

5. Territorial communities in the conditions of martial law in Ukraine: administrative and legal support and peculiarities of its functioning

The socio-economic development of territorial communities has always been and will be highlighted from the entire set of state interests as an actual and main direction, since, being a part of a single state, it contributes to its history, internal political, economic, cultural life, and the achievement of certain results in the international arena .

On February 24, 2022, the history of Ukrainian state-building radically changed its course, in connection with the full-scale military aggression of the Russian Federation against Ukraine, which caused an appropriate reaction from public authorities and the head of the Ukrainian state in particular. The President, on the basis of the offer of the National Security and Defense Council and in accordance with Ukrainian legislation, signed Decree No. 64/2022 « On the introduction of martial law in Ukraine» from 5:30 on February 24, 2022. The introduction of martial law in Ukraine changed the functioning and development of social relations in all spheres of social life. Ordinary citizens as well as representatives of the public administration, all people were mobilized to counter the enemy. At the same time, a special responsibility under such conditions was assigned to state and local self-government bodies representing the interests of corresponding territorial communities. According to part 2 of Article 9 of the Law of Ukraine « On the Legal Regime of Martial Law» , local governments still carry out the powers granted to them by the Constitution of Ukraine, this and other laws of Ukraine. The military command, together with the Ministry of Internal Affairs of Ukraine, other executive authorities , local governments must provide the measures and powers required by the Law of Ukraine « On the Legal Regime of Martial Law» to ensure the defense of Ukraine, the protection of the safety of the population and the interests of the country [94].

Despite the state of war, most of the reforms taking place in Ukraine, anyway continued their development in the direction of European integration. This applies to the territorial reform and the reform of local self-government as well. Its main content is the decentralization of power and the formation of united territorial communities as

the main subjects of local self-government, as well as the creation of prerequisites for their self-sufficient and economically efficient development.

State of research on this problem. The regulatory and legal framework for the study of local communities under martial law is: The Constitution of Ukraine, The Laws of Ukraine «On Local Self-Government» , «On the voluntary association of territorial communities», «On the legal regime of martial law», «On national resistance» , «On Cooperation of Local Communities» and government documents: The concept of reforming local self-government and territorial organization of government in Ukraine; Methodology of forming capable local communities, etc. [95].

The constitutional provision about the fact that the nation is the source of state power envisages two forms of its implementation - directly and through public (state and self-governing) authorities. According to Article 140 of the Constitution of Ukraine, local self-government is the right of a territorial community to independently resolve issues of local importance within the limits of the Constitution and laws of Ukraine [94]. In the territories where martial law has been introduced, to ensure the operation of the Constitution and laws of Ukraine, to ensure, together with the military command, the introduction and implementation of measures of the legal regime of martial law, defense, civil protection, public safety and order, protection of the rights, freedoms and legitimate interests of citizens by the President of Ukraine temporary state authorities - military administrations - can be formed. Military administrations of settlements are formed in one or more settlements (villages, settlements, cities) in which village, township, city councils and/or their executive bodies do not carry out the powers assigned to them by the Constitution and laws of Ukraine, including as a result of actual self-dissolution or self-removal from the performance of their authorities, or their actual non-performance, or termination of their authorities in accordance with the law [99].

A « local community» is a set of residents united by permanent residence within a certain village, town or city, which are independent administrative-territorial units or a voluntary association of residents of several villages that have a single administrative center. It is worth mentioning that in the Western political and legal science and

practice, more attention is paid not to the definition of the concept of « local community» itself, but to the analysis of the essence of territorial collectives, communes, self-organized communities and other local communities.

Today, the concept and content of the category « local community» are studied by many sciences and educational disciplines. In particular, certain characteristics of a local community are defined in philosophy, sociology, political science, economics, jurisprudence, geography, etc. Because of this, we believe that it is important to apply a comprehensive approach when examining the concept and content of the category « local community» .

A group of scientists led by J. Barnes considered the category « sodality» or « community» in the following aspects:

- the first is to reflect the legitimacy of the community as a historically formed community with a common culture, customs and traditions, past;
- the second - the existence of this community as a system of relations between its members (family relations, coexistence in a common space, belonging to a certain social group, etc.);
- the third - functioning of the community as a collective consumer of various social and economic benefits;
- fourth - the necessity for community development in order to ensure the provision of public services, the participation of local institutions of civil society in the livelihood of the population and production processes;
- fifth - the existence of the community as a representative of the local population in political processes and as a direct subject of the management process [98, p. 165].

In the opinion of Professor M. Baimuratov, in addition to the above-mentioned features of the territorial community, such things as joint communal ownership of the community, as well as the formation of a joint local budget through the payment of local taxes and fees, are also important. Among the definitions of the term « local community» , attention should be paid to the following.

O.V. Batanov points out that the territorial community is the primary subject of local self-government, which is formed from individuals (citizens of Ukraine, foreign

citizens, stateless persons, refugees, forced migrants) who permanently live and work on the territory of the village (or voluntary object uniting into a common community of several villages), settlements or cities, directly or through the municipal structures formed by them, resolve issues of local importance, have common communal property, own real estate in a certain territory, pay communal taxes and are connected by individual territorial ties of a systemic nature .

M.P. Orzikh pays attention to the fact that the local community is the primary subject of local self-government that has its own interests, which includes citizens of Ukraine, foreigners, stateless people who permanently live and work in this territory, own real estate, pay local taxes and gathering.

M.O. Baimuratov believes that a territorial community is a set of individuals who permanently live in the relevant territory and are connected to each other by territorial and personal ties of a systemic nature [100].

In our opinion, a territorial community is a naturally formed community of people who live, work or own immovable and movable property in the relevant territory within one or more settlements that have a single administrative center, and which is characterized by a system of stable connections and the ability to ensure common interests in matters of personal livelihood, administrative, socio-economic and cultural development, elects its own representatives for self-government and is the owner of public property.

After the analysis of the works of researchers of the legal status of territorial communities, we can highlight such main features as [98]:

- 1) common territory of existence (territorial feature), this is the space within which residents of the local community can resolve issues of local importance;
- 2) the existence of the population living in the defined territory (integrative feature);
- 3) existence of collective consciousness and common interests of local residents (intellectual characteristic);
- 4) common communal property, which the territorial community can use and dispose of in its own interests (property feature).

An interesting approach to the characterization of territorial communities is expressed by O.V. Yevdokimov. In the scientist's opinion to properties of the territorial community belong: territorial, social-psychological, historical-cultural, political, economic, natural and organizational-functional [97]. In particular, the territorial sign indicates that the territorial community is formed in a certain territory. Its members are individuals who live in this territory, or work, or have certain real estate. The socio-psychological one is due to the fact that the territorial community exists when each member of the community recognizes himself as a part of it, as well as the awareness of common interests. The historical and cultural feature indicates that the community exists and develops over time, therefore, when choosing the direction of its development, it is necessary to take into account the historical aspects of the evolution of the community, its cultural and customary features, which are characterized by the impact on the psychological climate in the community, and on endogenous relationships ties inherent in the community [95].

The political sign is determined by the awareness of the territorial community by the subject of legal relations and the representative of the local community in the political arena. The economic sign integrates the community as the owner of public property located on its territory, and its members, in accordance with the law, are tax payers to the local budget. The natural feature is determined by the fact that the territorial community is formed and operates on the basis of self-organization, social and economic activity and the need for continuous development. The organizational and functional feature of a territorial community means that it is a system with the organization of political and social networks, which functions primarily based on democratic principles of development and with the participation of its members in solving issues of their livelihood.

The authority of local communities derive primarily from the Constitution of Ukraine and the Laws of Ukraine « On Local Self-Government» , « On Voluntary Association of Local Communities» . In particular, the analysis of Articles 140–143 of the Basic Law shows that most issues of local importance are not resolved by territorial communities directly, but through local self-government bodies created by them.

Thus, the range of issues that are directly or indirectly resolved by the territorial community includes: [100].

- elections of the village, settlement head or mayor, who will later head the executive body of the council and preside over meetings of the executive committee and the council;

- elections of elders and council members, who represent and protect the interests of all residents of the respective community;

- communal property management;

- approval of socio-economic and cultural development programs and ensuring control over their implementation;

- approval of local budgets of relevant administrative and territorial units and control over their implementation;

- determination of local taxes and fees within the limits of the law;

- organization of local referendums and implementation of their results;

- creation, reorganization and liquidation of communal enterprises, organizations and institutions that are in communal ownership, as well as ensuring control over their activities;

- solving other issues of local importance, which are assigned by law to their competence [93].

Municipal and territorial reforms were initiated in Ukraine in order to ensure the implementation of the aforementioned powers by local communities. In particular, on April 1, 2014, the Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine was approved.

Its main objectives were [96]:

- creation of prerequisites for the provision of high-quality and accessible administrative services;

- ensuring a rational distribution of powers between local self-government bodies and local executive bodies;

- establishment of optimal boundaries of the territorial basis for the functioning of local self-government bodies and executive authorities in order to form the

conditions of accessibility and quality of public services provided by these structures;

- ensuring the creation of appropriate financial, resource and organizational prerequisites for local self-government bodies to implement their own and delegated powers. The fulfillment of these tasks was impossible without the creation of a new system of territorial organization, the basis of which is united territorial communities (UTC).

By carrying out statistical studies, scientists have proven that only those communities with a population of more than 3,000 people have the possibility of effective socio-economic development, because in this case, the possibility of increasing per capita income, as well as the corresponding development of the community and the territory in which it is located, is created.

On February 5, 2015, the Law of Ukraine « On Voluntary Unification of Local Communities» was adopted, according to which neighboring city, settlement or village councils can unite into one community with a single center of local self-government. The conditions for such an association are [92]:

- the absence of another local community with an existing representative body of local self-government as part of the united one;
- indivisibility of the territory of the united territorial community; the borders of the united territorial community are determined by the outer limits of the jurisdiction of the councils of the united local communities;
- the location of a unified territorial community within the boundaries of one region, territory or Autonomous Republic of Crimea;
- taking into account, when making a decision to unify communities, historical, cultural, ethnic and other factors of the evolution of these communities, which have a direct impact on the socio-economic development of the united local community;
- non-deterioration of the quality and availability of administrative services provided in the united local community [97].

Nowadays, Ukraine has completed the formation of a three-level system of administrative organization, consisting of regions (27 of them (regions, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol), districts (de jure

in Ukraine 140 districts, because 14 districts in the Autonomous Republic of Crimea will be liquidated only after de-occupation, 10 new districts will be created in their place. At the same time, about 1/6 of the districts are located in the temporarily occupied territory of Luhansk, Donetsk, Kherson, Zaporizhzhya, Dnipro and Kharkiv regions.

Before the reform, there were 490 districts in Ukraine, on June 12, 2021, in accordance with Law No. 562-IX, the government determined the administrative centers and territories of territorial communities on the basis of previously united communities and pre-approved prospective plans. In general 1,470 communities were approved, which fully covered the territories of 24 regions. Before the reform, there were 11.5 thousand communities [96].

The Ministry of Reintegration has updated the list of territorial communities that are located in areas of hostilities, surrounded or under temporary occupation. On August 17, there were already 323 such communities in nine regions of Ukraine. These are the local communities of: Donetsk (66), Kharkiv (56), Dnipropetrovsk (9), Luhansk (37), Zaporizhia (54), Kherson (49), Mykolaiv (26), Sumy (21), Chernihiv (5) regions. At the same time, it is worth noting that in September 2022, almost 90% of the Kharkiv region was deoccupied.

The primary task of local authorities in the mentioned territories is to ensure the livelihood of communities, because people should receive all the necessary assistance and at least the most necessary services. Since the local self-government bodies in the de-occupied territories may not have the majority of votes to make decisions important for the life of the communities, the only rational step to restore the effectiveness of the United Local Community is the creation of military administrations. The creation of military administrations is the most effective way to establish all the necessary processes, restore services and ensure the safety of people in liberated communities. According to Article 4 of the Law of Ukraine « On Martial Law» , military administrations of settlements are formed from servicemen of military formations formed in accordance with the laws of Ukraine, members of the rank and file of law enforcement agencies, civil protection services, who are seconded to them in

accordance with the procedure established by law to carry out tasks in the interests of the defense of the state and its security, while remaining in military service, service in law enforcement agencies, civil defense bodies and units without exclusion from personnel lists, as well as employees who have entered into an employment contract with regional military administrations (in the case of their formation) or with the General Staff of the Armed Forces of Ukraine (if a regional military administration has not been established in the relevant region) [93].

Therefore, during the period of martial law, military administrations exercise the powers of local self-government bodies in united local communities. The country provides support to such communities in informational, educational, organizational, methodological and financial forms [97].

Summing up, it should be noted that a united territorial community is a community that has the real ability to provide its residents with the help of local self-government bodies (and in the conditions of martial law, military administrations) a high-quality level of social and administrative services. In particular, education and culture, health care and social security, housing and communal services and improvement of the settlement, taking into account the new mechanism of financial and economic support, which causes the accumulation and rational use of these resources at the local level.

Taking into account that military operations are being conducted in Ukraine and in order to ensure the provision of necessary assistance to the citizens of Ukraine, social services are proposed to be provided in an emergency-crisis manner (if it is impossible to apply the general order of organization and provision of social services). The decision to provide or refuse to provide social services in an emergency (crisis) is made immediately, no later than one day after receiving the relevant application, appeal, or notification. Emergency (crisis) social services are provided for free. In the case of the stabilization of the military situation in Ukraine, in order to increase the effectiveness of municipal reform, it is necessary to ensure: the development and adoption of a perspective plan for the unification of territorial communities with full inclusion of geographical, economic, cultural, ethnic, recreational and other specificities of

communities; dissemination of adequate explanatory information about the expediency and advantages of the process of unification of territorial communities; organization of training seminars for employees of local self-government bodies and representatives of the public on various aspects of the reform. The perspective of future research should include the study and analysis of the experience of the process of uniting territorial communities in Ukraine.