

Organizational and Legal Principles for the Functioning of Public Administration Bodies Under the Legal Regime of Martial Law

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<http://doi.org/>

Abstract. The article examines the organizational and legal principles for the functioning public administration bodies in the context of the anti-terrorist operation and martial law. It is noted that one key features of governance in emergency situations is the possibility of creating temporary state bodies that take over some powers of local executive authorities and local self-government bodies. That is why the legal status of civil-military and military administration's powers, structure and interaction with other state bodies are analyzed. The legislative grounds for the creation of civil-military and military administrations are considered and attention is drawn to their role in ensuring the stability of public administration and public security, and the key challenges associated with their activities are outlined.

The study is based on the analysis regulatory legal acts, judicial practice and scientific works, which allows us to identify a number of problems related to the lack of constitutional consolidation of the legal status of military administrations, legal conflicts regarding the scope of the President's powers, changes in the status of local self-government and financing the activities these bodies. Special attention is paid to the accountability issue and military control administrations, which is complicated by their multi-vector activities and insufficiently defined control mechanisms.

On the basis of the analysis, the author suggests ways to improve the legal regulation functioning military administrations, in particular through improving the legislative framework, developing mechanisms for controlling their activities, financial support, and a clear definition of their powers. The results of the study have practical significance for improving the public administration system in crisis situations and can be used for the further legal development regulation of public administrative bodies in Ukraine.

Keywords: public administration, legal status, temporary state bodies, military-civilian administrations, military administrations, local self-government bodies, state executive bodies, anti-terrorist operation, special legal regime.

Introduction

The introduction of the legal regime of martial law significantly changes the system of public administration, as it provides special mechanisms for the exercise of power, aimed at ensuring national security, public order and the stability of state

institutions. Under martial law, public administration bodies operate in a special legal regime, which necessitates the adaptation of their functions, powers and interaction between state structures.

One of the key features of governance under martial law is the possibility of creating temporary

Suggested Citation:

Skochylias-Pavliv, O. (2025). Organizational and Legal Principles of the Functioning of Public Administration Bodies under the Legal Regime of Martial Law. *Veritas: Legal and Psychological-Pedagogical Research*, 1(1), 59–67. DOI:

Journal homepage: <https://science.lpnu.ua/veritas>

Article history: Received: 09.03.2025. Revised: 20.03.2025. Accepted: 30.05.2025.

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state bodies that take over some of the powers of local executive authorities and local self-government bodies. That is why an important aspect of the study is the legal status and functioning of military administrations, which ensures the implementation of martial law measures in the relevant territories.

First and foremost, the invasion of Russian troops in Ukraine in 2014 was the reason for the conduct of an anti-terrorist operation in the East of Ukraine. Under these conditions, it was necessary to adjust the work of local executive bodies and local self-government in the areas of the anti-terrorist operation. On February 3rd, 2015, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Military-Civil Administrations” [1], which provided for the establishment of such temporary bodies of public administration as military-civil administrations. The establishment of military-civil administrations became a necessary step to ensure effective management in crisis conditions.

In connection with these circumstances, it is important to clarify the legal status of public administration bodies, in particular military-civil and military administrations. This issue is not only the subject of scientific research, but also has direct significance for law enforcement practice, since the effectiveness of their work determines the state’s ability to ensure stability and order in crisis situations.

Literature Review

Despite the relevance of the issue of the legal status of military and civil-military administrations, most scientific works focus on the general aspects of the functions of public authorities under martial law, without paying sufficient attention to the specifics of legal regulation, powers, and interaction of civil-military and military administrations with other state structures.

In the scientific literature, much more attention is paid to the study of the features of the functions of military-civil administrations, which is quite natural, since they were created back in 2015 and have a longer period of practical existence. In particular, M. Anufriev was one of the first to analyze the administrative and legal status of military-civil administrations and other issues directly related to their activities, and formulated proposals for increasing the efficiency of their activities [2].

V. Dulger considers military-civil administrations as a unique form of civil-military relations in conditions of emergency legal regimes [3]. O. Zabozychuk studies military-civil administrations as a temporary state body that exercises powers characteristic of local authorities [4]. I. Ivanova, Yu. Panimash, K. Pasynchuk, S. Obrusna in their scientific research address the features of the administrative and legal status of public administration bodies of a military-civilian nature as subjects of public administration [5]. Military-civil administrations as a way of ensuring security and normalizing the life of the population in the area of the anti-terrorist operation are described by O. Sikorsky [6]. V. Shevchenko conducted a scientific analysis of the administrative and legal status of military-civil administrations at the level of a dissertation study [7]. Researcher V. Yatsyniuk analyzes military-civil administrations as a mechanism of rule-making activity during martial law [8]. However, this position of the author is inaccurate, since according to the Law of Ukraine “On the Legal Regime of Martial Law” in conditions of martial law, not military-civil, but military administrations function.

The legal status of military administrations is reflected in the works of V. Dulger “Military administrations as temporary state bodies with elements of military management organization within the security and defense sector of Ukraine” [9], V. Zinkevych “Problems of the legal status of military administrations” [10], O. Roy “Military administrations as subjects of power” [11], A. Tokar and R. Gavrik “Administrative and legal status of military administrations as subjects of public administration” [12], Y. Yakovchuk “Regional military administrations as temporary bodies of state local government” [13] and others.

Only some scholars, such as O. Bukhanevich [14], V. Govorov [15], O. Lyaluk [16], O. Chepel [17], addressed the issues of the distribution of powers between military-civilian and military administrations, as well as interaction with local authorities under the legal regime of martial law.

Thus, despite certain scientific developments in this area, the problem of the distribution of powers between public administration bodies under emergency regimes requires further research and practical developments to ensure effective management and protection of citizens’ rights under such conditions.

Purpose

The purpose of the study is to analyze the legal status and functioning of military-civilian administrations operating before the introduction of martial law in certain territories and military administrations under martial law in Ukraine, in particular the context of their impact on public administration and interaction with other state authorities. In accordance with the purpose, the following research tasks have been identified:

- determine the legal nature of military-civilian and military administrations as temporary bodies of public administration;
- to assess the legal and organizational aspects of the creation and functioning of military-civilian and military administrations in Ukraine;
- analyze the mechanisms of interaction between military-civilian and military administrations with local authorities and other state structures;
- to investigate current legal problems related to the implementation of martial law measures through military administrations, and to consider proposals for improving the legal regulation of their activities.

Methodology

The research methodology involves the use of a comprehensive approach and the use of both general scientific methods of understanding legal phenomena and special ones.

The formal-legal methods used in the analysis of legal facts through their logical interpretation using special legal terminology and constructions, was used for the analysis of regulatory legal acts regulating the activities of military-civilian and military administrations. The comparative legal method as a method of studying legal phenomena, which uses a system of techniques to identify their common and distinctive characteristics, as well as the formation of classification and typological groups, was used with the aim of comparing functions and powers of military-civilian and military administrations. The method of systems analysis which involves the study of a phenomenon as a single set of interconnected elements, made it possible to determine the structure and relationships between state bodies, military-civilian and military

administrations and other subjects of public administration, as well as assess the effectiveness of their functions in crisis conditions. The functional method, which involves the isolation of elements of interaction of various subjects or components and the determination of their role and significance, was used to determine the role and significance of individual legal norms, management mechanisms and procedures in ensuring the effective operation of public administration in special conditions. It made it possible to analyze how the functions of legal regulation change, what mechanisms of interaction between subjects of public administration are activated, and how they affect the implementation of administration tasks in wartime. The use of the doctrinal method made it possible to conduct analysis of regulatory legal acts, their interpretation, systematization of legal provisions and identification of law enforcement problems. This method helped to clarify how changes in legislation affect the organizational and legal structure of public administration, as well as to identify inconsistencies or gaps in legal regulation that complicate the effective functioning of government bodies during martial law.

Results and Discussion

Armed aggression by a terrorist state leads to significant changes in the functioning of public administration bodies, which requires the creation of temporary state bodies to ensure effective governance in wartime. Such a situation requires the adaptation of existing legal mechanisms and the introduction of new governance structures capable of responding to emergency circumstances, ensuring national security, stability and law and order, as well as performing the functions necessary to protect the rights of citizens and restore the normal functioning of the state in wartimes.

The outbreak of the armed conflict in 2014 led to the establishment of Donetsk and Luhansk regional, as well as a number of district, city, town and village military-civilian administrations as temporary state bodies. These administrations operated as part of the Anti-Terrorist Center under the Security Service of Ukraine or within the framework of the Joint Operational Headquarters of the Armed Forces of Ukraine. As of February 24,

2022, there were 2 regional and 19 city, town and village military-civilian administrations in operation [18]. This was the first unprecedented case in the history of independent Ukraine, the creation of state bodies of this type. However, the creation of military-civil administrations caused heated discussions among scientists not only regarding their competence, powers, but also regarding their constitutionality in general. Researchers V. Shevchenko, O. Lyaliuk, I. Koliushko considered the creation of military-civil administrations to be essentially unconstitutional, noting that the Constitution of Ukraine lacks norms regulating the creation of such bodies with elements of military organization of management [7; 16].

In accordance with the Law of Ukraine “On Military-Civil Administrations”, these bodies are formed as a temporary forced measure with elements of military organization of management, aimed at ensuring security and restoring normal life of the population in areas where the armed aggression of the Russian Federation is being repelled, in particular in the area of the anti-terrorist operation, without having the aim of changing or abolishing the constitutionally enshrined right of territorial communities to local self-government.

Military-civil administrations are temporary state bodies in villages, towns, cities, districts and regions that operate as part of the Anti-Terrorist Center under the Security Service of Ukraine (in case they are established to exercise the powers of the relevant bodies in the area of the anti-terrorist operation) or as part of the Joint Operational Headquarters of the Armed Forces of Ukraine (in case they are established to exercise the powers of the relevant bodies in the area of the implementation of measures to ensure national security and defense, repel and deter armed aggression of the Russian Federation in the Donetsk and Luhansk regions) and are intended to ensure the operation of the Constitutions and laws of Ukraine, ensuring security and normalization of the population’s life, law and order, participating in countering acts of armed aggression, sabotage and terrorist acts, preventing a humanitarian catastrophe in the area of repelling the armed aggression of the Russian Federation, in particular conducting an anti-terrorist operation [1].

In general opinion, there were two main reasons for the formation of military-civilian administrations. The first reason is due to the fact that a large number of public servants and employees of local government bodies defected to the enemy. This led to the actual paralysis of the normal functioning of local executive authorities and local self-government and the undermining of state control in these territories. Support for separatist sentiments among some local officials and their cooperation with the aggressor jeopardized stability and security in the regions affected by the armed conflict.

The second reason was the inability of the existing executive and local government bodies to exercise their powers due to circumstances caused by the armed conflict. In the context of armed hostilities, partial occupation and destabilization of local structures, local government and executive bodies were unable to perform their functions, in particular, in organizing security, providing administrative services, managing resources and coordinating activities in emergency conditions. The creation of military-civilian administrations became a necessary step to ensure state administration in these areas, performing key functions, restoring law and order and stability, as well as providing assistance to the local population in emergency conditions.

Thus, military-civilian administrations aimed to exercise the powers of local executive authorities and local self-government bodies, which led to the complexity of their legal status.

According to Article 4, Part 9 The Law of Ukraine “On the Legal Regime of Martial Law” [19] states that from the moment the military administrations of settlements begin to exercise their powers, the powers of the relevant military-civilian administrations of these settlements are automatically terminated. Similarly, in the event of the creation of district or regional military administrations, the powers of the relevant district and regional military-civilian administrations shall be terminated on the day the decree of the President of Ukraine on their establishment comes into force.

The full-scale Russian invasion on February 24, 2022 became the basis for the formation of such temporary bodies as military administrations, the legal status of which is regulated by the Law of

Ukraine “On the Legal Regime of Martial Law”. According to Article 4, temporary state bodies – military administrations – may be established in the territories where martial law has been introduced. Their main task is to ensure the operation of the Constitution and laws of Ukraine, as well as the joint implementation of measures of the legal regime of martial law with the military command. Military administrations carry out management in the areas of defense, civil protection, public security, law and order, as well as ensure the protection of critical infrastructure and the protection of the rights, freedoms and legitimate interests of citizens [19].

The decision to establish military administrations is made by the President of Ukraine upon the submission of regional state administrations or military command. Therefore, on February 24, 2022, by the Decree of the President of Ukraine “On the Establishment of Military Administrations”, 25 regional military administrations were established throughout the territory of Ukraine [20].

It is important to note that military administrations of settlements are established in the territories of those territorial communities where village, town, city councils, their executive bodies or the respective heads do not exercise the powers specified by the Constitution and laws of Ukraine. In addition, their establishment is possible in other cases stipulated by current legislation. The head of the military administration of a settlement (settlements) is the chief, who is appointed and dismissed from office by the President of Ukraine upon the proposal of the General Staff of the Armed Forces of Ukraine or the relevant regional state administration. The relevant village, town, city mayor may be appointed as the head of the military administration of a settlement (settlements). Military administrations of settlements are staffed by servicemen of military formations established in accordance with the legislation of Ukraine, as well as by members of the rank and file and command staff of law enforcement agencies and the civil protection service. In addition, military administrations may include employees who have concluded employment contracts with regional military administrations (if they have been established) or with the General Staff of the Armed Forces of Ukraine (in the absence of a

regional military administration in the relevant region).

In the district and region, military administrations are formed in the following cases: failure to convene a session of the district or regional council within the established deadlines By the Law of Ukraine “On Local Self-Government in Ukraine”, termination of the powers of the district, regional council in accordance with the law, to exercise leadership in the field of ensuring defense, public security and order. In the event of a decision to establish district or regional military administrations, the relevant district and regional state administrations acquire the status of military administrations. At the same time, the heads of these administrations receive the status of heads of the relevant military administrations. The positions of civil servants in such administrations may be replaced by servicemen of military formations formed in accordance with the laws of Ukraine, by ordinary and commanding personnel of law enforcement agencies, civil protection services, who are seconded to them in accordance with the procedure established by law.

Military administrations of settlements are formed from servicemen of military formations formed in accordance with the laws of Ukraine, members of the ranks and command staff of law enforcement agencies, civil defense services, who are seconded to them in accordance with the procedure established by law to perform tasks in the interests of state defense and its security, while remaining in military service, service in law enforcement agencies, civil defense agencies and units without being excluded from the lists of personnel, as well as employees who have concluded an employment contract with regional military administrations (in the event of their formation) or with the General Staff of the Armed Forces of Ukraine (if a regional military administration has not been formed in the relevant region).

Analysis of the above provisions of the Law of Ukraine “On the Legal Regime of Martial Law” indicates a number of legal features that determine the status and powers of military administrations. At the same time, their practical implementation faces a number of problems that require additional legal regulation. Among the main challenges that arise in

the process of creating and operating military administrations, the following problematic aspects should be highlighted:

1) the lack of constitutional provisions directly providing for the creation of military administrations;

2) the scope of the President's powers to create military administrations goes beyond the constitutionally provided powers;

3) change in the status of local self-government, since military administrations actually replace local self-government bodies, which contradicts the principle of decentralization enshrined in Chapter XI of the Constitution of Ukraine;

4) the transfer of financial costs, which arises from Part 6 of Article 4 of the Law of Ukraine "On the Legal Regime of Martial Law", which assigns the financing of the activities of military administration to perform the powers of local self-government bodies, local budgets, although local councils transfer their powers;

5) the complexity of the processes of accountability, control and responsibility, since the multi-vector nature of the areas of activity leads to ambiguity in determining the mechanisms of control and coordination. Military administrations simultaneously perform the functions of local executive bodies, local self-government bodies and implement measures of the legal regime of martial law, defense, civil protection, public safety and order, as well as the protection of critical infrastructure. This leads to legal uncertainty regarding their accountability and mechanisms for holding them accountable for the decisions they make.

As in the case of military-civilian administrations, military administrations actually takes over the powers of local self-government bodies and local executive bodies, which determines their dual legal status, and also raises the question of the termination of the powers of the relevant councils. Such legal uncertainty was resolved by the Supreme Court. In the Resolution of October 18, 2023 in case No. 620/7714/22, the Supreme Court expressed the position according to which the Law of Ukraine "On the Legal Regime of Martial Law" in any case does not provide for the termination of the powers of regional, district councils, but only establishes that such (fully or partially) may be temporarily, within

the time limits specified by this law, transferred to temporary state bodies – military administrations. The formation of such temporary state bodies by the President of Ukraine is not an independent and sufficient basis for the termination of the powers of regional, district councils during the period of martial law [21].

Another controversial issue that arises in practice is the scope of powers of military administrations. Indicative in this case is the case in which a deputy of the district council submitted an application for the resignation of the deputy's powers at his own request to the head of the district state administration, the head of the district military administration. However, they reported that the powers of the district military administrations do not include resolving the issue of early termination of the powers of deputies of district councils. This position was supported by the Donetsk District Administrative Court, substantiating it with Part 3 of Article 15 of the Law of Ukraine "On the Legal Regime of Martial Law", according to which military administrations are vested with only a certain limited list of powers that usually belong to district councils. Therefore, although the district military administrations have a significant amount of powers, they do not have the right to make decisions on the early termination of the powers of deputies of district councils, since this is not included in the list of their competences defined in the law [22].

In our opinion, this position of the court is justified, as it complies with the norms of Part 3 of Article 15 of the Law of Ukraine "On the Legal Regime of Martial Law". This norm clearly stipulates that military administrations receive only a certain limited list of powers that usually belong to the relevant local government bodies, but not all of their functions. Since the law does not grant military administrations the right to make decisions on the early termination of the powers of deputies of district councils, the court reasonably concluded that they do not have such competence.

Of course, this is a pressing issue, the final decision of which belongs to the Supreme Court, which must form a unified legal position on the limits of the powers of military administrations in such cases.

Given the above, the primary task is improving the legal regulation of the functioning of military administrations, in particular through improving the legislative framework, developing mechanisms for controlling their activities, financial support, and a clear definition of their powers.

Conclusions

The study of the organizational and legal principles of the functioning of public administration bodies under martial law confirmed their important role in ensuring national security, public order and the stability of public administration. The introduction of military-civilian and military administrations became a forced step aimed at supporting state control in regions where local authorities cannot carry out their functions.

The legal regulation of the activities of military administrations is complex and combines elements of civil and military administration, which allows for a prompt response to the challenges associated with armed conflict. At the same time, the effective functioning of these bodies requires clearly defined legal mechanisms that will ensure a balance between centralized management and democratic principles.

The results of the study indicate the need for further improvement of the legislative framework, taking into account the practical aspects of the

functioning of military administrations, as well as developing approaches to their integration into the general system of public administration in emergency situations.

Prospects for further research include an analysis of the mechanisms of legal regulation of military administrations, their interaction with state and local authorities, the study of international experience in crisis management, and the development of proposals for improving legislation.

Acknowledgements. None.

Funding. The author declares no financial support for the research, authorship, or publication of this article.

Author contributions. The author confirms sole responsibility for this work. The author approves this work and takes responsibility for its integrity.

Conflict of interest. The author declares no conflict of interest.

Institutional review board statement. Not applicable.

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**Організаційно-правові засади функціонування органів публічної адміністрації
в умовах правового режиму воєнного стану**

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Анотація. У статті досліджуються організаційно-правові засади функціонування органів публічної адміністрації в умовах антитерористичної операції та воєнного стану. Зазначено, що однією з ключових особливостей управління в надзвичайних умовах є можливість створення тимчасових державних органів, які перебирають на себе частину повноважень місцевих органів виконавчої влади та

органів місцевого самоврядування. Саме тому аналізується правовий статус військово-цивільних та військових адміністрацій, їхні повноваження, структура та взаємодія з іншими державними органами. Розглядаються законодавчі підстави для створення військово-цивільних та військових адміністрацій, звертається увага на їхню роль у забезпеченні стабільності публічного адміністрування та громадської безпеки, а також окреслюються ключові виклики, пов'язані з їхньою діяльністю.

Дослідження ґрунтується на аналізі нормативно-правових актів, судової практики та наукових праць, що дає змогу виявити низку проблем, пов'язаних із браком конституційного закріплення правового статусу військових адміністрацій, правовими колізіями щодо обсягу повноважень Президента, зміною статусу місцевого самоврядування та фінансуванням діяльності цих органів. Окрему увагу присвячено питанню підзвітності та підконтрольності військових адміністрацій, що ускладнюється їхньою багатовекторною діяльністю та недостатньо визначеними механізмами контролю.

На основі проведеного аналізу запропоновано шляхи вдосконалення правового регулювання функціонування військових адміністрацій, зокрема через удосконалення законодавчої бази, розробку механізмів контролю за їх діяльністю, фінансового забезпечення та чіткого визначення їхніх повноважень. Результати дослідження мають практичне значення для вдосконалення системи публічного адміністрування в умовах кризових ситуацій та можуть бути використані для подальшого розвитку правового регулювання органів публічної адміністрації в Україні.

Ключові слова: публічне адміністрування, правовий статус, тимчасові державні органи, військово-цивільні адміністрації, військові адміністрації, органи місцевого самоврядування, органи державної виконавчої влади, антитерористична операція, особливий правовий режим.