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ENSURING THE FUNCTIONING OF SOCIETY IN ACTIVITIES OF LOCAL GOVERNMENTS UNDER THE LEGAL REGIME OF MARTIAL LAW

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The scientific article is devoted to the study of the activities of local self-government bodies during the period of martial law in ensuring the functioning of society, characterization of the concept, competence and features of local self-government bodies, and types of local self-government bodies. The article examines the scientific and regulatory approaches to defining the most important functions of local authorities, in particular, ensuring the constitutional rights and security of citizens. Local self-government during the period of martial law faces many challenges on a daily basis. That is why this topic is extremely relevant and requires scientific substantiation and research. The decentralization reform has laid the foundation for the activities of competent local governments. However, the unjustified military aggression has changed the usual rhythm of work of regional and district councils, as well as local authorities. The peculiarity of this legal regime is the creation of temporary state bodies, including military authorities. They operate in parallel with autonomous local governments. However, there are cases when the military administration can assume the powers of local self-government bodies if the local council does not meet on time.

Local self-government in Ukraine is a right guaranteed and enforced by the state and a territorial community – a voluntary association of residents of a village, villages or several villages, cities – to address local issues within the limits determined by the current legislation, may be formed independently or subordinated to officials and self-government bodies. Local self-government is designed to strengthen the foundations of the constitutional order of Ukraine, ensure the implementation of constitutional principles, human and civil rights, create conditions for meeting the vital needs and legitimate interests of citizens, and develop local

democracy. During the legal regime of martial law, military authorities exercise the powers of local state authorities and part of local self-government bodies, as defined by the current legislation. Therefore, the role of local state authorities and local self-government bodies in ensuring the quality functioning of society is very important.

Key words: state; society; citizens; rights; legislation; local self-government; local self-government body; legal regime; martial law; war; powers; competence.

Formulation of the problem. Local governments are the closest authorities to people, as it is easiest to solve problems faced by the local population at the place where they occurred. Their proper functioning is the key to the well-being of community residents and society as a whole. For civil society and the state mechanism, the main problem is the trust and support of the population. Alienation of citizens from the authorities leads to confrontation and weakens the state mechanism. Local self-government is a special type of governance that ensures the exercise of the rights of local governments to independently resolve important local issues based on the interests of people and on the basis of legal acts.

An important task of local governments today is to protect the population from possible emergencies at the level of territorial communities. After all, local authorities make a lot of efforts to restore homes, schools, kindergartens, hospitals, important infrastructure, etc. In wartime, decentralization helps to strengthen the capacity of local governments and activate the initiative of citizens in solving problems of socio-economic development.

Today, the armed aggression of the Russian Federation remains the main threat to the security of the state in general, its regions and local authorities in particular. This requires local governments and the military to focus their efforts in this area. Despite all the problems caused by the war, local governments responded promptly to unforeseen challenges, ensuring the restoration of destroyed monuments and providing services to the population, creating jobs for internally displaced persons, attracting investment.

Analysis of the study of the problem. The following scholars have studied local self-government bodies, and their works have become the basis for this paper, in particular T. Steshenko, Y. Buglak, Ya. Bohiv, S. Gonchar, O. Hryn, M. Prokopyk, O. Skakun, A. Sukhorukova, V. Utvenko, V. Kravchenko, V. Borodin, E. Kvitka and other scholars.

The article is aimed to studying the work of local self-government bodies under the legal regime of martial law, and the functioning of society in the activities of local self-government bodies during the legal regime of martial law.

Presenting main material. People's sovereignty means that the people are officially the only source of power in the state and are recognized as the bearers of sovereignty. Citizens exercise their power in the country directly (through elections or referendums), as well as through local governments and state authorities. The basis of people's sovereignty in Ukraine is defined in Article 5 of the Constitution of Ukraine as the participation of the people in the governance of the state. These rights cannot be violated by the state or its bodies. This is due to the constitutional provision that the structure of local governments is not part of a single state mechanism. In this regard, local self-government can be considered as a separate form of government [1, p. 68].

In other words, the existence of the institution of local self-government for a modern democracy, i.e. the existence of a system of local self-government in which local communities – associations of urban, rural and territorial units – have real access to solve problems of local importance that relate to the life of the city, village or territorial unit independently and without state interference, is an indispensable condition. One of the objective reasons for the need for the institution of local self-government in a modern state is the theoretical possibility of discrepancies between the interests of the state (national interest) and the interests of the state on the ground (for example, in a particular place), especially of the community.

The Institute of Local Self-Government is called upon to reconcile these differences. Another reason is that central government regulation is virtually impossible, except for all problems that arise on the ground. The better the system of local self-government is developed, the fewer acute conflicts of interest there will be between the state and local communities, the less localized national life will be [2, p. 164].

Thus, local self-government of territorial communities is one of the international standards of a democratic society. The constitutionalization of local self-government is formed not only from legislative provisions, the source of which is the Constitution, but to a certain extent is the result of the country's international legal obligations. As a part of public administration, local governments are not integrated into the system of national authorities and are based on the principle of decentralization. They are subject to control by state authorities within the limits established by legal acts. They have their own organization, which is determined by constitutions and laws.

Therefore, it is worth noting that there are various approaches to understanding the meaning of local self-government, as well as the formation of different systems and models of local self-government due to a number of factors, including: historical development of states and localities, ethnic composition, social and economic level and trends in political development, etc.

In accordance with the Law of Ukraine "On Local Self-Government in Ukraine", local self-government in Ukraine is a state-defined right and real capabilities of a territorial community (a voluntary association of residents of a village, several villages, towns or cities – independent or subordinate to local self-government bodies and officials to solve important local problems within the framework of the Constitution and laws of Ukraine).

Therefore, local self-government is practically carried out by territorial communities of villages, towns, cities, through village, town, city councils and their executive bodies, as well as through district and regional councils representing the common interests of the territorial community of a village, town, or city [3].

Local self-government is seen as a means of improving the quality of life of citizens of a territorial entity, mainly aimed at solving issues of local importance, but this does not prevent the solution of municipal tasks on a territorial or national scale. Decisions of local self-government bodies should be made only in accordance with the law and subject to the provision of the necessary organizational, financial and material resources by local self-government bodies. Local self-government is based on a system of principles, the main of which is the principle of direct responsibility for decisions made, and involves the use of various forms of expression of citizens' will.

The most important tasks of local self-government are: strengthening the foundations of the constitutional order of Ukraine, ensuring the implementation of constitutional principles of people and citizens, establishing measures to ensure the basic vital needs and legitimate interests of society, and developing local self-government.

Local self-government is a special form of public authority that operates within the limits and in accordance with the procedure established by law, has a specific object of management compared to the state authorities, and its scope of competence is significantly and substantially limited. The competence of local self-government includes the authority to resolve issues of local importance and a limited range of issues of national importance that will be transferred to them to meet the daily needs of the population. Local self-government is exercised by a territorial community and has a spatial and local character, is carried out for the benefit of the territorial community and operates only within certain administrative-territorial units.

Local self-government in Ukraine is exercised by citizens in various organizational and legal forms. Taken together, these organizational and legal forms form a system of local self-government within the respective territorial entities and their communities, through which issues of importance to the local community are addressed. The system of local self-government is determined by the fact that it is based on the democratic principles of the organization of local self-government in Ukraine, built taking into account the role and functions of local government in the state, community, as well as historical and other local traditions and determined by the population of the respective territorial communities [4, p. 28].

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The unity of the local self-government system is also reflected in the distribution of subjects and powers between different forms and institutions of local self-government.

However, unlike state administrative bodies, which form a unified system throughout the state, local self-government bodies form a unified system only within the respective self-governing territorial entities, and local self-government institutions established within one self-governing territorial entity are completely independent of another territorial entity.

The basis of local self-government and its main feature is the territorial community, which occupies perhaps the most important place in the system of local self-government. The status of a territorial community is stipulated by the Constitution of Ukraine, the Law of Ukraine “On Local Self-Government in Ukraine”, and other regulatory documents and is defined as a single set of residents who mainly reside within a village or town and are an independent legal and administrative unit or a voluntary association of residents of many villages into a single administrative center.

The territorial community is constitutionally defined, on the one hand, as the main subject of local self-government, on the other hand, the nature of the members of this community is radically changing, at the local level they act not as citizens of the state, but as residents of the relevant territorial unit [3].

As for the powers of territorial communities, they, as subjects of local self-government, protect the interests of their residents before the state and are governed by representative bodies that comply with the Constitution of Ukraine and legal acts. Notwithstanding this, territorial communities also participate in local elections and support the activities of local self-government bodies, and exercise control over the activities of elected bodies and local self-government officials. Decisions on individual territories provide for the organization of public self-government bodies, the role of local councils in supporting these bodies and their own powers, and the creation of an autonomous financial basis for such bodies by virtue of legislative consolidation [4, p. 89].

The forms of direct expression of the will of territorial communities are: local referendums and elections, public hearings, local initiatives, general meetings of citizens at their place of residence, individual and written collective appeals, public works on the improvement of the territories of settlements, services to vulnerable social groups, recall of a deputy, participation in mass actions (rallies, pickets, strikes), etc.

In other words, Ukraine is a state that proclaims democratic values and constitutionally recognizes local self-government as an inalienable right of regional communities to independently resolve issues of local importance. At the same time, regional communities are deprived of real opportunities to address local issues in order to fully ensure the realization of the rights and freedoms of their residents as real holders of local power [5, p. 46].

Village, settlement, and city councils are local self-government bodies that represent the respective territorial communities, on their behalf and in their interests, exercise the functions and powers of local self-government management defined by the Constitution of Ukraine and other laws.

Regional and district councils are local self-government bodies representing the common interests of territorial communities of villages, towns and cities within the powers defined by the Constitution of Ukraine and other laws. The executive bodies of a village, town, city, or district council (if established) are executive committees, departments, offices, and other executive bodies established by the council.

However, due to Russia's full-scale military invasion of Ukraine, the situation in our country is different. This event changed the usual way of functioning of state structures and local self-government systems in particular.

Therefore, it was decided to introduce martial law in the territories in order to ensure the operation of the Constitution and laws of Ukraine, which, together with military administration, ensures the promulgation and implementation of measures of the legal regime of war, national defense, civil protection, public order and security, protection of critical infrastructure, protection of the rights, freedoms and legitimate interests of citizens, temporary and political authorities.

The decision to establish military administrations was made by the President of Ukraine upon the proposal of regional state administrations or military commands. The General Staff of the Armed Forces of

Ukraine directs, coordinates and controls the activities of the military administration of the district, and in other regions the Cabinet of Ministers of Ukraine within its powers. The power of the military government is exercised taking into account the peculiarities of martial law, namely:

- 1) powers to declare and enforce martial law measures;
- 2) powers in the sphere of socio-economic development in the respective territory: ensuring the efficient use of natural, labor and financial resources; participation of enterprises, institutions and organizations on a contractual basis, regardless of ownership, which are involved in the production of goods, performance of works (provision of services) required by the order of local self-government bodies; preparing and approving local budgets; making decisions on the establishment of regimes for the payment of local taxes and fees;
- 3) the right to manage housing and consumer services, commercial services, transport and communications facilities jointly owned by the respective territorial communities; provide the population with fuel, electricity, gas and other energy carriers; solve problems of water supply, sewage and wastewater treatment; solve problems of collection, transportation, treatment and disposal of household waste; approve routes and schedules of local passenger transport regardless of the form of ownership;
- 4) the right to manage educational, medical, cultural and sports facilities belonging to local self-government bodies; organize their logistical and financial support; provide cultural and amenity facilities;
- 5) the right to protection and defense in the respective territory: ensure the organization of citizens' regular military and alternative (non-military) service; take measures to create appropriate conditions for the functioning of checkpoints across the borders of Ukraine; establish enhanced protection of important objects of national;
- 6) the power to govern and manage: to cancel acts of executive bodies of the respective council that do not comply with the Constitution, laws of Ukraine and other legislative acts; to legislate rules for ensuring cleanliness and order in homes, markets, and public places, to make decisions on protection of the population and territories from emergencies, overcoming the consequences of emergencies, combating natural disasters, epidemics, epidemics; to make decisions on prohibition of trade in weapons, chemicals.

The military administration of one or several settlements is headed by a chief who is appointed and dismissed by the President of Ukraine upon the proposal of the General Staff of the Armed Forces of Ukraine or the governing body of the respective territory. The head of the military administration of a village (settlement) may be appointed by the respective village, town or city head.

Based on this, military administrations strengthen the efforts of local authorities, state institutions, local self-government bodies, public associations, enterprises, organizations and other organizations and the public sector, implement measures of the legal regime of martial law, defense, civil protection, public safety and order, protection of the rights, freedoms and legitimate interests of citizens.

An integral element of the local self-government system in Ukraine is the village, town and city mayor. However, their powers have changed somewhat during the Russian aggression in accordance with the Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law".

During martial law, village, settlement, city mayors may appoint persons to positions and dismiss from positions in local self-government bodies, heads of communal enterprises, institutions, organizations that belong to the sphere of management of the respective local self-government body.

During the martial law, a village, settlement, city head of a territorial community, on the territory of which no hostilities are conducted and no decision has been made to establish a military administration of the settlement (settlements), solely for the purpose of implementing the measures of the legal regime of martial law, may decide, with the obligatory notification of the head of the relevant regional military administration within 24 hours, to:

- 1) to free the community land from temporary structures that were built illegally, including equipment that was installed but not put into operation in accordance with the applicable law;
- 2) inspect buildings and structures damaged as a result of hostilities.

Thus, the law defines the legal framework for the activities of local governments under martial law. The unity of the local self-government system is due to the fact that it is based on the democratic principles of local self-government in Ukraine and is built taking into account the role and functions of local self-government, authority in society and the state, as well as other historical and local traditions and is determined by the population of the respective territorial communities. Despite all the difficulties, local governments continue to exercise their powers during martial law, but this has certain peculiarities.

Conclusions. Despite the difficult conditions of martial law in the country, the institution of local self-government not only continues to function, but also develops further. This once again demonstrates the effectiveness of this form of public authority; cooperation between government agencies, community representatives and civil society organizations, between community leaders and local government executive authorities, and representatives of public and non-governmental organizations continues. This is what contributes to the effective resolution of problems that arise in communities.

Openness, accountability and transparency of local authorities are integral elements of good governance. Local policies in various areas will be of higher quality if they are developed and implemented with the proper participation of various civil society organizations and interested citizens. The public demands a positive response from the government, and the government, in turn, cannot do anything without knowing how people understand and evaluate its efforts to address important social issues. Therefore, interaction with society is one of the most important areas of activity for government agencies.

The state mechanism of interaction with local governments that are not part of the system of state bodies is based on two legal bases. They stem from common tasks in the field of economic and social development. State bodies and local governments perform general social management functions by establishing and ensuring the activities of entities. However, in connection with the introduction of martial law in Ukraine, constitutional rights and freedoms of a person and citizen may be temporarily restricted, as provided for in Articles 30–34, 38, 39, 41–44, 53 of the Constitution of Ukraine.

REFERENCES

1. Bohiv Ya. S. (2014). *Mistseve samovriaduvannia yak odna iz form realizatsii pryntsyphu narodnoho suverenitetu* [Local self-government as a form of realization of the principle of people's sovereignty]. Chasopys Natsionalnoho universytetu "Ostrozka akademiia". Seriia : Pravo. Vyp. 2. Pp. 65–70. [in Ukrainian].
2. Frolov O. O. (2015). *Sutnist pryntsyviv mistsevoho samovriaduvannia* [The essence of the principles of local self-government]. Pravo ta innovatsii. Vyp. 4 (15). Pp. 164–168 [in Ukrainian].
3. *Pro mistseve samovriaduvannia* (1997, May, 21) No. 280/97-VR [About local self-government]. URL: <https://zakon.rada.gov.ua/laws/show/280/97-вр#Text> [in Ukrainian].
4. Kravchenko V. V., Borodin Ye. I., Kvitka S. A. (2018). *Mistseve samovriaduvannia v systemi publichnoho upravlinnia: navch. posibnyk v skhemakh* [Local self-government in the system of public administration: A Textbook]. Dnipro: HRANI, 148 p. [in Ukrainian].
5. Bohiv Ya. S. (2015). *Poniattia ta pryntsyphu mistsevoho samovriaduvannia* [Concept and principles of local self-government]. Visnyk Natsionalnoho universytetu "Lvivska politekhnikha". Seriia: Yurydychni nauky. Vyp. 827. Pp. 45–52 [in Ukrainian].

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ЗАБЕЗПЕЧЕННЯ ФУНКЦІОНУВАННЯ СУСПІЛЬСТВА У ДІЯЛЬНОСТІ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ ЗА УМОВ ДІЇ ПРАВОВОГО РЕЖИМУ ВОЄННОГО СТАНУ

У статті досліджено питання діяльності органів місцевого самоврядування у період дії правового режиму воєнного стану для забезпечення функціонування суспільства, характеристики поняття, компетенції та ознак органів місцевого самоврядування, видів органів місцевого самоврядування. Розглянуто наукові й нормативно-правові підходи до визначення найважливіших функцій місцевої влади, зокрема забезпечення конституційних прав та безпеки громадян. Місцеве самоврядування у період дії воєнного стану щоденно стикається з багатьма викликами. Саме тому ця тема є надзвичайно актуальною та потребує наукового обґрунтування та дослідження. Реформа децентралізації заклала основу для діяльності компетентних органів місцевого самоврядування. Проте невинуватна воєнна агресія змінила звичний ритм роботи обласної та районної рад, а також місцевої влади. Особливістю цього правового режиму є створення тимчасових державних органів, зокрема органів військового управління. Вони працюють паралельно з автономними органами місцевого самоврядування. Проте є випадки, коли військове управління може взяти на себе повноваження органів місцевого самоврядування, якщо місцева рада не збирається у встановлений термін.

Місцеве самоврядування покликане зміцнювати основи конституційного ладу України, забезпечувати реалізацію конституційних принципів, прав людини і громадянина, створювати умови для забезпечення життєвих потреб і законних інтересів громадян, розвивати місцеву демократію. Під час дії правового режиму воєнного стану органи військового управління здійснюють повноваження місцевих органів державної влади та частини органів місцевого самоврядування, визначені згідно з чинним законодавством. Тому дуже важлива роль місцевих органів державної влади та місцевого самоврядування у забезпеченні якісного функціонування суспільства.

Ключові слова: держава; суспільство; громадяни; права; законодавство; місцеве самоврядування; орган місцевого самоврядування; правовий режим; воєнний стан; війна; повноваження; компетенція.