

SECTION 6. THEORY AND HISTORY OF STATE AND LAW

6.1 Legal basis activities of volunteer formations territorial communities of Ukraine

The urgency of the problem. Ukraine, with the help of all branches of public power and civil society institutions, facing the threat of external aggression in the annexation of Crimea, occupation of parts of eastern Ukraine and waging a "hybrid war" against our country, finally began building the country's territorial defense (TD) system.

At the end of 2021, the Parliament of Ukraine adopted the Law "On the Fundamentals of National Resistance", which defined the legal and organizational principles of national resistance, the basis of its preparation and conduct, tasks and powers of security and defense forces to prepare and conduct national resistance. It also defines the basic definitions regarding the participation of territorial communities in the protection of the territorial integrity and sovereignty of Ukraine. According to the current legislation, national resistance is "a set of measures organized and implemented to promote the defense of Ukraine by involving the citizens of Ukraine in actions aimed at ensuring military security, sovereignty and territorial integrity of the state, deterring and repelling aggression and the task of unacceptable losses to the enemy, in view of which he will be forced to stop the armed aggression against Ukraine" [137]. The law determined that the components of national resistance are the TD, the resistance movement and the preparation of Ukrainian citizens for national resistance. And the purpose of national resistance is to increase the state's defense capabilities, to make the country's defense comprehensive, to help ensure the readiness of Ukrainian citizens to national resistance. The resistance movement is understood as "a system of military, informational and special measures, the organization, planning, preparation and support of which is carried out in order to restore state sovereignty and territorial integrity during the repulse of armed aggression against Ukraine" [137].

Presenting main material. TD is understood as "a system of national, military and special measures carried out in peacetime and in special periods to counter military threats and to assist in protecting the population, territories, environment and property from emergencies" [137]. The main tasks of the country's territorial defense are:

1) timely response and taking the necessary measures to defend the territory and protect the population in a particular area until the deployment within such territory of a group of troops or a group of joint forces designed to repel armed aggression;

2) participation in the protection of the population, territories, environment and property from emergencies, elimination of the consequences of hostilities;

3) participation in strengthening the protection and defense of the state border;

4) participation in the preparation of citizens of Ukraine for national resistance;

5) participation in providing conditions for the safe functioning of public authorities, other state bodies, local self-government bodies and military administration bodies;

6) participation in the protection and defense of important facilities and communications, other critical infrastructure facilities identified by the Cabinet of Ministers of Ukraine, and facilities of regional, district, rural, township, urban significance, district councils in cities, villages, townships, dysfunction and decommissioning of which pose a threat to the lives of the population;

7) providing conditions for strategic (operational) deployment of troops (forces) or their regrouping;

8) participation in the implementation of measures to temporarily prohibit or restrict the movement of vehicles and pedestrians near and within the zones / areas of emergencies and / or the conduct of military (combat) operations;

9) ensuring public safety measures and order in settlements;

10) participation in the introduction and implementation of measures of the legal regime of martial law in the event of its imposition on the entire territory of Ukraine or in some of its localities;

11) participation in the fight against sabotage and reconnaissance forces, other armed formations of the enemy and paramilitary or armed formations not provided by the laws of Ukraine;

12) participation in information activities aimed at increasing the level of defense capabilities of the state and counteracting the information operations of the aggressor (enemy) [137].

In fact, the territorial community becomes a real subject of TD in the system of national resistance, where with the assistance of its self-governing body a voluntary formation of a territorial community (VFTC) is formed - a paramilitary unit formed on a voluntary basis which is designed to participate in the preparation and implementation of territorial defense tasks within the territory of the relevant territorial community "[138]. One of the features of the genesis of local self-government is a combination of the principles of civil society and state power: the balance of state and local interests is ensured by law [133]. In accordance with the Law "On Local Self-Government in Ukraine", Article 36. "Powers in the field of defense" local governments provide for measures to prepare the population of Ukraine to participate in the movement of national resistance, as well as preparation and submission of proposals to relevant district councils to the target local programs of preparation of territorial defense and preparation of the population of Ukraine for participation in movement of national resistance and participation in the organization of their performance [137].

Local self-government is not part of the state mechanism of government in the country, but like the state, exercises public power, the power of the people, which is exercised by the territorial community ("local community" within a certain territory [133, pp. 5-6). The formation of VFTC is the implementation of such public administration, especially in the field of state security, maximally contributing to the formation of the VFTC. 5 years and on a voluntary basis enrolled in the service of the VFTC TD of the Armed Forces and usually live in the local community.

Within the tasks of TD, defined by the Law, VFTC can carry out the following activities:

1) respond in a timely manner and take the necessary measures to defend the territory and protect the population in a certain area until the deployment of a group of troops or a group of joint forces designed to conduct military (combat) operations to repel armed aggression against Ukraine;

2) participate in the preparation of citizens of Ukraine for national resistance;

3) participate in strengthening the protection and defense of the state border in the manner prescribed by the Law "On the participation of citizens in the protection of public order and the state border" [139];

4) participate in the protection of the population, territories, environment and property from emergencies, elimination of the consequences of military (combat) operations;

5) participate in providing conditions for the safe functioning of public authorities, other state bodies, local self-government bodies and military administration bodies;

6) participate in the protection and defense of important facilities and communications, other critical infrastructure facilities identified by the Cabinet of Ministers of Ukraine, and high-risk facilities, malfunctions and decommissioning of which pose a threat to life;

7) participate in providing conditions for the strategic (operational) deployment of troops (forces) or their regrouping;

8) participate in the implementation of measures to temporarily prohibit or restrict the movement of vehicles and pedestrians near and within emergency zones / areas and / or conduct military (combat) operations with the National Police;

9) participate in ensuring public safety and order measures in settlements together with the National Police;

10) participate in the introduction and implementation of measures of the legal regime of martial law in the event of its imposition on the entire territory of Ukraine or in some of its localities;

11) take part in the fight against sabotage and reconnaissance groups (DRG), other armed groups of the aggressor (enemy) and paramilitary or armed groups not provided by the laws of Ukraine;

12) participate in information activities aimed at increasing the level of defense capabilities of the state and counteracting the information operations of the aggressor (enemy);

13) cooperate with local self-government bodies and military units of the Territorial Defense Forces of the Armed Forces of Ukraine, collect and analyze information on threats to the security of the territorial community and scenarios of their deterrence;

14) in cooperation with local self-government bodies to account for, arrange and protect places of shelter of the population;

15) to extract, collect and summarize information that affects the implementation of TD tasks within the territory of the territorial community;

16) to assist in the implementation of measures to counteract the information operations of the aggressor (enemy) within the territory of the territorial community;

17) to organize training of VFTC members in order to effectively perform their tasks [135].

The activity of the VFTC is carried out under the direct guidance and control of the commander of the military unit of the Forces of the Ukrainian Armed Forces on a territorial basis.

Preparation of the VFTC for the implementation of the tasks of the TD is carried out in accordance with the Procedure for organizing, ensuring and conducting the preparation of the VFTC for the implementation of the tasks of the TD [135].

VFTC members may use personal hunting weapons and ammunition in the performance of TD tasks in accordance with the Procedure for the use of personal hunting weapons and ammunition by VFTC members in the performance of territorial defense tasks [136].

Provision of material and technical means and financing of the VFTC activities are carried out at the expense and within the funds of the State Budget of Ukraine, local

budgets, as well as from other sources not prohibited by law (*voluntary donations, volunteering, etc.*)

Membership in the VFTC does not release persons from the obligation to serve in the military, conscription during mobilization, for a special period, military service for conscripts, military service for conscripts from the reserve during a special period.

The order of formation of VFTC is as follows. The formation is formed by the meeting of the initiative group of ***residents of the territorial community*** in the presence of the commander of the military unit of the TD of the Armed Forces and authorized representatives of the local government of the territorial community. Meetings are considered valid if at least 5 people take part in them, as well as the commander of the military unit of the TD of the Armed Forces of Ukraine and representatives of the local self-government body of the respective territorial community.

Based on the results of the meeting, the minutes of the meeting of the initiative group on the formation of the VFTC (*hereinafter - the minutes*) are drawn up. Two copies of the protocol shall be submitted to the local self-government body within the jurisdiction of which the VFTC will operate, for approval of the candidate for the position of VFTC commander , one of which shall be sent to the commander of the relevant military unit TD VFTC.

The Commander of the Military Unit of the TD of the Armed Forces of Ukraine prepares and sends the necessary documents for a special examination of a candidate for the position of Commander of a Voluntary Formation in the SBU and the National Police in the manner prescribed by law. In case of successful passing of the special examination by the candidate for the position of the Commander of the Armed Forces of Ukraine, the Commander of the Military Unit of the Armed Forces of Ukraine sends an application for appointment to the position of Commander of the Armed Forces of Ukraine. The Commander of the TD of the Armed Forces of Ukraine appoints the Commander of the VFTC in agreement with the Commander of the Special Operations Forces of the Armed Forces of Ukraine.

The territorial community within the territory of responsibility may form several VFTC , taking into account the available resource and human resources in the manner

prescribed by the Regulations and the Law. The name of each individual VFTC is formed taking into account the name of the territorial community in whose territory it is formed, and the number of VFTC within one territorial community.

Regarding the recruitment of volunteer formations. A member of the VFTC may be a citizen of Ukraine over the age of 18 who lives in the community where the VFTC operates, has passed medical, professional and psychological selection (inspection) and entered into a contract with a volunteer TD. A person who has previously been sentenced to imprisonment for a serious or particularly serious crime is not included in the VFTC. Medical selection (examination) of candidates for membership in the VFTC is carried out by medical advisory commissions of municipal health care institutions of territorial communities at the direction of a local government official responsible for defense or mobilization work, under the conditions specified in the Procedure for issuing a medical certificate) on the object of the permit system [134].

Professional and psychological selection of candidates for members of the VFTC is provided by the military units of the Armed Forces of Ukraine by full-time and part-time groups of professional and psychological selection. A person who has expressed a desire to become a member of the VFTC submits an application to the commander of the volunteer formation. The TD volunteer contract is concluded between the VFTC commander and the person who has applied for VFTC membership. Such persons enter into a contract with a TD volunteer for a period of 3 years. The form of the TD volunteer contract is approved by the Ministry of Defense. The Command of the Troops of the Armed Forces of Ukraine together with the local self-government bodies located within the territory of the respective TD Zone develops and approves uniform symbols for all VFTC.

Legislation defines the procedure for the use of personal hunting weapons and ammunition by members of the VFTC during the implementation of the tasks of the TD for the implementation of the Law "On the Fundamentals of National Resistance" [138]. It may be :

- individual self-defense - the use of personal hunting weapons by a member of the VFTC in the performance of TD tasks to protect their health and life from attack or

threat of attack, if otherwise and by other means to protect themselves in such a situation is impossible;

- lethal use of personal hunting weapons and ammunition by members of the VFTC - in the performance of TD tasks aimed at causing death or serious injury, which may result in the death of a person involved in armed aggression;

- precautionary firing - a warning about the possibility and intention to use personal hunting weapons and ammunition to it during the execution of TD tasks by firing a shot that is not intended to hit the target and is a signal to immediately stop any action;

- self-defense - the use of personal hunting weapons and ammunition by VFTC members in the performance of TD tasks to protect against attack or threat of attack on objects protected / defended by them, if otherwise and by other means to protect them in such a situation impossible.

Personal hunting weapons and ammunition can be used by all members of the VFTC when performing TD tasks. In this case, the manufacture, purchase, storage and accounting of personal hunting weapons and ammunition for it are carried out in accordance with the requirements of the law. All members of the VFTC who use personal hunting weapons and ammunition in the performance of TD tasks must be guided by the following principles, based on generally accepted norms of international humanitarian law:

- inevitability - the use of personal hunting weapons and ammunition for it during the tasks of the TD in cases where it is absolutely obvious and necessary;

- military necessity - the use of personal hunting weapons and ammunition for it during the performance of TD tasks in the case when it is otherwise impossible to exercise the right to self-defense and / or perform the tasks;

- Proportionality - the use of personal hunting weapons and ammunition in the performance of TD tasks to the extent necessary to achieve the goal of self-defense and/or performance of tasks, unless it causes extraneous damage to outsiders and civilian objects compared to the expected specific military benefits.

The use of personal hunting weapons and ammunition for them in the performance of TD tasks should be carried out in such a way as to cause minimal harm to others in each situation.

Conclusions. The adoption of the legislative framework for the formation and operation of territorial defense forces in 2021 testified to the desire of the country's political elite and all civil society institutions to maximize the involvement of all Ukrainian citizens in defending Ukraine's territorial integrity and sovereignty. In particular, approval of the Regulations on Voluntary Formations of Territorial Communities (Resolution of the Cabinet of Ministers of December 29, 2021, №1449) and the Procedure for Using Personal Hunting Weapons and Ammunition by Members of Voluntary Formations of Territorial Communities in Territorial Defense Tasks (Resolution of the Cabinet of Ministers of December 29, 2021, №1448.) allows all active citizens of territorial communities to join the defense of Ukraine, but in good health in accordance with current legislation. It is worth noting that from now on it becomes a reality to involve in the territorial defense of primary hunting societies in which hundreds of thousands of smoothbore and rifled weapons, and their members have the appropriate skills in combat training.

Public authorities should actively engage in mass involvement of volunteers (*including representatives of patriotic NGOs UBD, MIA, Afghanistan veterans, the Union of Chornobyl Veterans, etc.*) and build them as much as possible, providing the opportunity to create appropriate logistics. The legal basis for the development of the TD Forces in Ukraine has been created, but needs to be harmonized with other legislative acts. The idea of forming VFTC needs maximum popularization and coverage by domestic and foreign media.