



THE ADMINISTRATIVE AND LEGAL STATUS OF MILITARY ADMINISTRATIONS IN UKRAINE DEPENDING ON THE ORDER OF THEIR CREATION

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DOI: <https://doi.org/10.61345/1339-7915.2024.2.16>

Annotation. The article is dedicated to the study of the system of public administration under martial law and the administrative and legal nature of military administrations. The author notes that the military administrations are a new and less studied institution of public administration for the modern stage of state formation.

The author aims to research the priority directions for improving the public administration system under martial law, outline the strategic orientations of the state's development and the optimal institutional model of public administration under martial law.

It has been found that, depending on territorial competence, subordination, grounds and order of formation and termination of activities, as well as the order of recruitment, military administrations are divided into: 1) regional military administrations; 2) district military administrations; 3) military administrations of settlements. At the same time, the powers of regional and district military administrations are completely identical, and therefore, the author believes that there is no reason to distinguish them into separate levels for the purposes of this study. Regional and district military administrations are one type of administration, as opposed to military administrations of settlements.

It has been proved that the Law of Ukraine "On the Legal Regime of Martial Law" does not contain an exhaustive list of grounds for terminating the powers of local self-government bodies of settlements and, accordingly, legal grounds for the formation of military administrations of settlements.

The author proves that the military administration in the city of Kyiv could be formed only as a military administration of the settlement, that is, in the event of failure by the Kyiv City Council and/or the executive body of the Kyiv City Council to exercise the powers assigned to them. Considering that the Kyiv City Council continues to exercise, and the executive body of the Kyiv City Council exercised its powers before receiving the status of the Kyiv City Military Administration, the formation of the Kyiv City Military Administration seems legally problematic.

It has been argued that the legislator has established different approaches to determining the fate of regional, district local state administrations and military-civilian administrations after the introduction of the legal regime of martial law and the formation of military administrations. This approach of the legislator seems unreasonable and gives rise to a number of problems.

Key words: military administrations, military administrations of settlements, regional and district military administrations, the legal regime of martial law, public administration under martial law, institutions of public administration, the President of Ukraine.

1. Introduction.

The use of special forms and methods of exercising state power under martial law is conditioned by the need for a timely response to threats of a military, political and economic nature, within which

the use of ordinary, traditional legal mechanisms of public administration by state authorities and local self-government is not always sufficient.

With the introduction of martial law in Ukraine, a number of problems arose related to the implementation by local authorities of the powers assigned to them, which negatively affected the life and safety of the population of the corresponding territorial communities [17]. Given this, the need arose to search for a new mechanism for public administration of territories in the conditions of armed aggression of the Russian Federation (hereinafter referred to as the RF) and to determine the powers of local executive authorities and local self-government bodies in these territories.

As evidenced by practice and modern administrative and legal research, public administration bodies that functioned in peacetime, in the event of emergency circumstances, as a rule, cannot act quickly due to the complexity of tasks and the increase in their volume [10, p. 96–99]. Under such conditions, there is a need to create a system of emergency authorities that would be able to mobilize society to fight the emerging danger. At the same time, various public administration systems can be introduced in such conditions.

Usually, when the legal regime of martial law is introduced, the existing bodies of executive power are preserved, but become directly subordinated to the head of state and/or the commander-in-chief; to coordinate efforts to eliminate the circumstances that led to the introduction of this regime; temporary special bodies of public administration are created in case of improper implementation of their functions by the bodies of state power and administration.

The introduction of the legal regime of martial law in Ukraine created special conditions for the activities of executive authorities, local self-government, law enforcement agencies, military formations, etc. Complicating the process of public administration, these conditions provoked the need for special legal, organizational and logistical support and require the creation of new public administration bodies that are not typical for ordinary everyday activities [13, p. 518–523; 11; 10, p. 96–99].

Administrative and legal science has developed the concept of public administration under the legal conditions of martial law, according to which, under martial law, public administration is carried out in the form of military cooperation, which is an interaction aimed at ensuring national security and defense, as well as socio-political and socio-economic processes of territorial development, taking into account the features of the martial law.

Among all possible models of public administration under martial law, Ukraine has chosen the model of creating temporary bodies for public administration of territories - the model of military administrations.

2. Analysis of scientific publications.

The military administrations are a new and less studied institution of public administration for the modern stage of state formation. Its emergence is conditioned by the difficult military and political situation in which our country found itself. Accordingly, the formation of the legislative framework regulating the administrative and legal status of military administrations took place through the resolution of many problematic issues of both an organizational and legal nature.

The administrative-legal nature of military administrations has been little studied in administrative-legal science.

Given the novelty of the research object, its scientific and resource base is only being formed at the moment. At the same time, some scientific works, which constitute the source base for this study, have already been published. In particular, certain aspects of the administrative and legal nature of military administrations have been studied by such scientists as: O.S. Arsentieva, N.I. Didyk, I.V. Kovbas, V.V. Dulher, T.S. Zhuravel, S.O. Kuznichenko, Ya.I. Maslova, Ya.P. Pavlovych-Seneta, A.A. Poltavets, S.A. Potapenko, M.M. Tyshchenko, O.D. Chepel, V.Y. Shevchenko, T.O. Kolomoiets, V.K. Kolpakov etc.

Paying tribute to the significant contribution of these scientists to the study of the administrative-legal nature of military administrations, it should be recognized that the rapid development of legislation on the legal regime of martial law actualizes the need for a comprehensive study of the institution of military administrations, their administrative-legal nature, features, types, powers, etc.

3. The aim of the work.

The study aims to determine the priority directions for improving the system of public administration under martial law, outline the strategic orientations of the state's development and the optimal institutional model of public administration under martial law.

To achieve this goal, the following tasks have been defined: to investigate the current state of administrative and legal regulation of the order of formation and operation of military administrations; to determine the specifics of the administrative and legal status of military administrations depending on the order of their formation; to outline problematic points in the formation and operation of military administrations; to establish the place of military administrations in the system of institutions of public administration; to justify the need to introduce new approaches to public administration under martial law; to determine directions for reforming the institution of military administrations; to formulate recommendations and proposals for improving the legal and regulatory framework on this issue.

4. Review and discussion.

Depending on territorial competence, subordination, grounds and order of formation and termination of activities, as well as the order of recruitment, military administrations are divided into: 1) regional military administrations; 2) district military administrations; 3) military administrations of settlements [16].

The study of the content of the Law of Ukraine "On the Legal Regime of Martial Law" (in particular, Clause 2 of Article 5 and Clause 3 of Article 15) shows that the powers of regional and district military administrations are completely identical, and therefore, we believe that there is no reason to distinguish them into separate levels for the purposes of this study. Regional and district military administrations are one type of administration, as opposed to military administrations of settlements.

Sometimes in administrative and legal science, military administrations of regions, districts and settlements, in which military-civilian administrations operated before the formation of military administrations, are singled out as a separate type of military administrations within the named three varieties (regional, district, those of settlements) [14, p. 10–14].

Military administrations of settlements. The formation of military administrations in settlements is carried out according to a separate legal procedure and must have compelling reasons. According to Part 3 of Art. 4 of the Law of Ukraine "On the Legal Regime of Martial Law", military administrations of settlements are formed within the territories of territorial communities wherein 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, as well as in other cases provided for by the Law [16].

As we can see, Part 3 of Art. 4 of the Law of Ukraine "On the Legal Regime of Martial Law" does not contain an exhaustive list of grounds for terminating the powers of local self-government bodies of settlements and, accordingly, legal grounds for the formation of military administrations. Moreover, such a legal basis as "failure to exercise powers" is quite subjective, as it does not detail the failure to exercise the scope of powers that creates a certain discretion of the President of Ukraine regarding the formation of a military administration. However, there is an opinion that in this case this is completely justified, because the Head of State has a much larger amount of information and has the opportunity to act proactively [9]. We believe that failure to exercise powers by local councils and/or their executive bodies, and/or village, settlement, city heads in wartime is not always related to

reluctance or inaction – in most cases, such exercise of powers is impossible for reasons independent of the local self-government body.

Military administrations of settlements are actually formed “from scratch”, from military personnel of military formations, law enforcement agencies, civil protection service, employees who have concluded an employment contract with the General Staff of the Armed Forces of Ukraine. However, the parliament is already considering a draft Law on improving the powers of local self-government bodies and their officials during the period of martial law, which is designed to correct this situation [9; 15]. And this is logical, because it is local government bodies (primarily elected ones) that have the mandate to represent the interests of members of their territorial community.

The problem of the formation of military administrations in cities with special status [1; 4], in which local state administrations operated in peacetime, deserves special attention. These administrations have been formed in the same order as other local state administrations, but their actual status was much more significant, since their appearance in cities with a special status has called into question the possibility of creating a full-fledged system of local self-government bodies in the cities of Kyiv and Sevastopol, which significantly distinguishes the latter from other cities of the country. This is confirmed by the evolution of public administration models in cities with special status. Administrative institutes in cities with special status have been entrusted with a wider range of powers, which is associated with additional functions performed by state authorities in these cities, as well as with the need to perform the functions of local self-government [12, p. 229–306].

Taking this into account, we can pay attention to the controversial status of the Kyiv City Military Administration [6], created by Decree of the President of Ukraine No. 68/2022 of February 24, 2022, because despite the fact that the city of Kyiv as the capital of Ukraine has a special status determined by the Constitution of Ukraine and the Law of Ukraine “On the Capital of Ukraine - Hero City of Kyiv” [4], the Law of Ukraine “On the Legal Regime of Martial Law” [3] does not single out the city of Kyiv as a separate territorial unit along with regions and districts, in which the military administration can be formed for public administration in the sphere of defense, public safety and order.

It can be assumed that the military administration in the city of Kyiv can be formed only as a military administration of a settlement, i.e. in case of failure by the Kyiv City Council and/or the executive body of the Kyiv City Council (Kyiv City State Administration) to exercise the powers assigned to them by the Constitution and laws of Ukraine. Considering that the Kyiv City Council continues to exercise, and the executive body of the Kyiv City Council exercised its powers established by the Constitution and laws of Ukraine before receiving the status of the Kyiv City Military Administration, the formation of the Kyiv City Military Administration seems legally problematic.

Regional and district military administrations. In contrast to the military administrations of settlements, when a military administration is formed in a district or region, they acquire the status of district and regional state administrations, respectively, and the heads of district and regional state administrations acquire the status of heads of the corresponding military administrations. Thus, in fact, already existing bodies of state power are given new powers, acquiring a different status. The legislator has laid down a simple logic here: both the state and military administrations are formed by the President of Ukraine who appoints the heads of such administrations.

In the context of the establishment of the Institute of Military Administrations in Ukraine, attention should be paid to parts 4 and 9 of Art. 4 of the Law of Ukraine “On the Legal Regime of Martial Law”, which determined the specifics of the formation and organizational and legal basis of military administrations.

The legislator determines that if a decision is made on the formation of district and regional military administrations, their status will be acquired respectively by district and regional state administrations (Part 4 of Article 4 of the Law of Ukraine “On the Legal Regime of Martial Law”).

In connection with this legislative provision, it seems somewhat illogical to conclude that:

– regional and district military administrations are formed on the basis of local state administrations, as well as on the basis of military-civilian administrations existing in Donetsk and Luhansk regions;

– the powers of the relevant district, regional military-civilian administrations are terminated on the day of entry into force of the act of the President of Ukraine on the formation of regional and district military administrations, military administrations of settlements on the territory of Ukraine, where military-civilian administrations functioned [16].

The provisions of Part 4 of Art. 4 of the Law of Ukraine “On the Legal Regime of Martial Law”, as noted by O.S. Arsentieva, cannot in any way be extended to Donetsk and Luhansk regions, in which since 2015, on the basis of the Law of Ukraine “On Military-Civilian Administrations” and the Presidential Decree “On the Formation of Military-Civilian Administrations”, regional and district military-civilian administrations have operated instead of regional and district state administrations.

According to Part 9 of Art. 4 of the Law of Ukraine “On the Legal Regime of Martial Law”, in the event of formation of district, regional military administrations, the powers of the respective district, regional military-civilian administrations are terminated on the day of entry into force of the act of the President of Ukraine on their formation.

Thus, we can talk about establishing a different approach of the legislator to determine the fate of regional, district local administrations and the corresponding military-civilian administrations after the introduction of the legal regime of martial law and the formation of military administrations. This approach of the legislator seems unfounded and creates a number of problems [8].

In particular, disruption of continuity in the formation of military administrations in regions where military-civilian administrations operated seems harmful. In practical terms, this means that a military administration created on the basis of a local administration has a number of advantages over a body created “from scratch”. The legislation does not contain any provisions on the transfer of the affairs of the military-civilian administration, the powers of which have been terminated, to the military administrations of the relevant administrative units. This situation has inevitably led to a complication in the performance of their functions by military administrations. Therefore, on the basis of the above provisions of the legislation, from the moment the Presidential Decree “On the formation of military administrations of settlements in the Luhansk region” came into force [7], the simultaneous occurrence of two legal facts can be claimed: 1) formation of Donetsk and Luhansk regional state administrations, corresponding district state administrations; 2) termination of the powers of regional, district military-civilian administrations of these regions [8, p. 11–24].

Under these conditions, appropriate personnel appointments have been made to ensure the functioning of the newly created bodies, because, unlike the case with local state administrations, there are no grounds for the heads of the military-civilian administration to automatically occupy the positions of heads of military administrations. No acts of law enforcement on this issue have been issued by the state authorities of Ukraine. At the same time, there is actually a situation where, contrary to the provisions of the law, the military administrations of the Luhansk and Donetsk regions act as if they are the legal successors of the regional military-civilian administrations of these regions, for which they have no grounds [8, p. 11–24].

We believe that the legislative consolidation of a different approach to the legal succession of military administrations from local state and military-civilian administrations creates problems for the newly created bodies on a practical level. In order to avoid them, the authorities have chosen to ignore the law, which raises the question of the legitimacy of the Luhansk and Donetsk military administrations.

Also, in the issue of determining the administrative-legal status of military administrations, the issue of distinguishing the institute of military and military-civilian administrations occupies an important place.

Thus, in 2015, on the basis of the Law of Ukraine “On Military-Civilian Administrations” [2], 19 military-civilian administrations have been formed in the Donetsk and Luhansk regions by the Decree of the President of Ukraine “On the Formation of Military-Civilian Administrations”. Two of them were regional - Luhansk and Donetsk regional military-civilian administrations, the remaining 17 were city, village and settlement military-civilian administrations [5].

Since the introduction of the legal regime of martial law, the established military-civilian administrations continued to function for a long time in accordance with the Law of Ukraine “On

Military-Civilian Administrations" [2].

Military and military-civilian administrations have a number of common features. At the same time, they have a different administrative and legal nature, goal and purpose.

Their common features are that military administrations and military-civilian administrations are temporary bodies of public administration that act / acted on the territory determined by the President of Ukraine as a forced event with elements of a military management organization to ensure security and normalize the life of the population in the area of repulse of armed aggression of RF.

As for the distinguishing features, the distinction between the administrative-legal status of military administrations and military-civilian administrations, in our opinion, should begin with the normative-legal regulation of their activities:

1) military-civilian administrations have been formed by the Decree of the President of Ukraine "On the formation of military-civilian administrations" [5] and operated in accordance with the Law of Ukraine "On military-civilian administrations" [2], while military administrations have been formed by the Decree of the President of Ukraine "On the formation military administrations" [6] and act on the basis of the Law of Ukraine "On the Legal Regime of Martial Law" [3].

2) in accordance with the Law of Ukraine "On Military-Civilian Administrations", military-civilian administrations, as temporary state bodies in villages, towns, cities, districts and regions, operated as part of the Anti-Terrorism Center under the Security Service of Ukraine or as part of the Joint Operational Headquarters of the Armed Forces of Ukraine. Their main task was to fulfill the powers of local executive authorities and local self-government bodies in cases established by the Law of Ukraine "On Military-Civilian Administrations" in the area of repulsing the armed aggression of the Russian Federation, in particular in the area of the anti-terrorism operation. Whereas, military administrations are temporary state bodies that act during the period of martial law, to ensure the operation of the Constitution and laws of Ukraine, to ensure, together with the military command, the implementation of measures of the legal regime of martial law, defense, civil protection, public safety and order, protection of rights, freedoms and legitimate interests of citizens (Art. 4, Art. 8 of the Law of Ukraine "On the Legal Regime of Martial Law") [3].

5. Conclusions.

1. Administrative and legal science has developed the concept of public administration under the legal conditions of martial law, according to which, under martial law, public administration is carried out in the form of military cooperation, which is an interaction aimed at ensuring national security and defense, as well as socio-political and socio-economic processes of territorial development, taking into account the features of the martial law.

2. As evidenced by practice and modern scientific administrative and legal research, bodies of state power and administration that functioned in peacetime, in the event of emergency circumstances, as a rule, cannot act quickly due to the complexity of tasks and the increase in their volume. Under such conditions, there is a need to create a system of emergency authorities that would be able to mobilize society to fight the emerging danger. At the same time, various public administration systems can be introduced in such conditions.

3. Among all possible models of public administration under martial law, Ukraine has chosen the model of creating temporary bodies for public administration of territories - the model of military administrations. Military administrations are institutions of public administration, or rather a type of local state administrations (they are local state administrations with expanded powers), are part of the system of executive authorities, and, within the limits of their powers, exercise executive power on the territory of the corresponding administrative-territorial unit. Since military administrations are an integral element of the state apparatus, it is obvious that they have appropriate tasks, functions and powers, with the help of which state power is exercised in the territories of military

operations. The general characteristics of public administration bodies can be fully applied to military administrations, but with the use of methods specific to military administration.

4. The Constitution of Ukraine does not contain direct norms regarding the functioning of military administrations. At the same time, it contains norms by means of which it empowers higher state authorities in the field of ensuring national security and defense. It is important that the Constitution of Ukraine does not contain a direct or indirect ban on the creation of additional temporary state authorities with expanded powers during the introduction of the legal regime of martial law, which are represented by military administrations, and therefore, we conclude that their formation and functioning are consistent with the provisions of the Constitution of Ukraine.

5. Depending on territorial competence, subordination, grounds and order of formation and termination of activities, as well as the order of recruitment, military administrations are divided into: 1) regional military administrations; 2) district military administrations; 3) military administrations of settlements. At the same time, the powers of regional and district military administrations are completely identical, and therefore the author believes that there is no reason to distinguish them into separate levels for the purposes of this study. Regional and district military administrations are one type of administration, as opposed to military administrations of settlements.

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