <https://hromadskeradio.org/programs/kyiv-donbas/vosstanovyt-voennye-sudy-nevozmozhno-eto-protivorechyt-konstytucyy-eks-voennyj-sudya>.
- <sup>12</sup> Commission decision, 20 October 1998.
- <sup>13</sup> See: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en)
- <sup>14</sup> Articles 14 and 15 of the International Covenant on Civil and Political Rights.
- <sup>15</sup> E/CN.4/2006/58, Issue of the administration of justice through military tribunals, Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux.
- <sup>16</sup> *Miroshnik v. Ukraine*, no. 75804/01, 27 November 2008, & 64. The Court found a violation of Article 6 § 1 of the Convention on account of the lack of an independent tribunal.
- <sup>17</sup> Customary IHL, Rule 100. Online at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule100](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule100).

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<sup>18</sup> *Mikhno v. Ukraine*, no. 32514/12, 30 January 2017; *Svitlana Atamanyuk and Others v. Ukraine*, no. 36314/06, 1 December 2016.

<sup>19</sup> *Mikhno v. Ukraine*, no. 32514/12, 30 January 2017; *Svitlana Atamanyuk and Others v. Ukraine*, no. 36314/06, 1 December 2016.

<sup>20</sup> *Pulatli v. Turkey*, 26 April 2011. In this case, the Court found a violation of Article 5 of the ECHR.

<sup>21</sup> Human Rights Committee, "Concluding observations on the initial report of Pakistan", Advanced Unedited Version, §§ 23-24.

<sup>22</sup> *Martin v UK*, no. 40426/98, 24 October 2006, §§ 43-44; *Icen v Turkey*, no. 45912/06, 31 May 2011.

<sup>23</sup> Gabriela Knaul, Special Rapportuer, 'Independence of Judges and Lawyers' 68<sup>th</sup> Sess, UN Doc. A/68/285 (7 August 2013) at 102.