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## **FEATURES OF THE FUNCTIONING OF LOCAL GOVERNMENT BODIES DURING THE PERIOD OF MARITAL LAW IN UKRAINE**

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The article comprehensively theorizes and analyzes the unique aspects of legal regulations governing the operations of local self-government bodies during Ukraine's period of martial law. It presents specific proposals aimed at enhancing the legislation that oversees this sphere of power and legal relations. The article emphasizes the critical role of local self-government bodies during times of conflict, highlighting their continued significance as a crucial mechanism in upholding the efficient functioning of public authority and the state's defense capabilities.

This was vividly demonstrated through the actions of local self-government bodies in response to the Russian Federation's large-scale invasion of Ukraine. They were tasked with establishing voluntary territorial community formations as per the Law of Ukraine «On the Foundations of National Resistance». This involved creating checkpoints, protective structures, and facilitating conditions for the effective functioning of volunteer units. In regions without direct hostilities, these bodies actively engaged in volunteer work and providing support to the Armed Forces of Ukraine. Numerous instances exist where these bodies either spearheaded or significantly contributed to volunteer initiatives at the community level.

According to the author, the experience gained by Ukraine during the war demonstrates the undeniable advantage of self-organization of the population over centralized management. The central government will not be able to take over the functions of local self-government bodies and perform them as effectively. Even before the war, the level of trust in local authorities among citizens was one of the highest compared to other institutions. With increasing interaction between people and their local government, this trust has only strengthened. Hence, the proposal to dissolve or arbitrarily limit the powers of local self-government bodies during wartime is considered unconstitutional and a threat to the country's national security. Termination or limitation of their powers is possible only in extraordinary cases, when there is a direct threat to the life and safety of citizens who are in the territory of hostilities or occupation. In all other cases, such actions should only be possible following a well-justified court decision.

**It's crucial to recognize that local self-government holds the same constitutional significance as the state's structure. The Constitution of Ukraine explicitly outlines the status of local self-government bodies, in particular their functions and powers, which they perform in peaceful conditions. Therefore, making amendments to the Constitution regarding the functioning of local self-government seems unfeasible. The functioning of local self-government during the war requires additional legislative regulation. Consequently, the Law of Ukraine «On Adopting Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law» was enacted, incorporating significant amendments into the Laws «On Local Self-Government in Ukraine» and «On the Legal Regime of Martial Law». The latest legislative act is of particular importance for the constitutional legal order, essentially acting as an addition to the Constitution of Ukraine, the effect of which is actualized in the period of wars.**

**Keywords: local self-government; local self-government bodies; martial law; legal regulation of the functioning of local self-government; military administrations.**

**Formulation of the problem.** Since the declaration of martial law in Ukraine by the Decree of the President of Ukraine dated February 24, 2022, all public authorities have operated in a special mode. In accordance with paragraph 6 of the Decree on regional and Kyiv city state administration, local self-government bodies are tasked with forming defense councils and providing support to the military command in implementing measures related to the legal regime of martial law [1].

From the first weeks of the full-scale invasion, the President, the Government and the Verkhovna Rada of Ukraine were concerned about the unfolding situation. Consequently, they directed efforts to strengthen centralized management, expanding the powers of executive authorities on the ground while correspondingly limiting the authority of local self-government bodies. To achieve this, during the martial law period, the head of state established temporary special bodies—military administrations—in the regions and districts. The purpose of their creation is evident: working in tandem with the military command to ensure the implementation of measures related to martial law, defense, civil protection, public safety, and order. These military administrations were established based on regional and district state administrations.

However, the role of local self-government bodies during the war cannot be underestimated, they remain an important mechanism in ensuring the effective functioning of public power and the defense capability of the state. This significance was clearly demonstrated by the actions of local self-government bodies in the first days of the Russian Federation's large-scale invasion of Ukraine. They were assigned the task of creating voluntary formations of territorial communities in accordance with the Law of Ukraine «On the Foundations of National Resistance». This involved establishing checkpoints, protective structures, and other necessary conditions for the effective operation of volunteer units [2].

In areas without hostilities, local self-government bodies actively participated in volunteer activities and provided assistance to the Armed Forces of Ukraine. Numerous examples exist where they initiated the volunteer movement themselves, while others actively supported it at the level of territorial communities.

The vast majority of representatives of local self-government bodies remained in place and organized the life activities of territorial communities under new conditions. We don't have many cases when deputies, heads of communities got lost and did not take responsibility for important decisions for people, moved to safe places. Therefore, there is every reason to believe that local self-government is successfully coping with new challenges under martial law. It is worth adding that one of the reasons for a coordinated and operational response to extreme conditions is the decentralization and expansion of local powers, which have been, although not fully, implemented in recent years.

It is crucial to emphasize that even in the conditions of war, it is local self-government and the functioning of local self-government bodies that contribute to the formation, functioning and improvement of the local system of protection and protection of human and citizen rights and freedoms, thanks to which one of the most important functions of local self-government is formed and highlighted in relief – human

rights protection and law enforcement [3, p. 67]. This is primarily due to the proximity of self-government bodies to the individual, a member of the territorial community, and their understanding of his or her needs, enabling them to provide the necessary assistance promptly.

In the first days of the war, it was the local self-government bodies that became the primary center for safeguarding and protecting the civilian population. This is due to the fact that there were different challenges in different regions of the country, if in the North, South and East it is the containment of the aggressor's troops, then in the West (especially in the regions bordering the countries of the European Union) it is an unprecedented number of people seeking asylum. Additional functions that fell to the lot of local authorities in the first days of the war related to the large influx of internally displaced persons. Local self-government bodies were tasked with organizing the registration process for relevant statuses, issuing certificates, and, with the assistance of community members, establishing the procedures for accommodating those who had fled their homes. To illustrate the magnitude of the issue, consider the statistics: prior to the war, 717,000 people lived in Lviv. By March, this number had risen to 2 million, and in the first month of the conflict, the Lviv Region received 5 million temporarily displaced people.

Both before the war and after the declaration of martial law, the level of citizens' trust in local self-government bodies is constantly increasing. This is clearly demonstrated by the results of a sociological study conducted by the International Republican Institute (IRI) [4]. The study aimed to evaluate citizens' opinions, encompassing their general attitudes, perceptions of the actions of local authorities, and their stance on reconstruction. The results of the study, which recorded the mood of Ukrainians during the full-scale invasion, were pleasantly surprising – It revealed that residents of Kyiv and 20 regional centers continued to strongly support their mayors even in the face of a challenging winter and wartime conditions. Additionally, a majority of citizens praised the activity of city councils, with the highest level of trust observed in residents of Kharkiv (73 %), Khmelnytskyi (69 %), Lutsk (68%), Vinnytsia (67 %), and Ivano-Frankivsk (62 %). A feature of the current attitudes of the interviewees was the high fate of those who plan to stay in their city after the war. An overwhelming majority of Ukrainians see the future of their country as hopeful, but the percentage of such people differs in each city.

Over the course of three decades of functioning of local self-government bodies in Ukraine, a sufficiently established mechanism of functioning of local self-government bodies was formed, and the reform of decentralization of public-authority powers was practically completed. However, the political and social reality caused by the full-scale invasion of the aggressor state on the territory of Ukraine shows significant shortcomings, which demonstrate the low level of legislative and law-making effectiveness, a high degree of generalization, declarativeness, and formalism, as well as internal contradictions and overt neglect of the interests of territorial communities and their members, which directly and negatively affect the procedure for self-government bodies to exercise their powers, including the sphere of protection of human rights and freedoms within local society. This discrepancy is especially inconsistent with the fact that Ukraine has been in a state of war not since February 24, 2022, but since the annexation of Crimea and the war in the East of the country, that is, for eight years from March 18, 2014.

The experience of Ukraine in the context of the legal regulation of ensuring the functioning of local self-government bodies during the war is unique and creates a substantial basis for the possibility of improving the system of legal prescriptions in the researched area with a preventive purpose.

**Analysis of recent research and publications.** Despite more than two thousand wars throughout human history and the prevalence of conflicts and armed aggression in various regions, the problem of the role and importance of local self-government during periods of military conflicts, particularly the peculiarities of the legal regulation of their functioning, has not been extensively explored by many scholars. We managed to find several works that only indirectly consider this issue. In particular, they are devoted to NATO operations in Afghanistan and the role of civil-military relations during the crisis (Zanfira F.) [5], as well as the role of local authorities as an institution of the security sector in post-conflict countries (Demir C. K.) [6]. Certain studies also concern the cooperation of the US Army with public

institutions and local communities of the host African country during the fight against terrorist and religious extremists (Celestino P.) [7].

Instead, the question of the peculiarities of the functioning of local self-government bodies and, in particular, the legal regulation of their activities, became, by necessity, the subject of scientific research by domestic legal scholars. The works of Mykhailo Baimuratov and Boris Kofman, Oleksandr Batanov [12], Anatoly Zaits [13], Yuriy Klyuchkovskiy [14], and Igor Koliushko deserve special attention. It was their scientific conclusions on the researched issue that formed the basis of this article. Also, the research used the works of scientists who investigated the problem of the peculiarities of the functioning of government bodies in extreme conditions, in particular war [8, p. 36].

**The purpose of the article** is a comprehensive theoretical generalization and analysis of the specificities of the legal regulation of the activities of local self-government bodies during the period of martial law in Ukraine, the development of specific proposals for improving the legislation regulating the relevant sphere of power-legal relations.

**Presenting main material.** According to the Constitution, local self-government is recognized and guaranteed in Ukraine (Article 7), and the people exercise power directly and through state and local self-government bodies (Article 5). Therefore, local self-government bodies are endowed with the same constitutional powers as other public authorities. Therefore, when adopting laws, they cannot be limited or canceled. Two draft laws, No. 7153 and 7269, which aimed to curtail powers, were passed by the Verkhovna Rada but were not signed by the President of Ukraine. In this instance, the head of state considered the opinions of experts and community representatives, leading to a revised and improved version of the draft law. This modified version later came into force as the Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law», dated May 12, 2022.

Prior to the adoption of this Law, the activities of local self-government bodies in the conditions of war in the legislation of Ukraine were not regulated systematically and comprehensively in any special legislative document. Separate issues of a profile nature were partially resolved by the Laws of Ukraine «On the Foundations of National Resistance» dated July 16, 2021, «On National Security of Ukraine» dated June 21, 2018, «On the Legal Regime of Martial Law» dated May 12, 2015, «On Military-Civil Administration» dated February 3, 2015, «On the Defense of Ukraine» dated December 6, 1991, «On Mobilization Training and Mobilization» dated October 21, 1993.

The adopted Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law» was intended to ensure the proper and uninterrupted functioning of local self-government bodies under martial law, to enable them to make operational decisions to ensure the livelihood of communities, to increase the authority of the village, township, and city head of a community where hostilities are not taking place and a military administration has not been formed. The law also regulated the activities of the military administrations of settlements.

Thus, in accordance with the Law, the village, settlement and city mayors acquire additional powers. Specifically, they can make individual decisions in the following areas: transferring funds from the local budget for the needs of the Armed Forces of Ukraine; establishing institutions to provide free primary legal assistance, combating natural disasters and epidemics, managing hazardous waste, releasing communally owned land plots from illegally placed temporary structures, inspecting buildings and structures damaged due to hostilities, and dismantling buildings and structures deemed dangerous and posing a threat to people's lives.

Decisions made by village, settlement, and city mayors enter into force from the moment of their adoption, unless a later date for their entry into force is established by these decisions, and are immediately brought to the notice of the residents of the relevant territorial communities [9].

The law also provides that in the event of violations by the head of a village, settlement, or city in the implementation of the Constitution or laws of Ukraine, the head of the regional military administration, in agreement with the General Staff of the Armed Forces of Ukraine, raises before the President of Ukraine the issue of the formation of a military administration of the settlement (settlements).

The Law of Ukraine «On the Legal Regime of Martial Law», which was amended after the adoption of the Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law», also provides for other grounds for terminating the activities of local self-government bodies and, accordingly, creating military administrations. They are created within territorial communities in which village, settlement, city councils and/or their executive bodies, and/or village, settlement, city mayors do not exercise the powers assigned to them by the Constitution and laws of Ukraine (Part 3, Article 4 of the Law) [ 10]. Reasons for termination may include self-dissolution, self-removal, or simply the failure to fulfill their mandate. In districts and oblasts, military administrations are formed if a session of the district or regional council fails to convene within the specified time limits outlined in the Law of Ukraine ‘On Local Self-Government in Ukraine’. This may also occur upon the termination of their powers in accordance with the law or the failure to exercise leadership in ensuring defense, public safety, and order (Part 4, Section 4 of the Law). Military administrations of settlements, districts, and regions exercise their powers during martial law and for 30 days after its termination or cancellation.

Hence, reaching the grounds for terminating the powers of local self-government bodies is challenging but feasible. If the mayor and council deputies adhere to their duties and do not violate laws, stopping their work abruptly is impossible. However, in cases where the city or region has been occupied, the deputies may choose to remove themselves, disregarding council meetings. In such circumstances, the president, based on the current situation and tactical necessity, retains the authority to establish a military administration.

The enactment of a specific law generally had a positive impact on the regulation of local self-government bodies’ activities during the period of martial law. However, it did not encompass all areas of local public authorities’ functioning, and certain provisions require clarification and coordination with other legal norms.

1. Municipal legislation should contain norms regarding the algorithm of actions of local self-government bodies during the declaration of martial law and separately contain rules of behavior in temporarily occupied territories, in the demarcation zone and other unoccupied territories.

2. The issue of the powers of military administrations and their interaction with institutions of civil society requires legislative regulation, which would ensure the coherence of actions in providing effective assistance to the Armed Forces of Ukraine and resisting armed aggression.

3. It is necessary to abandon the simplified procedure for the appointment and dismissal of civil servants and employees of self-government bodies, in particular, it is necessary to resume competitions for vacant positions and filling out the declaration of the person provided for by the Law of Ukraine «On Prevention of Corruption».

4. Special legal regulation is required by the financial sphere of local self-government activities in wartime conditions. The position of state authorities in this matter should primarily be aimed at ensuring the interests of the territorial community and be as balanced as possible with regard to the transfer of funds from the local budget to the state budget.

5. The legislation must provide for exceptional grounds for the early termination or limitation of the powers of self-government bodies, as well as the corresponding procedure for their implementation in those territories that are not in the combat zone.

6. The issue of the possibility of self-removal of employees of self-government bodies, if the performance of the duties assigned to them threatens their life and safety, requires legislative settlement.

**Conclusions.** The experience gained by Ukraine during the war demonstrates the undeniable advantage of self-organization of the population over centralized management. The central government will not be able to take over the functions of local self-government bodies and perform them as effectively. Even before the war, the level of trust in local authorities among citizens was one of the highest compared to other institutions. In recent times, as people increasingly interact with local government due to its proximity, this trust has only strengthened. Therefore, the idea of dissolving local self-government bodies or arbitrarily limiting their powers during the war are unconstitutional decisions that pose a threat to the country's national security. Termination or limitation of their powers is possible only in extraordinary cases, when there is a direct threat to the life and safety of citizens who are in the territory of hostilities or occupation. In any other cases, this is possible only after a reasoned court decision.

Local self-government is a constitutional construction parallel to the state structure. The Constitution of Ukraine clearly defines the status of local self-government bodies, specifying their functions and powers under peaceful conditions. Therefore, making changes to the constitution regarding the functioning of local self-government seems impractical. The functioning of local self-government during the war requires additional legislative regulation. This was the reason for the adoption of the Law of Ukraine «On Adopting Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law», on the basis of which substantial additions were made to the Laws «On Local Self-Government in Ukraine» and «On the Legal Regime» martial law». The latest legislative act, in our opinion, is of particular importance for the constitutional legal order; it serves as a complement to the Constitution of Ukraine, with its effects actualized during periods of war.

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## ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ В ПЕРІОД ВОЄННОГО СТАНУ В УКРАЇНІ

У статті здійснено комплексне теоретичне узагальнення та аналіз особливостей правового регулювання діяльності органів місцевого самоврядування в період воєнного стану в Україні, запропоновано конкретні пропозиції щодо вдосконалення законодавства, що регулює відповідну сферу владно-правових відносин.

Зазначається, що роль органів місцевого самоврядування в період війни не можна недооцінювати, вони залишаються важливим механізмом в забезпеченні ефективного функціонування публічної влади та обороноздатності держави. Про це яскраво засвідчили дії органів місцевого самоврядування в перші дні широкомасштабного вторгнення російської федерації в Україну. На них було покладено завдання створення добровільних формувань територіальних громад відповідно до Закону України «Про основи національного спротиву». Це також створення блокпостів, захисних споруд та інших умов для ефективної діяльності добровільних загонів. Там, де не було бойових дій, органи місцевого самоврядування активно долучилися до волонтерської

діяльності та допомоги Збройним Силам України. Є багато прикладів, коли вони самі ініціювали волонтерський рух, інші – активно сприяли йому на рівні територіальних громад.

На думку автора, досвід, набутий Україною за час війни, демонструє беззаперечну перевагу самоорганізації населення перед централізованим управлінням. Центральна влада не зможе перебрати на себе функції органів місцевого самоврядування і виконувати їх так само ефективно. Ще напередодні війни рівень довіри до місцевої влади серед громадян був одним із найвищих порівняно з іншими інституціями. За останній час, коли люди все більше взаємодіють з місцевою владою, оскільки вона найбільше наближена до них, це ставлення лише укріпилося. Тому ідея розпуску органів місцевого самоврядування чи довільне обмеження їх повноважень в період війни – це антиконституційні рішення, які становлять загрозу національній безпеці країни. Припинення чи обмеження їх повноважень можливе лише в екстраординарних випадках, коли з'являється пряма загроза життю та безпеці громадян, які перебувають на території ведення бойових дій чи окупації. У будь-яких інших випадках це можливо лише після вмотивованого рішення суду.

Акцентується увага на тому, що місцеве самоврядування є такою ж конституційною конструкцією, як і державне. В Конституції України достатньо чітко прописаний статус органів місцевого самоврядування, зокрема їх функції та повноваження, які вони виконують в мирних умовах. Тому внесення змін до Конституції щодо питання функціонування місцевого самоврядування видається недоцільним. Додаткового законодавчого регулювання потребують питання функціонування місцевого самоврядування в період війни. Саме цим було зумовлено прийняття Закону України «Про прийняття змін до деяких законів України щодо функціонування державної служби та місцевого самоврядування у період дії воєнного стану», на основі якого були внесені істотні доповнення до законів «Про місцеве самоврядування в Україні» та «Про правовий режим воєнного стану». Останній законодавчий акт має особливе значення для конституційного правопорядку, він є своєрідним доповненням Конституції України, дія якого актуалізується в період війни.

**Ключові слова:** місцеве самоврядування; органи місцевого самоврядування; воєнний стан; правове регулювання функціонування місцевого самоврядування; військові адміністрації.