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Activities of military administrations under martial law in Ukraine

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Abstract

The relevance of the subject under study is conditioned upon the fact that in Ukraine, during the period of the legal regime of martial law, special bodies of public power with the powers of a military management organization can be created. Such bodies are military administrations and civil-military administrations, whose separation of powers is a complex process that requires more research. The purpose of this study was the legal characterization of the activities of special bodies in the conditions of military threats in Ukraine and the formation of proposals for improving the legislation in the area under study. The methods employed for this study include comparative, system-structural, comparative legal, formal legal, and systematization. The results established that in the conditions of a full-scale invasion, supporting the proper level of activity of public administration bodies is a necessary component in the fight against the enemy that encroaches on the territorial integrity of the state. It was found that ordinary citizens often identify the activities of military administrations and military civil administrations, which have different powers. This paper argues the need to outline basic provisions in the Constitution of Ukraine regarding the organization of the activities of military administrations to harmonize the provisions of the Law of Ukraine "On the Legal Regime of Martial Law" with the provisions of the Constitution of Ukraine. The relevant practices of Israel and the United States of America were analysed. It was proposed, following the example of Israel, to introduce separate zones in Ukraine, considering the level of potential or existing military threat, and, depending on this, to give military administrations proper autonomy and powers. The materials of this study can be useful in studying the disciplines "Military law", "Municipal law", "Administrative law" since this study distinguishes the powers of military civil administrations and military administrations and provides examples of positive foreign practices in organizing the activities of public authorities in the context of military threats

Keywords: military aggression, local authorities, public administration, military-civil administrations, legal regime of martial law

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Introduction

At the end of February 2022, according to the Decree of the President of Ukraine, a legal regime of martial law was introduced throughout Ukraine in connection with the full-scale invasion of the Russian Federation (Decree of the President of Ukraine "On the Introduction...", 2022). Simultaneously with the introduction of martial law, pursuant to the Decree of the President of Ukraine No. 68/2022, twenty-five special bodies with military powers were created – regional military administrations and the Kyiv Military Administration based on the existing regional administrations and the Kyiv City State Administration. Furthermore, district military administrations were created at the district levels to replace the existing district state administrations. However, this does not mean the cessation of the activities of state authorities and local self-government bodies, which are defined by the Constitution of Ukraine and the laws of Ukraine (Decree of the President of Ukraine "On the Formation...", 2022).

Notably, even before the full-scale invasion on the territory of Ukraine, since 2014, military actions have been taking place within the Donetsk and Luhansk regions (the area of the Anti-Terrorist Operation and the Joint Forces Operation). Thus, within these areas, military civil administrations were established with a different legal status from military administrations.

The purpose of the present study was to analyse the activities of military administrations, created by the Decree of the President of Ukraine as a result of active offensive, military actions of the Russian Federation, to outline the differences between military-civil administration and military administration, to describe the foreign practices of military administrations with the possibility of implementing them in Ukraine.

To fulfil the outlined purpose, it was necessary to complete the following tasks: to analyse the relationship between the declared war and martial law and the need for the existence of military administrations; characterize the powers of the military administration, considering the amendments introduced in recent years to the Law of Ukraine "On the Legal Regime of Martial Law" (2015); to figure out the correlation between the military administration and the military-civil administration, to define their common and distinctive features; to describe the foreign practices of the military administration and provide recommendations and suggestions for improving the current legislation governing this sphere of public relations.

The analysis of the latest research and publications indicates the relevance of certain aspects of the activities of special bodies of state power and local self-government in the conditions of martial law for the scientific community. Separately, it is worth noting the studies of V.V. Dulger (2018; 2019), who investigated the question of the affiliation of military administrations to security and defence bodies of Ukraine. Furthermore, Dulger's

classification of measures of the legal regime of martial law deserves attention.

It is also necessary to consider the study of D.O. Kuzmenko (2020), who covered the features of the exercise of state power in frontline zones, namely the interaction of military civil administrations with state authorities and local self-government. The researcher also analysed the positive foreign practices of organizing the activities of state authorities in the context of military threats.

In her thesis "Administrative legal status of military-civil administrations", V.I. Shevchenko (2019) carried out a legal analysis of military-civil administrations within the Donetsk and Luhansk regions. Shevchenko also addressed the structural modernization of state authorities and local self-government in areas of potential danger, for their effective organization and interaction. There is also a distinction between managerial functions in the activities of military-civil administrations, proceeding from the specifics of their powers.

O.Yu. Lialiuk (2022) performed a comparative analysis of military and military-civil administrations in the current conditions. The author concluded that the model of organization of modern territorial power should make provision for uniform approaches to the formation of military, including military-civil, administrations in all administrative-territorial units of a particular territory.

In his study "Features of the activities of military administrations in the conditions of martial law", V. Bortniak (2022) analysed the powers of military civil administrations according to the provisions of the legislation on the legal regime of martial law and on local self-government.

This is the first study to analyse the activities of newly created military administrations, identify shortcomings in the statutory regulation of the activities of such administrations, and propose ways to eliminate these shortcomings.

Materials and Methods

Within the framework of this study, a complex of general scientific and special legal methods was used. Thus, the comparative method was used to analyse the relationship between the introduction of martial law and the need for the existence of specific military bodies. The system-structural method was used to analyse the principal regulations and sub-legislative acts defining the activities of military administrations in Ukraine. The comparative legal method was used to identify the common and distinctive features in the legal status of the military administration and the military-civil administration, as well as to analyse the positive foreign practices of the existence of special bodies in the conditions of military conflicts. The formal legal method allowed defining the concept of the legal status of military

administrations in Ukraine. The systematization method was used to formulate proposals for regulatory support for the activities of military administrations.

When analysing the key aspects of the activities of military administrations created by the Decree of the President of Ukraine, some regulations and sub-legislative acts were used. Specifically: the Constitution of Ukraine (1996); the Law of Ukraine "On the Legal Regime of Martial Law" (2015), the Law of Ukraine "On the Defence of Ukraine" (1991), the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" (2022), the Decree of the President of Ukraine "On the Formation of Military Administrations" (2022).

Results and Discussion

The relationship between war and martial law and the need to create military administrations

At the beginning of the 21st century, one of the manifestations of the new world order was the gradual transformation of such a socio-political phenomenon as war. The key signs of war can be a transformed set of means to ensure the political goals of war, including non-military means and means of armed struggle; an increased list of subjects of struggle (not only state formations take part, but also other paramilitary or terrorist formations); an increase in the time frame for purely armed struggle, etc. To date, the largest military conflict is taking place in Ukraine, the consequences of which are spreading to the entire world (Kopytko *et al.*, 2022b).

War is a process aimed at resolving state, religious, economic, as well as socio-political and ideological conflicts (contradictions) between nations, state entities, peoples and social groups through armed violence. The war causes changes in all spheres of social life universally: political, economic, social, spiritual, since they are fundamentally restructured into a military system. This happened to Ukraine as a result of a full-scale invasion of the Russian Federation (Kopytko *et al.*, 2022a).

A declaration of war is usually accompanied by the following essential signs:

- 1) severance of any consular and diplomatic, economic and cultural-economic or other relations between states;
- 2) cancellation of any peacetime treaties and agreements, except for those regulating the conduct of war or concluded specifically in case of war;
- 3) introduction of a special legal regime that may have signs of partial restriction of rights and freedoms; the transformation of the entire political system, which begins to perform some specific functions caused by the war and aimed at victory;
- 4) waging war in a specific area (land, sea, or air), called a theatre of war or theatre of military actions, that has the potential to develop hostile activities (Pankevych & Slovka, 2020).

Although it is worth noting that the neighbouring state has not formally declared war on Ukraine, the

actions of the Russian Federation and the above-mentioned signs of war fully confirm that there is a war in Ukraine. It should be recalled that for the first time since the independence of Ukraine, martial law was introduced in November 2018 at an extraordinary meeting of the Verkhovna Rada of Ukraine. The introduction of such a legal regime became necessary in connection with the aggression of the Russian Federation in the Kerch Strait. Specifically, back then martial law was introduced only in certain territories bordering the Russian Federation and regions of Moldova not controlled by the government of the country (namely in Chernihiv, Kherson, Kharkiv, Sumy, Odesa, Mykolaiv, Luhansk, Zaporizhzhia, Donetsk, Vinnytsia regions, and internal waters of the Azov-Kerch water area). The aggression of the Russian Federation forced the then authorities to take such a necessary step to preserve the state sovereignty, territorial integrity, and independence of Ukraine. Martial law was imposed only for a month, although the armed aggression of the Russian Federation continues to this day.

As for the essence of martial law, there is a special legislative act – the Law of Ukraine "On the Legal Regime of Martial Law" (2015) (Law No. 389-VIII). According to Article 1 of Law No. 389-VIII, martial law is recognized as "a special legal regime introduced in Ukraine or in some of its localities in case of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and stipulates granting the relevant state authorities, military command, military administrations, and local self-government bodies the powers necessary to prevent the threat, repel armed aggression, and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as temporary, conditioned by the threat, restriction of constitutional rights and freedoms of human and citizen and rights and legitimate interests of legal entities with an indication of the validity period of such restrictions". Apart from Law No. 389-VIII, the legal grounds for the introduction of martial law are determined by the provisions of the Law of Ukraine "On Defence of Ukraine" (1991). This Law also defines martial law identically to the definition outlined in Law No. 389-VIII, and therefore there is no need for its separate indication.

Analysing the legislative definition of the concept of martial law, it is possible to distinguish the following features: it is a special type of legal regime; it may prescribe restrictions on the rights and freedoms of a human and a citizen regulated by the Constitution of Ukraine; it can be established on the entire territory of Ukraine or be limited to its individual localities; it has a clearly outlined purpose – to eliminate the danger to the state independence of Ukraine, to repel armed aggression; it may stipulate the granting of special powers and jurisdiction to state authorities, local self-government bodies, which are necessary for such bodies

to avert the threat and repulse armed aggression; the introduction of such a state does not mean a declaration of war, since it is a response to armed aggression and an existing external threat to sovereignty and territorial integrity; it makes provision for the creation of special military bodies with defined powers – military administrations, etc.

Considering the fact that one of the signs of martial law is the possibility of transferring special powers for armed resistance, there is a need for special bodies of state power and local self-government.

Thus, the Decree of the President of Ukraine No. 68/2022, which was mentioned at the beginning of this paper, created such temporary authorities – military administrations.

Analysis of Article 4 of Law No. 389-VIII indicates that to ensure the validity of the norms of the Constitution of Ukraine and maintain law and order in those territories where the legal regime of martial law has been introduced, special temporary state structures – military administrations – may be formed.

Therewith, the Constitution of Ukraine (1996) does not consolidate the activities of such bodies of emergency jurisdiction, grounds, and procedure for their formation. Although Ukraine has been living in a military conflict with a neighbouring state for eight years, the definition of such state authorities with elements of a military management organization should be reflected in the Constitution of Ukraine.

Article 15 of Law No. 389-VIII contains an inexhaustible list of powers of military administrations of localities and district regional military administrations. The key powers are as follows: the introduction and implementation of the measures of the legal regime of martial law; drafting and approving the local budget or introducing changes to it; ensuring rational and effective use of financial, natural, and labour resources; aid to owners of houses (apartments) affected by military operations in the form of reconstruction of such housing; facilitating the organization of conscription of citizens for non-military or temporary military service, including mobilization; organization of activities related to civil protection and mobilization training; facilitating the activities of judicial bodies, prosecutor's offices, the National Police, etc.

Therefore, the above-mentioned powers of military administrations can be divided into those related to the introduction of a legal regime of martial law and those unrelated to such a regime and closely intertwined with the powers of the relevant local, district, or regional council. Considering the current conditions in which military administrations operate, it can be reasonably stated that in territories where there are no military operations and which are not front-line, military administrations have powers only directly related to the imposed martial law (e.g., the Kyiv Military Administration).

Comparative legal analysis of the activities of military-civil and military administrations

Within the framework of the present study, it is also necessary to point out the possibility of creating military-civil administrations, which are often identified with military administrations. The existence of the first military-civil administrations was connected with the need to organize the activities of local authorities in the territory where the Anti-Terrorist Operation was carried out. Such bodies played the role of chief advisers to the authorities and performed the following official and combat tasks: 1) establishing and maintaining communication with the civilian population at the appropriate level, promoting cooperation, harmonization, exchange of information, ensuring integrated planning and conduct of operations; 2) defining and explaining military goals, tasks, and concepts of operations (to ensure proper security and control of operations with classified materials); 3) promoting parallel and, where possible, integrated planning of further operations between the military forces and the friendly civilian population (where the involvement of community groups in planning is possible); 4) integration with other types of personnel in all aspects of activities; 5) continuous assessment of the operational environment, including local needs and unequal opportunities for problem-solving; 6) act towards timely and uninterrupted transfer of responsibilities to the relevant state bodies (Komisarov *et al.*, 2018).

However, the legal regulation of such special state bodies is different. Thus, the validity of military-civil administrations is regulated pursuant to the provisions of the Law of Ukraine “On Military-civil Administrations” (2015), whereas military administrations are governed by the Law “On the Legal Regime of Martial Law” (2015). Considering the activities of such special bodies in general, it is possible to determine that in case of the creation of a military-civil administration, such a body takes over all the powers of a local self-government body, which in turn entails the termination of the activities of such local self-government body, whereas the military administration can exist alongside the local self-government body. Furthermore, military administrations would differ in the purpose of their creation. Specifically, military administrations aim to ensure compliance with the Constitution of Ukraine and the Laws of Ukraine, to implement the measures of the legal regime of martial law, protect the rights and legitimate interests of the population. Military-civil administrations are created to exercise the powers of local state authorities and local self-government bodies in areas of active military aggression.

Foreign practices of military administrations and modern organization of military administrations in Ukraine

For Ukrainian legislators, it is important to consider foreign practices in regulating a certain sphere of public

relations and the possibility of adopting their positive aspects. Practices in organizing the activities of military administrations is no exception.

For the first time, the activities of the military administration were introduced in Israel back in the 1940s. Thus, in 1948-1949, the activities of military administrations were characterized by the fact that they supervised the movement of Arabs; increased the number of control bodies in the territories where the majority of the Arab population was stationed (including the Northern Negev, Galilee, and the small triangle); in cases of active armed aggression from neighbouring states, they prevented attempts to activate the local Arab population to promote the spread of armed aggression (a crucial function in Ukrainian realities). Furthermore, military administrations had the power to prevent the creation of Arab nationalist organizations whose ideological appeals were anti-Israeli, including the ability to respond quickly to crimes committed against the state (Neuberger, 1998).

The military administration comprises three districts: Southern, Northern, and Central. At the head of each district, a military governor was appointed, who also had a wide scope of powers. Such a governor was guided by a special legislative act – the Code on Defence. The governor's key powers were as follows: imposition of administrative or house arrest measures on any resident within their administrative-territorial unit; liquidation of a certain public organization or prevention of its creation; measures to restrict freedom of movement; deportation measures; decision-making on property confiscation or house demolition; establishment or cancellation of the curfew, introduction of measures to restrict employment, etc. (Kuzmenko, 2020).

Even though Israel still lives in a rather turbulent situation, it is precisely this administrative system that has existed in the state for decades. The division of problem territories into three zones with the corresponding level of autonomy and distribution of powers can be a positive practice for Ukraine.

In addition, within the scope of the present study, it should be mentioned that the United States of America was also faced with the issue of creating military administrations on Japanese territories. Specifically, in 1945, based on the results of military operations, the state authorities of the United States of America took some measures aimed at developing a new system of administration in Okinawa. Thus, the military administration was headed by mayors who had assistants. Such positions were elected and formed from among local residents. The first elections to form a local branch of government were held in 1945. At that time, Okinawa was divided into sixteen districts. Notably, the policy of the United States of America was generally characterized as positive towards local residents. After all, building a new administrative management system

by actively involving local residents has gained trust among Okinawans (Neuberger, 1998).

Consequently, the activities of military administrations were directly related to the local residents who inhabited the relevant territory.

Since in the 21st century, Ukraine is living in the conditions of military aggression of a neighbouring state, foreign practices are extremely limited for application. At the same time, the Ukrainian public administration bodies have an increased responsibility to organize a suitable level of management.

Conclusions

The organization of public power in Ukraine has different forms of manifestation depending on the region. The territorial organization of power can be considered as an organizational and functional characteristic of public institutions of the state, which reflects the correlation with the territory within which it operates. As it was found out and argued, military administrations have a special connection in the context of the introduction of a legal regime of martial law – as specific authorities with elements of a military management organization. Thus, military administrations have a complex legal nature, which is reflected in a special connection with 1) local authorities, which can partially transfer certain powers to the military administration; 2) citizens who inhabit the relevant administrative-territorial unit and to ensure whose rights, freedoms, and legitimate interests they are created; 3) the higher bodies of state power, created to ensure the defensive capability to resist the enemy.

It was found that there are cases of identification of the legal status of military administrations and military-civil administrations, even though the Law of Ukraine "On the Legal Regime of Martial Law" governs the activities of military administrations, and military-civil administrations – by the Law of Ukraine "On Military-Civil Administrations". Furthermore, it was found out that such special authorities have different goals of creation.

The need to amend the Constitution of Ukraine is argued, since the fundamental law of Ukraine does not establish the basic principles of the activities of such specific bodies as military administrations and military-civil administrations. Thus, the Constitution of Ukraine should consolidate both the general principles of military cooperation and the particular institutional foundations of these bodies.

Considering the absence of military conflicts on the territory of states of the world in recent decades, except for some, the practices of Israel and the United States of America were analysed. Thus, a positive practice of organizing the activities of military administrations in Israel for Ukraine might be the introduction of separate zones in Ukraine, according to the level of

danger, and depending on this, provision of military administrations with the proper level of autonomy and powers.

Further research may involve the analysis of the activities of military administrations in the territories of

active combat operations or those that are under temporary occupation. After all, it is simply impossible to investigate their activities in the current conditions of warfare, and this issue should be re-addressed in the aftermath of hostilities.

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Особливості діяльності військових адміністрацій в умовах воєнного стану в Україні

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Анотація

Актуальність обраної проблематики зумовлено тим, що в Україні на період дії правового режиму воєнного стану можуть створюватися особливі органи публічної влади з повноваженнями військової організації управління. Такими органами є військові адміністрації та військово-цивільні адміністрації, розмежування повноважень яких – це складний процес, що потребує додаткового дослідження. Метою дослідження виступає правова характеристика діяльності особливих органів в умовах воєнних загроз в Україні та формування пропозицій щодо удосконалення законодавства в досліджуваній сфері. Методами дослідження стали компаративний, системно-структурний, порівняльно-правовий, формально-юридичний та метод систематизації. Результатами дослідження встановлено, що в умовах повномасштабного вторгнення підтримання належного рівня діяльності органів публічної адміністрації – необхідний компонент у боротьбі з ворогом, що посягає на територіальну цілісність держави. Визначено, що часто пересічні громадяни ототожнюють діяльність військових адміністрацій та військових цивільних адміністрацій, які мають різних обсяг повноважень. Аргументовано необхідність визначення в Конституції України базових положень щодо організації діяльності військових адміністрацій з метою узгодження положень Закону України «Про правовий режим воєнного стану» з нормами Основного Закону. Проаналізовано відповідний досвід Ізраїлю та Сполучених Штатів Америки. Запропоновано за прикладом Ізраїлю запровадити в Україні окремі зони, враховуючи рівень потенційної чи наявної військової загрози, і залежно від цього наділяти військові адміністрації належними автономією та повноваженнями. Матеріали цього дослідження можуть бути корисними під час вивчення дисциплін «Військове право», «Муніципальне право», «Адміністративне право», адже в дослідженні здійснено розмежування повноважень військових цивільних адміністрацій та військових адміністрацій, зокрема наведено приклади позитивного зарубіжного досвіду щодо організації діяльності органів публічної влади в умовах воєнних загроз

Ключові слова: військова агресія, органи місцевої влади, публічне управління, військово-цивільні адміністрації, правовий режим воєнного стану
