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Disciplinary responsibility of a serviceman as a consequence of committing a criminal or administrative offense under the legal regime of martial law

Mariia Koba^{1,*}

Kyiv Institute of the National Guard of Ukraine

Olena Druchek²

Kyiv Institute of the National Guard of Ukraine

Oleksandr Pelahesha³

Kyiv Institute of the National Guard of Ukraine

Andrii Beikun⁴

Kyiv Institute of the National Guard of Ukraine

Volodymyr Myna⁵

Kyiv Institute of the National Guard of Ukraine

Summary: 1. Introduction. 2. Literature review. 3. Materials and methods. 4. Results. 4.1 Functional models of applying disciplinary responsibility for military personnel

¹ PhD in Law, Associate Professor, Associate Professor of the Department of Legal Support and Law Enforcement Activities, Faculty of Law Enforcement, Kyiv Institute of the National Guard of Ukraine, Kyiv, Ukraine. ORCID: 0000-0001-9407-2838; Email: mariakoba@eu-science.org (corresponding author).

² PhD in Law, Associate Professor, Professor of the Department of Legal Support and Law Enforcement Activities, Faculty of Law Enforcement, Kyiv Institute of the National Guard of Ukraine, Kyiv, Ukraine. ORCID: 0000-0002-7460-8137; Email: king@ngu.gov.ua

³ PhD in Law, Associate Professor, Senior Lecturer of the Department of Legal Support and Law Enforcement Activities, Faculty of Law Enforcement, Kyiv Institute of the National Guard of Ukraine, Kyiv, Ukraine. ORCID: 0000-0003-4158-5888; Email: spu596@ukr.net

⁴ PhD in Law, Associate Professor, Associate Professor of the Department of Legal Support and Law Enforcement Activities, Faculty of Law Enforcement, Kyiv Institute of the National Guard of Ukraine, Kyiv, Ukraine. ORCID: 0000-0002-4895-1361; Email: krobati@meta.ua

⁵ PhD in Law, Associate Professor, Senior Lecturer of the Department of Legal Support and Law Enforcement Activities, Faculty of Law Enforcement, Kyiv Institute of the National Guard of Ukraine, Kyiv, Ukraine. ORCID: 0000-0002-1523-4737; Email: Mynavolodymyr@ukr.net

under martial law. 4.2 The practice of making and justifying disciplinary decisions by commanders and their judicial control. 4.3 The nature of disciplinary sanctions and their assessment through the lens of Engel's criteria. 5. Discussion. 6. Conclusion. 7. References.

Abstract: This paper studies the legal nature, functional models, and limits of disciplinary responsibility of servicemen under martial law. Research methods include legal-dogmatic analysis, interpretation of law enforcement practice, content analysis, and descriptive statistical analysis. The empirical base consists of 42 disciplinary orders and 186 independent court decisions rendered from 2022 to 2025; a subset of 88 judicial cases was additionally assessed under the Engel criteria. The results indicate that disciplinary responsibility operates through three functional models: operational, primary, and additional. The operational model applies while another legally prescribed procedure remains pending, whereas the primary model constitutes the completed response in cases governed by Article 15 of the Code of Ukraine on Administrative Offenses. The additional model accompanies another legally distinct procedure without replacing it. The paper also reveals that 78.6% of the analyzed disciplinary orders contain formal or partial reasoning, indicating a recurrent weakness in their documented justification rather than a demonstrated effect on subsequent judicial review. The Engel-based assessment showed that 68.2% of sanctions had predominantly internal-service effects, 22.7% involved identifiable material or service-related consequences, and 9.1% displayed stronger punitive characteristics. The study conceptualizes disciplinary responsibility as an autonomous instrument of military governance and substantiates the necessity of clarifying reasoning standards, procedural safeguards, and the limits of commanders' discretion.

Keywords: Military Service, Disciplinary Responsibility, Engel Criteria, Commander's Discretion, Reasoning Of Disciplinary Decisions, Judicial Review, Martial Law

1. Introduction

The legal regime of martial law substantially transforms the mechanisms used to ensure military discipline, and therefore directly impacts the practice of imposing disciplinary responsibility on servicemen. In this light, the enhanced requirements for maintaining internal order within military formations presuppose broader grounds for disciplinary intervention and greater intensity of sanctions. Under these conditions, disciplinary responsibility becomes one of the principal extrajudicial instruments of military governance. It is exercised by commanders within the limits of the authority established by the Disciplinary Statute of the Armed Forces of Ukraine. Its function, however, is not uniform, since the form of disciplinary intervention depends on the legal classification of the conduct, the applicable procedure, and the consequences of the commander's decision.

The practice of law enforcement demonstrates that disciplinary responsibility does not operate as a single mechanism but rather assumes several functional forms depending on the nature of the offense and the circumstances under which it is committed. In some situations, it serves as an operational or interim response intended to restore military discipline before the completion of another legally prescribed procedure. In other cases, particularly where Article 15 of the Code of Ukraine on Administrative Offenses provides for disciplinary treatment of misconduct, disciplinary responsibility functions as the primary and autonomous form of response within the military service system. An additional model may arise when a disciplinary measure accompanies, but does not replace, another form of legal response. Such diversity emphasizes the need to scrutinize its internal structure, functional models, and limits of application.

At present, legal scientific approaches primarily view the disciplinary responsibility of military personnel through its relationship with other forms of legal responsibility or within the broader framework of procedural and human rights safeguards. In this respect, Amalia and Anditya⁶ examine the normative relationship between breaches of military discipline and military criminal offenses, emphasizing that unclear criteria for distinguishing these categories may produce inconsistent legal qualification. Goss⁷ critically evaluates the contemporary application of the Engel criteria and demonstrates that the assessment of a sanction cannot be confined to its formal classification under domestic law. A related line of scholarship concerns the *ne bis in idem* principle. Graat and Luchtman⁸ interpret it as a safeguard against repeated punitive proceedings or sanctions arising from the same factual conduct.

These approaches are relevant because they direct attention to the substantive character and practical consequences of disciplinary sanctions rather than solely to their formal designation. Nevertheless, the present study does not empirically measure the accumulation of disciplinary and criminal sanctions in paired cases. The available disciplinary orders and court decisions constitute separate corpora and do not permit the authors to establish whether the same conduct resulted in both disciplinary and criminal proceedings. Accordingly, *ne bis in idem* is used as part of the doctrinal framework rather than as an independently tested empirical variable.

Further, existing scholarly works are insufficient in providing a holistic understanding of disciplinary responsibility as an independent mechanism of military governance. There is no systematic empirical assessment in the current literature of its functional models, the limits of commanders' discretion, and the nature of disciplinary sanctions under wartime conditions. Insufficient attention has also been paid to whether different legal contexts require different standards of reasoning, proportionality, and procedural substantiation in commanders' decisions. These gaps indicate the necessity for a detailed examination of the legal nature of disciplinary responsibility and its actual limits within military governance.

The international relevance of this issue extends beyond the Ukrainian legal system. Military disciplinary systems in European and NATO jurisdictions similarly employ command-based, non-judicial measures that may coexist with administrative or criminal procedures. The Ukrainian model, however, functions under prolonged martial law, where the need for an immediate command response must be reconciled with procedural guarantees and subsequent judicial control. Comparison with foreign approaches therefore makes it possible to distinguish the specific features of Ukrainian wartime military governance from broader principles of military disciplinary law.

This study aims to determine the legal nature, limits, and functional purpose of disciplinary responsibility of military personnel when conduct connected with military service may also fall within the scope of administrative or criminal law under martial law. The criminal-law dimension is examined primarily at the normative and functional levels, whereas the empirical component focuses on disciplinary orders and judicial decisions concerning the legality of disciplinary measures. The study does not claim to establish the frequency of simultaneous disciplinary and criminal responses

⁶ AMALIA, R. W., and ANDITYA, A. W. "The interrelation between military discipline infraction and military criminal charge in Indonesia". *Nurani Hukum: Jurnal Ilmu Hukum*, v. 7, n. 2, 2024, pp. 236-262. <https://dx.doi.org/10.51825/nhk.v7i2.33048>

⁷ GOSS, R. "The Engel criteria in the 21st century: Irrational flexibility and deference in recent European Court of Human Rights jurisprudence". *Human Rights Law Review*, v. 25, n. 4, 2025, art. no. ngaf031. <https://doi.org/10.1093/hrlr/ngaf031>

⁸ GRAAT, J., and LUCHTMAN, M. "Ne bis in idem", In P. CAEIRO, S. GLESS, V. MITSILEGAS, M. J. COSTA, J. DE SNAJDER, G. THEODORAKAKOU (Eds.), *Elgar encyclopedia of crime and criminal justice*. Edward Elgar Publishing, 2024, pp. 685-702. <https://doi.org/10.4337/9781789902990.ne.bis.in.idem>

to the same conduct because the available datasets do not contain paired cases of this kind.

To achieve the study's purpose, the following interrelated tasks are addressed: to analyze the legal grounds of disciplinary responsibility in the military service system and its extrajudicial character; to identify the features of application in cases requiring subsequent judicial assessment, where it functions as an operational, interim or additional response pending the completion of another legally prescribed procedure; to determine the situations in which disciplinary responsibility becomes the primary form of response within military service under legislative provisions, particularly Article 15 of the Code of Ukraine on Administrative Offenses; to distinguish these situations from the statutory exceptions under Article 15 in which servicemen bear administrative responsibility on general grounds; to examine the practice of imposing disciplinary sanctions within the military governance system, taking into account the commander's role as the decision-maker; to identify the functional models through which disciplinary responsibility is implemented depending on the nature of the offense and the conditions of martial law; to assess the reasoning of disciplinary decisions and the limits of commanders' discretion in light of judicial-review standards and the Engel criteria; and to develop specific proposals for clarifying the requirements for the reasoning of disciplinary orders, the conduct of official investigations, and the exercise of commanders' discretionary powers.

2. Literature review

In legal scholarship, the disciplinary responsibility of military personnel is generally understood as a specific form of legal responsibility shaped by two intersecting elements: the hierarchical nature of military service and the coercive authority exercised within the chain of command. Its immediate purpose is to preserve internal order, operational readiness, and compliance with service duties. Yet scholars differ in their assessment of whether disciplinary responsibility should be treated as an autonomous mechanism of military governance or primarily as an institution connected with administrative and criminal law. Meclea and Toader⁹ place disciplinary responsibility within the internal regulatory structure of military service and emphasize its role in maintaining command and subordination. Amalia and Anditya,¹⁰ meanwhile, demonstrate that uncertainty in distinguishing disciplinary misconduct from military criminal conduct may produce inconsistent legal qualification and uneven procedural consequences.

Ukrainian scholarship has paid particular attention to the substantive grounds for imposing disciplinary sanctions. Moisieiev¹¹ argues that clearer criteria are required to distinguish disciplinary responsibility from administrative responsibility because uncertainty at this boundary expands the practical discretion of decision-makers. Kuryliuk et al.¹² develop a related argument in the context of unauthorized absence from a military unit, showing that the legal assessment depends on the character of the conduct, its consequences for military discipline, and the degree of public danger.

⁹ MECLEA, M.-A., and TOADER, D. "Disciplinary liability of the military personnel". *Scientific Research and Education in the Air Force – AFASES 2019*, v. 21, n. 4, 2019, pp. 125-134. <https://doi.org/10.19062/2247-3173.2019.21.4>

¹⁰ AMALIA, R. W., and ANDITYA, A. W. "The interrelation between military discipline infraction and military criminal charge in Indonesia". 2024. Ibid.

¹¹ MOISIEIEV, M. "Criteria for distinguishing between administrative and disciplinary liability of servicemen of the Armed Forces of Ukraine". *Slovo of the National School of Judges of Ukraine*, v. 4, n. 49, 2024, pp. 95-104. [https://doi.org/10.37566/2707-6849-2024-4\(49\)-8](https://doi.org/10.37566/2707-6849-2024-4(49)-8)

¹² KURYLIUK, Y., NIKOLAIENKO, T., PRYTULA, A., KARPENKO, M., and KUSHNIR, Y. "Criteria for differentiating administrative and criminal liability for unauthorized abandonment of a military unit". *Relações Internacionais do Mundo Atual*, v. 4, n. 50, 2025, pp. 161-175. Available at: <https://dspace.nadpsu.edu.ua/handle/123456789/5643> (accessed on 20 August 2026).

These contributions clarify the grounds for legal qualification. They do not, however, provide an empirical typology of how commanders use disciplinary responsibility in different procedural contexts under martial law.

A separate line of research examines disciplinary responsibility as a managerial instrument. Rosenblatt¹³ characterizes nonjudicial punishment in the United States military system as a command-based mechanism intended to secure a prompt response to misconduct without initiating a full judicial proceeding. This model preserves the authority of commanders while distinguishing nonjudicial measures from criminal punishment. Kulmaczewski¹⁴ similarly approaches nonjudicial military measures through the values and institutional purposes of military law. Read together, these studies suggest that disciplinary responsibility cannot be reduced to a lesser version of criminal liability. Its defining feature is its location within military governance, although the intensity of particular sanctions may require stronger procedural safeguards.

The Ukrainian wartime context adds another dimension to this debate. Szupjana and Burdin¹⁵ show that Ukrainian criminal law has had to respond rapidly to wartime threats and changes in the practical significance of military offenses. Their analysis is important for distinguishing the expansion of criminal-law intervention from the internal disciplinary response exercised by commanders. Voluiko et al.¹⁶, by contrast, examine the continuation of military service after unauthorized abandonment of a military unit and draw attention to the organizational consequences of legal decisions for personnel capacity. Their findings shift the focus from formal classification alone to the function performed by disciplinary measures within military formations.

The broader literature on wartime accountability places military disciplinary mechanisms within a system of criminal justice, judicial control, institutional coordination, and procedural safeguards. Corn and VanLandingham¹⁷ identify structural gaps in military criminal accountability and emphasize the importance of clearly defined jurisdiction, command responsibility, and statutory grounds for responding to serious misconduct. Meanwhile, Shchokin et al.¹⁸ associate state security with closer coordination between civilian and military institutions. Although these studies do not directly examine commanders' disciplinary decisions, they indicate that military discipline cannot be analyzed separately from judicial oversight,

¹³ ROSENBLATT, F. D. "Nonjudicial punishment". *Villanova Law Review*, v. 68, n. 5, 2024, pp. 807-826. Available at: <https://digitalcommons.law.villanova.edu/vlr/vol68/iss5/4> (accessed on 20 August 2026).

¹⁴ KULMACZEWSKI, S. "Non-judicial measures of legal reaction in the military domain as a contribution to the discussion on the values of military law". *Southern Illinois University Law Journal*, v. 50, n. 3, 2026, pp. 521-564. Available at: <https://opensiuc.lib.siu.edu/siulj/vol50/iss3/5/> (accessed on 20 August 2026).

¹⁵ SZUPJANA, M., and BURDIN, W. "Prawo karne Ukrainy w realiach wojny (2022-2023). Odpowiedź na wyzwania [Criminal law of Ukraine in the realities of war (2022-2023): A response to challenges]". *Annales Universitatis Mariae Curie-Skłodowska, Sectio G – Ius*, v. 70, n. 3, 2023, pp. 181-194. <https://doi.org/10.17951/g.2023.70.3.181-194>

¹⁶ VOLUIKO, O., SHEVCHUK, H., MYNA, V., PELAHESHA, O., and SHARKO, D. "Legal grounds for continuing military service by servicemen after an unauthorized abandonment of a military unit". *Cadernos de Dereito Actual*, v. 29, 2025, pp. 58-71. Available at: <https://www.cadernosdereitoactual.es/index.php/cadernos/article/view/1382> (accessed on 20 August 2026).

¹⁷ CORN, G. S., and VANLANDINGHAM, R. E. "Strengthening American war crimes accountability". *American University Law Review*, v. 70, n. 2, 2020, pp. 1-45. Available at: <https://digitalcommons.wcl.american.edu/aulr/vol70/iss2/1> (accessed on 20 August 2026).

¹⁸ SHCHOKIN, R., SOLOVIOV, O., and TANTSIURA, I. "Strengthening cooperation between the civilian and military sectors in the context of state security: Benefits and challenges". *Revista de Cercetare si Interventie Sociala*, v. 83, 2023, pp. 155-170. <https://doi.org/10.33788/rcis.83.11>

institutional integrity, inter-agency coordination, and the protection of individual rights.

The relationship between disciplinary and criminal proceedings is commonly considered through the principle of *ne bis in idem*. Van Bockel¹⁹ interprets this principle as a limitation on repeated exercises of punitive state power, while Turmo²⁰ emphasizes the difficulty of applying it across overlapping national and supranational legal orders. In the military context, Chomicki²¹ argues that the practical observance of *ne bis in idem* depends on the substantive nature of the proceedings and sanctions rather than solely on their formal classification. Graat and Luchtman²² likewise treat the principle as protection against duplicative punitive proceedings based on substantially the same facts.

These doctrinal positions are relevant to disciplinary law, but their relevance to the present empirical design is limited. The available disciplinary orders and judicial decisions are not paired records of the same cases. Consequently, they do not permit a direct assessment of whether a disciplinary sanction and a criminal penalty were imposed for the same conduct. In this study, *ne bis in idem* therefore functions as a doctrinal boundary for interpreting potentially punitive measures rather than as an empirically tested variable. This distinction prevents conclusions about double punishment that the available data cannot support.

The substantive character of a disciplinary sanction may be assessed through the criteria developed by the European Court of Human Rights in *Engel and Others v. the Netherlands*.²³ These criteria concern the domestic classification of the offense, the nature of the offense, and the nature and degree of severity of the penalty that the person risks incurring. The third criterion is therefore not confined to the sanction actually imposed. It also requires attention to the maximum or legally possible consequence attached to the proceedings. Goss²⁴ warns that the flexible application of the Engel criteria can produce inconsistent results, particularly where domestic classifications are given excessive weight. Villiger²⁵ similarly explains that the applicability of procedural guarantees depends on the substantive nature of the proceedings rather than exclusively on their formal designation in national law.

The Engel framework does not automatically transform a disciplinary sanction into a criminal penalty. Rather, it provides a functional test for determining whether formally disciplinary proceedings have acquired a punitive character that requires safeguards associated with Article 6 of the European Convention on Human Rights. This distinction is especially important in military settings, where sanctions may range from an internal reprimand to measures that substantially affect remuneration,

¹⁹ VAN BOCKEL, W. B. *The ne bis in idem principle in EU law: A conceptual and jurisprudential analysis* (Doctoral dissertation, Leiden University). Meijers Research Institute and Graduate School of the Leiden Law School, 2009. Available at: <https://hdl.handle.net/1887/13844> (accessed on 20 August 2026).

²⁰ TURMO, A. "Ne bis in idem in European law: A difficult exercise in constitutional pluralism". *European Papers*, v. 5, n. 3, 2020, pp. 1341-1356. <https://doi.org/10.15166/2499-8249/429>

²¹ CHOMICKI, S. "Criminal and disciplinary liability of a soldier and an officer in the light of the *ne bis in idem* principle". *De Securitate et Defensione. Security and Defence*, v. 7, n. 2, 2021, pp. 134-148. <https://doi.org/10.34739/dsd.2021.02.09>

²² GRAAT, J., and LUCHTMAN, M. "Ne bis in idem". 2024. Ibid.

²³ EUROPEAN COURT OF HUMAN RIGHTS. *Engel and Others v. the Netherlands (Applications nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72)*, 1976. Available at: <https://hudoc.echr.coe.int/eng?i=001-57479> (accessed on 20 August 2026).

²⁴ GOSS, R. "The Engel criteria in the 21st century: Irrational flexibility and deference in recent European Court of Human Rights jurisprudence". 2025. Ibid.

²⁵ VILLIGER, M. E. "Guarantees of a fair trial (Article 6 of the Convention) – I. Applicability and scope of the procedural rights". In M. E. Villiger (Ed.), *Handbook on the European Convention on Human Rights*. Brill | Nijhoff, 2022, pp. 312-333. https://doi.org/10.1163/9789004443839_017

promotion, service status, or continued service. The European Court of Human Rights²⁶ has also affirmed that emergency conditions do not eliminate the need to preserve fundamental procedural guarantees, although the scope of permissible derogation depends on the applicable Convention requirements.

Comparative scholarship confirms that military disciplinary systems combine command autonomy with differing levels of procedural control. In the United States, nonjudicial punishment operates within the military chain of command but remains distinct from court-martial proceedings.²⁷ Polish and broader European scholarship places greater emphasis on legality, proportionality, and the relationship between disciplinary and criminal measures.^{28,29} The Ukrainian system shares the command-based character of these models, but it functions under prolonged martial law, increased operational pressure, and an intensified need for rapid disciplinary intervention. This combination makes the Ukrainian experience internationally relevant while also exposing the need for clearer limits on commanders' discretion.

Existing studies can therefore be grouped into three connected strands. The first establishes substantive criteria for distinguishing disciplinary misconduct from administrative or criminal offenses.^{30,31,32} The second considers disciplinary responsibility as a managerial and nonjudicial mechanism within military governance.^{33,34,35,36} The third evaluates disciplinary proceedings through procedural safeguards, the Engel criteria, and protection against duplicative punitive intervention.^{37,38,39,40,41,42}

²⁶ EUROPEAN COURT OF HUMAN RIGHTS. *Derogation in time of emergency* (Factsheet), 2022. Available at: https://www.echr.coe.int/documents/d/echr/fs_derogation_eng (accessed on 20 August 2026).

²⁷ ROSENBLATT, F. D. "Nonjudicial punishment". 2024. Ibid.

²⁸ CHOMICKI, S. "Criminal and disciplinary liability of a soldier and an officer in the light of the ne bis in idem principle". 2021. Ibid.

²⁹ SZUPJANA, M., and BURDIN, W. "Prawo karne Ukrainy w realiach wojny (2022-2023). Odpowiedź na wyzwania [Criminal law of Ukraine in the realities of war (2022-2023): A response to challenges]". 2023. Ibid.

³⁰ AMALIA, R. W., and ANDITYA, A. W. "The interrelation between military discipline infraction and military criminal charge in Indonesia". 2024. Ibid.

³¹ KURYLIUK, Y., NIKOLAIENKO, T., PRYTULA, A., KARPENKO, M., and KUSHNIR, Y. "Criteria for differentiating administrative and criminal liability for unauthorized abandonment of a military unit". 2025. Ibid.

³² MOISIIEV, M. "Criteria for distinguishing between administrative and disciplinary liability of servicemen of the Armed Forces of Ukraine". 2024. Ibid.

³³ KULMACZEWSKI, S. "Non-judicial measures of legal reaction in the military domain as a contribution to the discussion on the values of military law". 2026. Ibid.

³⁴ MECLEA, M.-A., and TOADER, D. "Disciplinary liability of the military personnel". 2019. Ibid.

³⁵ ROSENBLATT, F. D. "Nonjudicial punishment". 2024. Ibid.

³⁶ VOLUIKO, O., SHEVCHUK, H., MYNA, V., PELAHESHA, O., and SHARKO, D. "Legal grounds for continuing military service by servicemen after an unauthorized abandonment of a military unit". 2025. Ibid.

³⁷ CHOMICKI, S. "Criminal and disciplinary liability of a soldier and an officer in the light of the ne bis in idem principle". 2021. Ibid.

³⁸ GOSS, R. "The Engel criteria in the 21st century: Irrational flexibility and deference in recent European Court of Human Rights jurisprudence". 2025. Ibid.

³⁹ GRAAT, J., and LUCHTMAN, M. "Ne bis in idem". 2024. Ibid.

⁴⁰ TURMO, A. "Ne bis in idem in European law: A difficult exercise in constitutional pluralism". 2020. Ibid.

⁴¹ VAN BOCKEL, W. B. *The ne bis in idem principle in EU law: A conceptual and jurisprudential analysis* (Doctoral dissertation, Leiden University). Meijers Research Institute and Graduate School of the Leiden Law School, 2009. Ibid.

⁴² VILLIGER, M. E. "Guarantees of a fair trial (Article 6 of the Convention) – I. Applicability and scope of the procedural rights". In M. E. Villiger (Ed.), *Handbook on the European Convention*

Although these strands provide a substantial doctrinal foundation, they do not offer a systematic empirical account of how disciplinary responsibility functions under martial law. In particular, the literature has not sufficiently classified the functional models used by commanders, quantified variations in the reasoning of disciplinary orders, or examined how the actual and legally possible consequences of sanctions affect the required level of procedural justification. The relationship between commanders' discretion and judicial review also remains insufficiently systematized.

The present study addresses this gap by moving from a predominantly normative discussion to an empirical analysis of disciplinary orders and judicial-review practice. Its contribution lies not in asserting that disciplinary measures constitute criminal punishment, but in identifying the different functions performed by disciplinary responsibility and examining when the substantive impact of a sanction may justify enhanced reasoning and procedural safeguards. This approach also permits the Ukrainian model to be situated within the wider discussion of nonjudicial military measures in European and NATO jurisdictions.

3. Materials and methods

The research was conducted between January 2025 and July 2026 at the Department of Criminal and Military Law of a higher education institution in Ukraine. The study combined normative-doctrinal analysis with an empirical examination of the disciplinary responsibility of military personnel under martial law. The empirical materials covered the period from 2022 to 2025 and included disciplinary orders and judicial decisions issued no later than 31 December 2025. Sources published in 2026 were used to update the doctrinal and comparative framework during the final revision of the manuscript and were not included in the empirical corpora or the descriptive statistical analysis.

Disciplinary responsibility was examined as an extrajudicial mechanism exercised within the military chain of command through the statutory authority of commanders. The normative framework comprised the Disciplinary Statute of the Armed Forces of Ukraine, Order No. 608 of the Ministry of Defence of Ukraine governing official investigations, and Article 15 of the Code of Ukraine on Administrative Offenses. Particular attention was paid to the distinction between cases in which military personnel are subject to disciplinary responsibility and the exceptions expressly established by Article 15, including offenses concerning road safety, sanitary rules, hunting and fishing, customs regulation, corruption, public-noise restrictions, the use of state property, state secrets, and the handling of official information, for which servicemen bear administrative responsibility on general grounds.

The research design consisted of three sequential stages. At the first stage, disciplinary practices were systematized according to the legal nature of the misconduct, the procedural context, and the function performed by the disciplinary response. This analysis provided the basis for identifying three recurring functional configurations: operational or intermediate, primary or autonomous, and additional. These configurations were treated as a qualitative typology because the available coding records did not permit a reproducible numerical distribution of all 42 orders across mutually exclusive categories.

At the second stage, commanders' disciplinary decisions and national judicial-review practice were examined separately. The analysis of disciplinary orders focused on the procedural steps preceding the sanction and the completeness of the commander's reasoning. The judicial decisions were used to identify recurring standards applied by courts when reviewing statutory competence, factual substantiation, compliance with official-investigation procedures, proportionality, adequacy of reasoning, and the limits of commanders' discretion.

At the third stage, a selected subset of judicial decisions was interpreted through the criteria established by the European Court of Human Rights in *Engel and Others v. the Netherlands*. These criteria were applied as a legal interpretive framework for assessing the substantive characteristics of disciplinary sanctions. They were not used to reclassify disciplinary responsibility automatically as criminal liability.

Several complementary methods were employed. Legal-dogmatic analysis was used to examine the normative structure of disciplinary responsibility and the boundaries between disciplinary, administrative, and criminal responses. Interpretation of law-enforcement practice made it possible to determine the legal and procedural circumstances in which disciplinary sanctions were imposed and reviewed. Qualitative content analysis was used to identify recurring functional configurations, procedural patterns, levels of reasoning, and judicial-review standards. Descriptive statistical analysis was limited to absolute frequencies and percentages calculated for the level of reasoning in disciplinary orders and for the Engel-based analytical categories.

The first empirical corpus consisted of 42 disciplinary orders obtained in anonymized form through official requests submitted to commanders of military units. The unit of analysis was an individual disciplinary order imposing a sanction on a serviceman. These materials constituted the principal empirical source for examining disciplinary responsibility as an instrument of internal military governance.

The second corpus comprised 186 decisions of Ukrainian national courts retrieved from the Unified State Register of Judicial Decisions. The decisions covered the period from 2022 to 2025 and concerned judicial review of commanders' disciplinary decisions in comparable legal relationships. This corpus was independent of the 42 disciplinary orders. The judicial decisions were therefore not treated as procedural continuations of the same disciplinary cases and could not be used to determine whether the analyzed orders were subsequently challenged, upheld, or annulled.

The judicial corpus was examined qualitatively to identify recurring standards of legality review. These included the sufficiency of factual findings, compliance with official-investigation procedures, adequacy of reasoning, proportionality of sanctions, and the permissible scope of commanders' discretion. Courts were not treated as authorities imposing disciplinary responsibility. Their role in the study was limited to reviewing the legality of decisions adopted within the military command hierarchy.

A disciplinary order was included where it: (1) concerned a serviceman; (2) imposed a disciplinary sanction for conduct connected with military service; (3) contained sufficient information to identify the misconduct, the sanction, and the commander's reasoning; and (4) was issued between 1 January 2022 and 31 December 2025.

A separate analytical subset of 88 cases was drawn from the corpus of 186 judicial decisions for assessment under the Engel framework. The unit of analysis was an individual disciplinary sanction examined by a court. Only one disciplinary sanction was coded from each included judicial case. A case was included where the judicial decision contained sufficient information to determine: (1) the classification of the misconduct and sanction under domestic law; (2) the nature and purpose of the underlying offense; (3) the nature and degree of severity of the penalty that could legally be imposed; and (4) the sanction actually imposed and its effect on the serviceman's legal or service status.

The remaining 98 judicial decisions were excluded from the Engel-based assessment where the disciplinary measure or its legally possible severity could not be determined with sufficient precision, the judicial reasoning was confined predominantly to procedural matters, the disciplinary sanction was not identified, or the material duplicated proceedings already represented in the analytical subset. The resulting subset therefore comprised 88 non-duplicated judicial cases, each representing one disciplinary sanction and containing sufficient factual and legal information for substantive assessment under the Engel criteria.

The Engel criteria were not treated as a validated three-level measurement scale. They served as a legal classification framework concerning the domestic classification of the offense, the nature of the offense, and the nature and degree of severity of the penalty that the person risked incurring. The third criterion was not confined to the sanction actually imposed but also included the maximum or otherwise legally available penalty and its potential consequences.

For descriptive analysis, the sanctions were assigned to low, medium, or increased categories. These categories constituted an analytical coding framework developed for the study and were not presented as components of the original Engel test. The classification considered the domestic legal status and regulatory purpose of the sanction, its legally possible severity, its actual consequences, and its effect on the serviceman's legal, material, hierarchical, or broader service status.

The content-analysis scheme covered the legal nature of the misconduct, the type of disciplinary sanction, the timing and procedural context of the response, the function performed by the disciplinary measure, the procedural steps preceding the order, and the level of reasoning provided by the commander. For judicial decisions, the analysis additionally considered the principal grounds and scope of judicial review.

The reasoning contained in disciplinary orders was classified as formal, partial, or full according to predefined indicators. Formal reasoning referred to a statement of the violation without substantive analysis of the relevant circumstances. Partial reasoning included a description of the conduct and a reference to the findings of an official investigation but did not establish a complete connection between the facts and the selected sanction. Full reasoning required a documented connection between the established facts, the assessment of the serviceman's conduct, the consequences of the violation, and the choice of disciplinary measure.

Two researchers coded the materials using a unified coding manual. The independently completed coding records were compared, and disagreements were resolved through joint review and discussion. Because a formal intercoder reliability coefficient was not calculated, no Cohen's κ or Krippendorff's α value is reported. This limitation is relevant particularly to categories requiring interpretive differentiation, including the distinction between formal and partial reasoning.

The quantitative component was limited to descriptive statistics. Absolute frequencies and percentages were calculated for the three levels of reasoning in the corpus of 42 disciplinary orders and for the low, medium, and increased categories in the subset of 88 judicial cases. For descriptive interpretation, the low and medium categories were combined to distinguish sanctions remaining formally within disciplinary regulation from sanctions displaying stronger punitive characteristics. This recoding produced 80 cases, or 90.9%, and eight cases, or 9.1%, respectively. It did not create a separate sample.

The study has several limitations. First, purposive non-random sampling restricts the statistical generalizability of the findings. Second, access to internal disciplinary materials was limited, and the corpus of 42 orders cannot represent the full range of disciplinary practices across the Armed Forces of Ukraine. Third, the disciplinary-order and judicial-decision corpora were independent and unpaired. The study could not establish whether a particular disciplinary order was subsequently challenged, upheld, or annulled.

Fourth, the judicial corpus included only disputes that reached the courts and may therefore overrepresent contested or procedurally problematic decisions. Fifth, the subset of 88 judicial cases enabled a substantive Engel-based assessment but did not support conclusions about the prevalence of sanctions with punitive characteristics across the military system as a whole. Finally, the absence of a formally calculated intercoder reliability coefficient limits the verifiability of coding consistency and should be addressed in future studies through independent double coding and the reporting of Cohen's κ or Krippendorff's α .

4. Results

4.1 Functional models of applying disciplinary responsibility to military personnel under martial law

The empirical analysis of disciplinary orders issued by commanders of military units ($n = 42$), supplemented by a separate analysis of judicial-review practice reflected in 186 court decisions, demonstrates that disciplinary responsibility under martial law primarily operates as an independent extrajudicial response mechanism. The disciplinary orders were used to identify the functional models of disciplinary responsibility, whereas the judicial decisions were analyzed separately to determine the standards applied by courts when reviewing commanders' decisions. Because the two corpora were not linked at the level of individual cases, the court decisions were not treated as procedural continuations of the analyzed disciplinary orders. Disciplinary responsibility is exercised within the military chain of command under the Disciplinary Statute of the Armed Forces of Ukraine and the procedure governing official investigations.^{43, 44}

Content analysis found that the application of disciplinary sanctions depended on the functional purpose of the response. Where misconduct required an immediate command response while another legally prescribed procedure remained pending, disciplinary responsibility functioned as an operational or intermediate measure. In these circumstances, the commander responded to the disruption of military discipline without replacing or predetermining a possible administrative or criminal procedure conducted by another competent authority.

A different model applied in cases regulated by Article 15 of the Code of Ukraine on Administrative Offenses. In these circumstances, disciplinary responsibility constituted the primary form of response within military service. Commanders assessed the nature and circumstances of the misconduct and selected an appropriate disciplinary sanction without referring the matter to a court for the imposition of an administrative penalty. Such cases constituted a distinct functional configuration in the qualitative analysis.^{45,46,47,48}

The primary model did not cover the statutory exceptions expressly established by Article 15. Servicemen bear administrative responsibility on general grounds for violations concerning road safety, sanitary requirements, hunting and fishing, customs rules, corruption-related offenses, public-noise restrictions, the use of state

⁴³ MINISTRY OF DEFENCE OF UKRAINE. *On approval of the procedure for conducting official investigations in the Armed Forces of Ukraine (Order No. 608)*, 2017. Available at: <https://zakon.rada.gov.ua/go/z1503-17> (accessed on 20 August 2026).

⁴⁴ VERKHOVNA RADA OF UKRAINE. *On the Disciplinary Statute of the Armed Forces of Ukraine (Law No. 551-XIV)*, 1999. Available at: <https://zakon.rada.gov.ua/go/551-14> (accessed on 20 August 2026).

⁴⁵ CHERKASY DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 580/8490/23 (Disciplinary sanction for breach of reporting procedure after leave; typical standalone disciplinary case)*, 2024. Available at: <https://zakononline.ua/court-decisions/show/116518189> (accessed on 20 August 2026).

⁴⁶ VELIKOPYSARIVSKYI DISTRICT COURT OF SUMY REGION. *Decision in case No. 575/16/23 (Closure of proceedings)*, 2023a. Available at: <https://reyestr.court.gov.ua/Review/108395693> (accessed on 20 August 2026).

⁴⁷ VELIKOPYSARIVSKYI DISTRICT COURT OF SUMY REGION. *Decision in case No. 575/1/23 (Closure of proceedings)*, 2023b. Available at: <https://reyestr.court.gov.ua/Review/108213964> (accessed on 20 August 2026).

⁴⁸ VERKHOVNA RADA OF UKRAINE. Code of Ukraine on Administrative Offenses. Article 15, 1984. Available at: <https://zakon.rada.gov.ua/go/80731-10> (accessed on 20 August 2026).

property, the unlawful possession of special technical devices for covert information gathering, compliance with separate court rulings and lawful prosecutorial demands, state-secret legislation, and the accounting, storage, or use of documents and other material carriers containing official information. The boundary between these categories and misconduct governed by disciplinary statutes is therefore essential for determining whether the commander may apply disciplinary responsibility as the principal response.⁴⁹

The analysis also identified cases in which disciplinary responsibility performed an additional function. In these cases, the disciplinary measure operated as an internal service response alongside a legally distinct procedure falling outside the commander's authority. The additional model was identified as a qualitative functional configuration. Its presence did not, by itself, establish cumulative punishment or a violation of the *ne bis in idem* principle because the study did not contain paired disciplinary and criminal proceedings concerning the same conduct.

The synthesis of the findings made it possible to distinguish three functional models of disciplinary responsibility: operational or intermediate, primary or autonomous, and additional. The available coding supported the qualitative differentiation of these models but did not provide a reproducible numerical distribution of the 42 orders across all three categories. Accordingly, the models are presented as a qualitative typology rather than as a statistically tested classification.

Overall, the analysis identified three implementation mechanisms that differed according to the legal context, procedural stage, and function of the disciplinary response (Table 1).

Table 1. Functional models of applying disciplinary responsibility to military personnel under martial law.

Model	Functional purpose	Conditions of application	Features of implementation
Operational (intermediate)	Immediate restoration of military discipline pending another legally prescribed procedure	Service-related misconduct requiring a prompt command response while another procedure remains incomplete	Applied by the commander without replacing or predetermining a procedure conducted by another competent authority
Primary (autonomous)	Principal and completed form of response within military service	Administrative misconduct for which Article 15 of the Code of Ukraine on Administrative Offenses provides for disciplinary responsibility, excluding statutory exceptions	The commander determines the disciplinary sanction without referring the case to a court for the imposition of an administrative penalty
Additional	Internal service response accompanying another legally distinct procedure	Misconduct capable of producing disciplinary consequences and consequences within another area of legal responsibility	Applied alongside another procedure without replacing the competence of an administrative, investigative, or judicial authority

Note: The functional models were derived from the qualitative content analysis of 42 disciplinary orders. The independent corpus of 186 judicial decisions was used to identify standards of judicial review and was not used to calculate the prevalence of the models. The

⁴⁹ Ibid.

additional model describes the functional coexistence of disciplinary and other legal procedures but does not establish double punishment.

Source: Developed by the authors based on commanders' disciplinary orders and the applicable regulatory framework.^{50,51,52}

As shown in Table 1, the commander occupies a central position in all three models. The commander acts as the primary decision-maker in disciplinary matters, assesses the serviceman's conduct, determines the nature of the violation, and selects a sanction from the measures permitted by law. This discretion remains subject to statutory competence, factual substantiation, proportionality, and compliance with the procedure governing official investigations.^{53, 54}

Judicial authorities, by contrast, do not impose disciplinary responsibility. Their role is limited to reviewing the legality of disciplinary decisions adopted within the military hierarchy. Such review includes examination of compliance with official-investigation procedures, the sufficiency of the factual basis, the adequacy of reasoning, and the lawful exercise of commanders' discretion. Courts may annul decisions adopted in violation of substantive or procedural requirements.^{55,56,57,58} Disciplinary responsibility under martial law therefore functions as a flexible mechanism of military governance whose specific role depends on the legal circumstances of each case.

4.2 Commanders' reasoning in disciplinary decisions and judicial review

The analysis of disciplinary orders issued by commanders (n = 42) indicates that decisions concerning disciplinary responsibility generally followed a recognizable procedural sequence. This process included recording the alleged violation, conducting an official investigation, preparing the relevant findings, and issuing an order imposing a disciplinary sanction. The procedure followed from the requirements of the Disciplinary Statute of the Armed Forces of Ukraine and Order No. 608 governing official investigations.^{59,60} Nevertheless, the completeness with which

⁵⁰ MINISTRY OF DEFENCE OF UKRAINE. *On approval of the procedure for conducting official investigations in the Armed Forces of Ukraine (Order No. 608)*, 2017. Ibid.

⁵¹ VERKHOVNA RADA OF UKRAINE. "Code of Ukraine on Administrative Offenses. Article 15, 1984. Ibid.

⁵² VERKHOVNA RADA OF UKRAINE. *On the Disciplinary Statute of the Armed Forces of Ukraine (Law No. 551-XIV)*, 1999. Ibid.

⁵³ MINISTRY OF DEFENCE OF UKRAINE. *On approval of the procedure for conducting official investigations in the Armed Forces of Ukraine (Order No. 608)*, 2017. Ibid.

⁵⁴ VERKHOVNA RADA OF UKRAINE. *On the Disciplinary Statute of the Armed Forces of Ukraine (Law No. 551-XIV)*, 1999. Ibid.

⁵⁵ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 1.380.2019.000616*, 2021. Available at: <https://reyestr.court.gov.ua/Review/94973787> (accessed on 20 August 2026).

⁵⁶ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 640/21562/21*. Protocol.ua, 2023a. Available at: https://protocol.ua/ua/postanova_kas_vp_vid_20_04_2023_roku_u_spravi_640_21562_21_1/ (accessed on 20 August 2026).

⁵⁷ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 420/15045/21 (Grounds of disciplinary liability and limits of judicial review)*, 2023b. Available at: <https://iplex.com.ua/doc.php?regnum=112184734> (accessed on 20 August 2026).

⁵⁸ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 460/13859/21 (Cassation review concerning commander's orders and consequences of disciplinary decisions)*, 2024. Available at: <https://iplex.com.ua/doc.php?d=5&red=100003bf3cbecdc5ffba710325e88a79df39a1®num=116553295> (accessed on 20 August 2026).

⁵⁹ MINISTRY OF DEFENCE OF UKRAINE. *On approval of the procedure for conducting official investigations in the Armed Forces of Ukraine (Order No. 608)*, 2017. Ibid.

these stages were implemented and documented varied among the analyzed orders.

The content analysis revealed substantial differences in the level of reasoning provided by commanders. Formal reasoning was identified in 42.9% of the orders ($n = 18$). These decisions stated the existence or general nature of the violation but did not substantively examine the relevant circumstances. Partial reasoning was recorded in 35.7% of the orders ($n = 15$). These decisions described the misconduct and referred to the findings of an official investigation but did not fully explain why the established facts justified the selected sanction. Full reasoning was found in only 21.4% of the orders ($n = 9$). It included an assessment of the serviceman's conduct, the consequences of the violation, and the reasons for choosing a particular disciplinary measure (Table 2).

Table 2. Level of reasoning in commanders' disciplinary decisions.

Level of reasoning	Decision details	n	Share in the sample (%)
Formal	Statement of the violation without substantive analysis of the relevant circumstances	18	42.9
Partial	Description of the conduct and reference to the official investigation without complete justification of the selected sanction	15	35.7
Full	Connection between the established circumstances, assessment of conduct, consequences of the violation, and choice of sanction	9	21.4
Total		42	100.0

Note: Full reasoning required a documented connection between the established facts, the assessment of the serviceman's conduct, the consequences of the violation, and the selected sanction. Formal and partial reasoning together accounted for 78.6% of the disciplinary orders. This percentage characterizes only the corpus of 42 orders and does not represent a rate of judicial challenge or annulment.

Source: Developed by the authors based on 42 commanders' disciplinary orders.

The independent corpus of 186 judicial decisions was examined qualitatively to determine the recurring legal standards applied during judicial review. Since these decisions were not linked to the 42 disciplinary orders, the analysis did not establish whether the particular orders coded as formal or partial were later challenged, upheld, or annulled.

The judicial decisions recurrently addressed the sufficiency of the factual basis, compliance with official-investigation procedures, the adequacy of reasoning, and the relationship between the established misconduct and the selected sanction. Administrative courts considered whether relevant circumstances had been properly established, whether the evidence supported the conclusions of the commander, and whether applicable procedural safeguards had been respected.^{61,62,63,64,65}

⁶⁰ VERKHOVNA RADA OF UKRAINE. *On the Disciplinary Statute of the Armed Forces of Ukraine (Law No. 551-XIV)*, 1999. Ibid.

⁶¹ CHERNIHIV DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 620/3654/25 (Challenge of disciplinary sanction "reprimand"; evidentiary standards of official investigation findings)*, 2025. Available at: <https://youcontrol.com.ua/catalog/court-document/127978580/> (accessed on 20 August 2026).

⁶² KHARKIV DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 520/24636/25 (Challenge of reprimand imposed by order "on disciplinary results"; minimum procedural guarantees)*, 2025. Available at: <https://youcontrol.com.ua/catalog/court-document/131738304/> (accessed on 20 August 2026).

The examined decisions reflected different procedural and material contexts. The Cherkasy District Administrative Court⁶⁶, for example, considered a disciplinary sanction connected with a breach of reporting obligations after leave. Other cases involved reprimands, severe reprimands, changes to service records, denial of bonuses, and related remuneration consequences.^{67,68,69} These decisions illustrate the range of issues examined by courts but do not establish the general probability that a disciplinary sanction will be annulled.

The Supreme Court has maintained a distinction between commanders' disciplinary discretion and the supervisory role of administrative courts. Courts should not substitute their own substantive assessment for that of the commander. They must determine whether the commander acted within statutory limits, relied on sufficiently established facts, observed procedural guarantees, and provided adequate reasons for the decision. The selection of a particular disciplinary measure generally remains within the commander's authority.^{70,71,72,73}

Taken together, the findings identify two connected features of disciplinary decision-making. Commanders possess substantial discretion when evaluating misconduct and selecting a sanction. At the same time, the legal sustainability of their decisions depends on procedural compliance, factual substantiation, and an intelligible explanation of the relationship between the misconduct and the measure imposed.

The findings do not establish that formal or partial reasoning causes judicial annulment. Nor do they demonstrate that better reasoning increases the

⁶³ LVIV DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 380/9520/24 (Recognition as unlawful and annulment of provisions of orders, including disciplinary sanction and related payments)*. 2025. Available at: <https://youcontrol.com.ua/catalog/court-document/127090481/> (accessed on 20 August 2026).

⁶⁴ VINNYTSIA DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 120/586/24 (Annulment of disciplinary sanctions "reprimand/severe reprimand" and related bonus orders)*, 2024. Available at: <https://youcontrol.com.ua/catalog/court-document/120151829/> (accessed on 20 August 2026).

⁶⁵ VINNYTSIA DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 120/13381/24 (Disciplinary "reprimand" imposed without official investigation; claims for annulment of record and bonus payment)*, 2025. Available at: <https://youcontrol.com.ua/catalog/court-document/124639040/> (accessed on 20 August 2026).

⁶⁶ CHERKASY DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 580/8490/23 (Disciplinary sanction for breach of reporting procedure after leave; typical standalone disciplinary case)*, 2024. Ibid.

⁶⁷ LVIV DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 380/9520/24 (Recognition as unlawful and annulment of provisions of orders, including disciplinary sanction and related payments)*. 2025. Ibid.

⁶⁸ VINNYTSIA DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 120/586/24 (Annulment of disciplinary sanctions "reprimand/severe reprimand" and related bonus orders)*, 2024. Ibid.

⁶⁹ VINNYTSIA DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 120/13381/24 (Disciplinary "reprimand" imposed without official investigation; claims for annulment of record and bonus payment)*, 2025. Ibid.

⁷⁰ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 1.380.2019.000616*, 2021. Ibid.

⁷¹ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 640/21562/21*. Protocol.ua, 2023a. Ibid.

⁷² SUPREME COURT (Administrative Cassation Court). *Decision in case No. 420/15045/21 (Grounds of disciplinary liability and limits of judicial review)*, 2023b. Ibid.

⁷³ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 460/13859/21 (Cassation review concerning commander's orders and consequences of disciplinary decisions)*, 2024. Ibid.

effectiveness of disciplinary responsibility, because deterrence, restoration of discipline, and other indicators of effectiveness were not measured. The results concern the documented quality of reasoning and the legal standards applied during judicial review.

4.3 The nature of disciplinary sanctions and their assessment through the lens of Engel's criteria

The nature of disciplinary sanctions was examined using a subset of 88 non-duplicated cases selected from the corpus of 186 judicial decisions. The unit of analysis was an individual disciplinary sanction examined by a court. A case was included where the judicial decision contained sufficient information to determine the domestic legal classification of the measure, the nature and purpose of the underlying offense, the nature and degree of severity of the penalty that could legally be imposed, the sanction actually imposed, and its effect on the serviceman's legal or service status.

The remaining 98 judicial decisions were excluded from the Engel-based analysis because the disciplinary measure or its legally possible severity could not be established with sufficient precision, the decision was confined predominantly to procedural matters, or the material duplicated proceedings already represented in the analytical subset.

The assessment was based on the criteria established in *Engel and Others v. the Netherlands*. The criteria were used to evaluate the substantive nature of disciplinary measures rather than to reclassify every disciplinary sanction automatically as a criminal penalty.

The analysis considered three elements: the classification of the offense under domestic law, the nature of the offense, and the nature and degree of severity of the penalty that the person risked incurring.⁷⁴ The third Engel criterion was not limited to the sanction actually imposed. It also included the maximum or otherwise legally available penalty and its potential consequences for the serviceman's status.

The categories low, medium, and increased were not treated as components of the original Engel test or as a validated measurement scale. They constituted an analytical coding framework developed for this study to describe the extent to which the substantive characteristics of a formally disciplinary sanction approached a punitive measure. The assessment considered domestic classification, regulatory purpose, legally possible severity, actual consequences, and effects on legal and service status.

Sixty sanctions, corresponding to 68.2% of the subset, were assigned to the low category. These measures principally performed an internal service-regulation function and had limited effects on the serviceman's legal, material, or hierarchical status. They included warnings and reprimands where the judicial materials did not demonstrate wider service-related consequences. Their principal purpose remained the maintenance of discipline and subordination within the military formation.⁷⁵

Twenty sanctions, or 22.7%, were assigned to the medium category. These measures produced identifiable material or service-related consequences, including effects on remuneration, promotion prospects, professional position, or other aspects of service status. Although they remained formally disciplinary, their consequences extended beyond a purely symbolic internal-service measure. Such consequences increased the relevance of proportionality, procedural safeguards, and adequate

⁷⁴ EUROPEAN COURT OF HUMAN RIGHTS. *Engel and Others v. the Netherlands* (Applications nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72), 1976. Ibid.

⁷⁵ VERKHOVNA RADA OF UKRAINE. *On the Disciplinary Statute of the Armed Forces of Ukraine* (Law No. 551-XIV), 1999. Ibid.

reasoning but did not automatically transform disciplinary proceedings into criminal proceedings.

Eight sanctions, or 9.1%, were assigned to the increased category. These sanctions displayed stronger punitive characteristics and had a substantial actual or potential effect on the serviceman's service status. Classification within this category did not amount to a finding that each sanction constituted a criminal penalty for the purposes of Article 6 of the European Convention on Human Rights. It indicated that the measure required closer substantive assessment under the Engel framework.⁷⁶

The judicial decisions recurrently addressed factual substantiation, compliance with official-investigation procedures, adequacy of reasoning, and the connection between the established conduct and the sanction. These issues were particularly visible in cases involving remuneration or other substantial service-related consequences.^{77,78,79,80} The study did not test whether more severe sanctions were supported by more extensive reasoning.

Based on these results, three analytical categories were distinguished according to the extent to which the substantive characteristics of the sanctions approached a punitive measure. These categories operationalized the study's coding framework but did not replace the legal criteria established by the European Court of Human Rights (Table 3).

Table 3. Analytical assessment of disciplinary sanctions under the Engel framework.

Assessment category	Characteristics of the sanction	n	Share in the sample (%)
Low	Internal-service measures with limited effects on legal or service status	60	68.2
Medium	Formally disciplinary measures with identifiable material or service-related consequences	20	22.7
Increased	Measures displaying stronger punitive characteristics and a substantial effect on service status	8	9.1
Total		88	100.0

Note: The assessment categories constitute an analytical coding framework developed for this study and do not replace the Engel legal test. The analysis considered domestic classification, the nature of the offense, and the nature and degree of severity of the penalty that could legally be imposed.

⁷⁶ EUROPEAN COURT OF HUMAN RIGHTS. *Derogation in time of emergency* (Factsheet), 2022. Ibid.

⁷⁷ KHARKIV DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 520/24636/25 (Challenge of reprimand imposed by order "on disciplinary results"; minimum procedural guarantees)*, 2025. Ibid.

⁷⁸ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 420/15045/21 (Grounds of disciplinary liability and limits of judicial review)*, 2023b. Ibid.

⁷⁹ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 460/13859/21 (Cassation review concerning commander's orders and consequences of disciplinary decisions)*, 2024. Ibid.

⁸⁰ VINNYTSIA DISTRICT ADMINISTRATIVE COURT. *Decision in case No. 120/586/24 (Annulment of disciplinary sanctions "reprimand/severe reprimand" and related bonus orders)*, 2024. Ibid.

Source: Developed by the authors based on 88 judicial decisions containing sufficient information for the Engel-based assessment.⁸¹

Most sanctions remained formally within disciplinary regulation, although the medium category involved consequences extending beyond a purely symbolic internal-service measure. The presence of sanctions with greater substantive severity indicates that formal domestic classification alone may be insufficient for determining the procedural safeguards required in an individual case. More substantial consequences require clearer reasoning, closer examination of proportionality, and greater attention to the limits of commanders' discretion.

For the descriptive binary comparison, the low and medium categories were combined. This produced 80 sanctions, or 90.9% of the same subset, while the increased category comprised eight sanctions, or 9.1%. This division represented a recoding of the original $n = 88$ subset rather than a separate sample.

The judicial decisions recurrently addressed factual substantiation, compliance with official-investigation procedures, adequacy of reasoning, and proportionality. These observations are qualitative and do not represent a quantified measure of the intensity of judicial scrutiny. The Supreme Court's case law indicates that judicial review focuses on the legality and sufficiency of reasoning in disciplinary decisions without substituting the commander's discretion regarding the selection of a particular sanction.^{82,83,84,85}

In other words, the findings demonstrate that disciplinary sanctions differ in their substantive effects on the legal and service status of military personnel. The Engel criteria provide an interpretive framework for assessing these measures according to their substantive characteristics rather than solely their formal domestic classification. The results do not establish that disciplinary sanctions generally constitute criminal penalties. They identify a limited category of measures whose actual or potential severity requires enhanced reasoning and procedural safeguards.

5. Discussion

The study sheds light on the operation of disciplinary responsibility within the military governance system under martial law. The findings support the view that disciplinary responsibility should be regarded as an autonomous extrajudicial mechanism rather than merely as a derivative element of criminal or administrative liability. At the same time, its functional purpose depends on the legal and procedural context of the misconduct. Under the operational model, disciplinary responsibility provides a prompt internal response while another legally prescribed procedure remains pending. It does not determine or replace subsequent criminal, administrative, or judicial proceedings where the same conduct may also fall within the competence of another legally authorized body. In the sphere of administrative offenses, disciplinary responsibility may function as the primary and completed response under Article 15 of the Code of Ukraine on Administrative Offenses. This general rule does not apply to the categories expressly listed in Article 15, including

⁸¹ EUROPEAN COURT OF HUMAN RIGHTS. *Derogation in time of emergency* (Factsheet), 2022. Ibid.

⁸² SUPREME COURT (Administrative Cassation Court). *Decision in case No. 1.380.2019.000616*, 2021. Ibid.

⁸³ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 640/21562/21*. Protocol.ua, 2023a. Ibid.

⁸⁴ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 420/15045/21* (*Grounds of disciplinary liability and limits of judicial review*), 2023b. Ibid.

⁸⁵ SUPREME COURT (Administrative Cassation Court). *Decision in case No. 460/13859/21* (*Cassation review concerning commander's orders and consequences of disciplinary decisions*), 2024. Ibid.

offenses concerning road safety, sanitary requirements, hunting and fishing, customs rules, corruption, public-noise restrictions, the use of state property, state secrets, and the handling of official information, for which military personnel bear administrative responsibility on general grounds.^{86,87}

These findings do not indicate that disciplinary responsibility is transformed into criminal liability. Rather, they reveal variation in the substantive intensity and consequences of formally disciplinary sanctions. The low category, which accounted for 68.2% of the assessed sanctions, retained a predominantly internal-service orientation and produced limited effects on the serviceman's legal or service status. The medium category comprised 22.7% of the sanctions and included identifiable material or service-related consequences extending beyond a purely symbolic disciplinary measure. A further 9.1% displayed stronger punitive characteristics and a substantial actual or potential effect on service status. These categories do not constitute elements of the original Engel test and do not establish that the relevant sanctions were criminal penalties. Instead, they indicate different degrees of proximity to punitive state intervention and therefore different requirements concerning reasoning, proportionality, and procedural safeguards.⁸⁸

At a broader comparative level, these findings are consistent with the argument advanced by AbdelAziz and Abouahmed⁸⁹ that measures imposed outside criminal proceedings may nevertheless acquire substantial punitive effects. Their study concerns the sanctioning powers of independent administrative authorities rather than military discipline, so the comparison should not be treated as direct evidence regarding servicemen. It is relevant, however, because it demonstrates that the formal classification of a measure as administrative or disciplinary does not fully determine its substantive character. In the military context examined here, the variation concerned not a change in the formal legal nature of disciplinary responsibility but differences in the severity, material consequences, and practical impact of individual sanctions on the serviceman's status.

A clear distinction between disciplinary and criminal sanctions remains essential with respect to their purpose, legal basis, procedure, and consequences. The principal purpose of disciplinary intervention is to maintain military discipline and internal service order, and the results generally confirm that this distinction is preserved in practice. Nevertheless, Table 2 shows that only 21.4% of the analyzed orders contained full reasoning, whereas formal or partial reasoning accounted for 78.6%. Limited reasoning does not prove that a sanction was criminal in substance, nor does it demonstrate that the order was subsequently annulled. It does, however, make it more difficult to determine whether the commander properly distinguished an internal disciplinary response from a measure with broader punitive consequences.

The Commentary to Article 117 of the Fourth Geneva Convention must be used with particular caution in this context. Article 117 regulates disciplinary and penal consequences applicable to interned protected persons and prohibits repeated punishment within that specific legal regime. It does not directly govern the domestic disciplinary responsibility of a state's own military personnel. Accordingly, the Commentary cannot serve as an immediate normative basis for evaluating

⁸⁶ VERKHOVNA RADA OF UKRAINE. Code of Ukraine on Administrative Offenses. Article 15, 1984. Ibid.

⁸⁷ VERKHOVNA RADA OF UKRAINE. *On the Disciplinary Statute of the Armed Forces of Ukraine (Law No. 551-XIV)*, 1999. Ibid.

⁸⁸ EUROPEAN COURT OF HUMAN RIGHTS. *Engel and Others v. the Netherlands (Applications nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72)*, 1976. Ibid.

⁸⁹ ABDELAZIZ, G. M., and ABOUAHMED, A. "The punitive power of independent administrative authorities: Focus on financial and tax violations (A comparative study)". *Access to Justice in Eastern Europe*, v. 7, n. 2, 2024, pp. 301-324. <https://doi.org/10.33327/AJEE-18-7.2-n000216>

commanders' disciplinary orders. Its relevance is limited to a comparative illustration of the broader concern with duplicative punitive intervention and the need to distinguish disciplinary measures from criminal punishment in situations of armed conflict.⁹⁰

The qualitative examination of judicial practice did not provide sufficient grounds for concluding that Ukrainian courts systematically or expressly apply international standards when reviewing disciplinary sanctions. The reviewed decisions focused primarily on domestic statutory competence, the establishment of relevant facts, compliance with official-investigation procedures, the adequacy of reasoning, and the proportionality of the selected measure. References to international standards, where present, did not form a separately quantified variable in the study. It is therefore more accurate to conclude that the substantive logic underlying the Engel criteria is only indirectly reflected in domestic judicial review, particularly where courts consider the actual consequences of disciplinary orders rather than their formal designation alone.

The institutional dimension of the findings is broadly consistent with Voznyk et al.,⁹¹ who emphasize the need to reform military law-enforcement structures in Ukraine and draw on the experience of military police systems in the United States, Spain, France, and Turkey. Their analysis concerns institutional powers, investigative capacity, preventive functions, and the relationship between military and civilian law-enforcement bodies. The present study complements that institutional perspective by examining an earlier stage of military legal response, namely commanders' disciplinary decision-making and the subsequent limits of judicial review. The findings show that institutional reform should concern not only the distribution of investigative powers but also the quality of internal disciplinary procedures and the standards governing commanders' discretion.

Taken together, the results confirm that disciplinary responsibility under martial law remains an autonomous component of military governance and an important mechanism for maintaining service order. Its autonomy, however, does not place it outside the requirements of legality, factual substantiation, proportionality, and procedural fairness. The variations identified in the severity of sanctions and in the quality of commanders' reasoning demonstrate the need for clearer and more consistent requirements for disciplinary orders.

On the basis of these findings, we propose a minimum reasoning structure for disciplinary orders that could be incorporated into departmental guidance on disciplinary decision-making. Such an order should contain five interconnected elements: (1) a concise statement of the established facts and the evidence on which those findings are based; (2) identification of the specific service duty, statutory provision, or disciplinary rule breached by the serviceman; (3) an assessment of the relevant circumstances of the misconduct, including its consequences and any mitigating or aggravating factors considered by the commander; (4) an explicit explanation of why the selected disciplinary sanction is proportionate to the nature and seriousness of the misconduct; and (5) an indication of whether the same conduct has triggered, or may trigger, a legally distinct administrative or criminal procedure. Where the disciplinary measure entails material, hierarchical, career-

⁹⁰ INTERNATIONAL COMMITTEE OF THE RED CROSS. "Commentary on Article 117: Applicable legislation and the prohibition of double jeopardy". In *Convention (IV) relative to the protection of civilian persons in time of war*. Geneva, 12 August 1949. ICRC, 2025. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-117/commentary/2025> (accessed on 20 August 2026).

⁹¹ VOZNYK, M., GOLOBORODKO, Y., VLAD, V., SEVRUK, Y., and RUDOI, K. "Reforming military law and service in Ukraine: Lessons from the military police of other countries". *Croatian and Comparative Public Administration*, v. 25, n. 3, 2025, pp. 529-547. <https://doi.org/10.31297/hkju.25.3.2>

related, or other substantial consequences for the serviceman's status, the reasoning should additionally explain why a less restrictive disciplinary measure would be insufficient. This minimum structure would not eliminate commanders' statutory discretion but would make its exercise more transparent, reviewable, and consistent with the differentiated substantive effects of disciplinary sanctions identified in the present study.

The interpretation of these findings must remain within the limits of the research design. The corpus of 42 disciplinary orders and the corpus of 186 judicial decisions were independent and unpaired. Consequently, the study cannot determine whether an order classified as formally or partially reasoned was later challenged or annulled. Nor can it establish a causal relationship between the quality of reasoning, the severity of a sanction, and its legal sustainability during judicial review. The subset of 88 judicial cases permitted a substantive assessment under the Engel framework, but it does not represent the entire range of disciplinary sanctions imposed within the military system.

6. Conclusions

The findings indicate that the disciplinary responsibility of military personnel under martial law operates as an autonomous extrajudicial mechanism within the military hierarchy. Depending on the legal and procedural context, it may perform an operational, primary, or additional function. Commanders retain discretion in selecting disciplinary sanctions, but the exercise of that discretion remains subject to statutory competence, compliance with official-investigation procedures, factual substantiation, proportionality, and adequate reasoning.

The empirical analysis covered 42 disciplinary orders and an independent corpus of 186 judicial decisions. Among the disciplinary orders, 42.9% contained formal reasoning, 35.7% contained partial reasoning, and only 21.4% contained full reasoning. These results identify a recurring weakness in the documented justification of disciplinary decisions. They do not, however, establish a relationship between the quality of reasoning and the frequency of judicial challenges or annulments because the two empirical corpora were independent and unpaired.

The Engel-based assessment of 88 judicial cases showed that 68.2% of the sanctions had predominantly internal-service effects, 22.7% involved identifiable material or service-related consequences, and 9.1% displayed stronger punitive characteristics. These findings do not establish that disciplinary sanctions constitute criminal penalties. Rather, they indicate that sanctions with more substantial actual or potential consequences require clearer reasoning, closer proportionality assessment, and enhanced procedural safeguards.

The theoretical contribution of the study lies in distinguishing three functional models of disciplinary responsibility and clarifying their different roles within military governance. Its practical contribution concerns the formulation of clearer standards for disciplinary orders and more precise limits on commanders' discretion. The principal limitations include the purposive non-random sample, restricted access to internal disciplinary materials, the absence of paired disciplinary and judicial records, and the lack of a formally calculated intercoder reliability coefficient. Future research should examine linked disciplinary and judicial cases and assess the relationship between sanction severity, the quality of reasoning, and the legal sustainability of disciplinary decisions under judicial review.

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