FINANCIAL POWERS OF LOCAL SELF-GOVERNMENT BODIES IN CONDITIONS OF MARTIAL LAW: PERSPECTIVES AND CHALLENGES

Abstract. The article is devoted to analysis of legislative regulation and practice of exercising powers of the bodies of local self-government in Ukraine in the conditions of martial law. Attention is drawn to that in the conditions of martial law a positive influence of the reform of decentralisation on the ability of the communities to solve their own problems and on the institutions of local self-government in general is clearly revealed, because today strong territorial communities are created, which arrange more quantity of resources and also endowed with greater ability to solving today's problems such as migration of the population, food security, organisation of educational process, infrastructure restoration and so on. The aspects of ensuring of the development of balanced local budgets in the conditions of martial law. It is noted that local budgets assumed a significant part of the costs as for forming of the resource potential of effective counter measures against the enemy and in the same time as for solving socio-economic problems of the population, which lives in the area and internally displaced persons from occupied and particularly dangerous regions because the war caused large-scale destruction of civil infrastructure, humanitarian catastrophe, has devast economic consequences. It is proposed to make changes to the legislation that have mechanisms for delimiting the powers of local governments and military administrations, in particular, powers in the budgetary sphere, control mechanisms on the part of military administrations, which should ensure compliance with guarantees for local governments. It is necessary to ensure the possibility of independent execution by local government bodies of territorial communities of all powers received as a result of reforms.

The conducted research allows us to substantiate the theoretical and methodological aspects of the implementation of the decentralization of power
reform, reveal its essence, determine its legal nature, and consider the main directions of distribution of powers between executive authorities and local governments as the main aspect of the implementation of this reform.

**Keywords:** local budget, budget process, martial law, own revenues of local budgets, official transfers, non-tax revenues.

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**ФІНАНСОВІ ПОВНОВАЖЕННЯ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ В УМОВАХ ВОЄННОГО СТАНУ: ПЕРСПЕКТИВИ ТА ВИКЛИКИ**

**Анотація.** Стаття присвячена аналізу законодавчого регулювання та практики реалізації повноважень органів місцевого самоврядування в Україні в умовах воєнного стану. Звертається увага на те, що в умовах воєнного стану чітко виявився позитивний вплив реформи децентралізації на спроможність територіальних громад вирішення власних проблем та на інститут місцевого самоврядування в цілому, оскільки на сьогодні створені створити сильні територіальні громади, котрі розпоряджаються більшою кількістю ресурсів, а також наділені більшою здатністю до вирішення проблем сьогодення, як от: міграція населення, продовольче забезпечення, організація освітнього процесу, відновлення інфраструктурі, тощо. Досліджені аспекти забезпечення збалансованого розвитку місцевих бюджетів в умовах воєнного стану. Зауважено, що саме місцеві бюджети прийняли на себе значну частину витрат щодо формування ресурсного потенціалу ефективної протидії ворогу і в той же час, щодо вирішення соціально-економічних проблем населення, яке проживає на даній території, та внутрішньо переміщених осіб із оккупованих і особливо небезпечних регіонів, адже війна спричинила масштабні руйнування цивільної інфраструктури, гуманітарну катастрофу, має нищівні економічні наслідки.

Водночас, треба звернути особливу увагу не тільки на визначаючи перспективи децентралізації влади, які можуть наступити лише у майбутньому, при відповідному накопиченні управлінської практики та вдосконаленні технологічної діяльності органів місцевого самоврядування, – необхідно враховувати реальні можливості настання відповідних ризиків, що мають очікуваний характер, пов’язаний з об’єктивними та суб’єктивними труднощами, що виникають під час перегляду меж адміністративно-територіальних одиниць, що виражатимуться в укрупненні територіальних громад (ми вже стикнулись з ними в процесі оптимізації ТГ при створенні об’єднаних ТГ).
Analysis of last researches and publications. Problem issues of realisation of power by bodies of public administration in general and by the bodies of self-government in particular are researched in the works of many legal scholars in the sphere of constitutional and administrative licence such as A. Averianov, G. Atamanchuk, A. Bukhanevych, O. Bukhanevych, I. Hrytsiak, T. Karabin, V. Kovalenko, I. Kaliushko, A. Kolodiy, V. Koloakov, V. Malynovsky, R. Melnyk, R. Minenko, O. Obolensky, I. Paterylo, A. Pukhtetska, Y. Surmin, V. Tymoshchuk and others.

Formulation of the problem. The war in Ukraine started by russian federation affected country's economical development, caused by the large-scale distribution of infrastructure during the war, shelling, occupation, migration, drop in economic activity and reduction of production, drop in business activities, anti-crisis measures of the government as for easing of tax pressure significantly affected local budgets, especially in the regions, where hostilities are talking place. In the conditions the study of local budgets of Ukraine and the analysis of the peculiarities of forming of their incomes in Ukraine started the conditions of war are extremely actual and important issue, that need detailed study and important for solving socio-economic problems of the country in wartime.

Analysis of last researches and publications. Local budgets are already the subject of focused attention and the researches of domestic scientists during many years, especially from the moment of introduction of the reform of local self-government. Among them: Y. O. Balatsky, N. I. Vlasuk, O. R. Zakhidna, I. A. Lomachynska, S. O. Osypenko, O. M. Pikhotska, I. Y. Churkina, Y. V. Yushchyk. However the questions of fullness of local budgets in wartime today is on the stage of study and resolution, because approaches to forming financial resources on the local level are under the influence of the challenges brought by the war, significantly differ from measures in peacetime. That's why the question requires additional attention of researchers and experts in the field of finance and economics and need further research.

Formulating of the aim of the article. The aim of the article is analysis of the structure of revenue part of budgets of Ukraine during 2022 in the conditions of full-scale war and defining its influence on peculiarities of forming revenue on the grounds.

Description of the main research material. Full-scale invasion of russian federation, which started 24. 02. 2022 became the greatest challenge for Ukrainian independence, functioning of the state and activity of the bodies of self-government. Among others then war sharpened the problems of achieving regional and communal stability.
Invasion of the Russian Federation on the territory of Ukraine, certainly affected on the development of the reform, but it didn't stop its realisation. As experience shows, the reform of decentralisation of power is one of the most successful for all the independence of Ukraine, strong and able territorial communities firmly placed a shoulder of support to central bodies of executive powers in the fight with aggression.

Introduction of martial law in Ukraine changed functioning and progress of implementation state management processes and socio-political life on the territory of Ukraine.

Special responsibility was assigned on state authorities and local self-government, that represent interests of relevant territorial communities and executive power.

According to p.2 a. 9 The Law of Ukraine «About legal regime of martial law» bodies of local self-government continue to exercise powers granted to them by the Constitution of Ukraine, by this and other laws of Ukraine [1].

The constitutional provision that people is the source of state power provides for two forms of its implementation - directly and through public (state and self-government) authorities. According to a.140 of the Constitution of Ukraine local self-government is a right of territorial communities to independent solving issues of local importance within the limits of the Constitution and Laws of Ukraine [2].

District and regional military administrations were created 24.02 2022 by the Presidential decree № 68/2022 [3] throughout the territory of Ukraine due to the full-scale aggression of the Russian Federation against our state, on the basis of existing district and regional state administrations (relevant military-civilian administrations).

Military administrations of settlements are now formed as needed [4]. In the conditions of martial law provision of operational, proper and continuous execution of budgets is extremely important. In order to ensure effective functioning of budgetary sphere and vital needs of the community residents during the period of martial law, a number of normative legal acts were adopted, which allowed local self-governmental bodies to react quickly on challenges related to full-scale invasion.

In the conditions of martial law locai budgets are formed and performed in accordance with the items 22, 22¹, 22², 22⁴, 22⁶, 23¹ «Chapter VI Final and transitional provisions of Budget code of Ukraine» [5], Resolution of the Cabinet of Ministers of Ukraine from 11 March 2022 № 252 «About some issues of forming and performing of local budgets during the period of martial law Resolution of the Cabinet of Ministers of Ukraine» from 9 June 2021 № 590 «About approval of the order of powers of the State Treasury Service in the special regime in the conditions of martial law» [6], «Presidential Decree About emergency measures of financial ensuring the functioning of the state in the conditions of martial law» [7].
The main tasks of acceptance of the documents is prompt and effective management decision-making to ensure uninterrupted functioning of the institutions and establishments of the budgetary sphere, utility companies and satisfaction of vital needs of residents of territorial communities during the period of martial law, sequence of implementation by the State Treasury Service of Ukraine expenditures of the both state and local budgets with taking into account resource provision of single treasury account.

Making decisions significantly eased budget process in the conditions of uncertainty, especially on the initial stage of full-scale invasion, gave an opportunity to the bodies of self-government to respond to calls promptly and make management decisions effectively. « »

But some legislative norms don't always contribute to this and so they need improvement. So, according to the clause 22/2 chapter VI "Final and transitional provisions of Budget code of Ukraine, as an exception to the provision of clause 11 chapter «Final provisions of the Law of Ukraine 'About State budget of Ukraine for 2022» bodies of self-government of military administrations can direct the remaining funds by subventions from state to local budgets, saved on the accounts of local budgets as on January, 1 2022 on measures of territorial defence, satisfaction of food needs of civilian population, evacuation/removal/relocation of the civilian population from areas, where hostilities are taking place and dangerous territories into safe places, particularly payment for transport services, fuel and lubricants, arrangement of places of accommodation for citizens, who, in connection with hostilities left their homes/locations, payment of their measures directed on a support of civilian population in the conditions of martial law.

But the current legislation of Ukraine doesn't contain such definition as support of the civilian population in the conditions of martial law. Besides, there are no official explanations for the reason from the institutions of state power, particularly from Ministry of Finance of Ukraine.

So some bodies of local self-government make decisions at their own peril and risks for directing these funds on individual expenditures of local budgets particularly on arrangement of shelters in social and cultural institutions and other priority expenses.

To avoid different interpretation of the phrase the changes must be made in the «Budget code of Ukraine in order to specify the concept support of the civilian population in the conditions of martial law» or replace it with other concepts, which are used in the Budget code of Ukraine and/or other normative legal acts.

Also by clause 22/5 chapter VI «Final and transitional provisions of Budget code of Ukraine» bodies of local self-government, local state administrations, military civilian administrations (in the case of their formation) can make decisions about spending, as an exception from provisions p.2 a.85 of Budget code of Ukraine costs not assigned to the relevant local budgets and costs on maintenance of budgetary institutions from different budgets at the same time. Such expenses are incurred by providing an inter budgetary transfer from relevant local budget.
Howey, in particular, not all institutions, white are financed from state budget (especially institutions in the sphere of defence) due to objective and subjective reasons will be able to use the funds quickly and effectively, which will come to them as interbudgetary transfers.

That's why most of the territorial communities are ready to make purchases independently for institutions of national security and defence, some kinds of property (except for special purpose production) particularly automobiles (including used ones), means of communication, quadcopters, separate material supports.

Thus the Law of Ukraine About local self-government in Ukraine and the Budget code of Ukraine don't contain norms (including temporary for the period of martial law), which would allow the bodies of local self-government to make such expenses.

That's why it is necessary (as on a 04.09.2023) to amend the above laws, «In order to provide an opportunity to bodies of local self-government to make purchases of separate kinds of properties in order to transfer them to military units», units of the National Guard and so on.

Other normative legislative act, which regulates budget process on the local level during martial law is a resolution of the Cabinet of Ministers of Ukraine from 11 March 2022 № 252 «Some issues of forming and performing of local budgets in the period of martial law», which also needs improvement.

Particularly by sub-item 6 of item 1 of the resolution established that in the period of martial village, settlement or city head of territorial community on the territory of which there are no hostility and the decision of forming military administrations of the settlement is not made can make decisions as for transfer of funds for the needs of Armed Forces from related local budget and/or for ensuring measures of legal reasons of martial law.

Except that, there is no mechanism for transferring these funds this provision significantly narrows the powers of community representatives (deputies of the council) to manage community budget funds subject to legal capacity of such council.

And so, the relevant provision of the resolution, subject the changes to it, must be applied exclusively to those communities in which local council is disabled and can't make relevant decisions.

Also sub-item 7, item 1 of this resolution contains the norm, according to which draft decision of the local council, military administration transfers of the funds in a form of interbudgetary transfer (except interbudgetary transfers, provided by clauses 1, 4 part 2 101 of the Budget code of Ukraine to relevant local budget of other region and/or Kyiv necessarily subject to approval of Ministry of Finance by providing a corresponding letter.

Now any argumentation as for existing of such a norm is absent, current edition of Budget code does not contain similar norms, which are applied in peacetime conditions that's why this in contrary complicates individual budgetary procedures instead of simplifying them.
Conclusion. So, to my mind, the relevant provision must be excluded from above resolution, because it complicates the mechanism of transfer of interbudgetary transfers to local budgets of other regions (particularly, for the restoration of objects of social and cultural sphere as a result of consequences of armed aggression of Russian Federation destroying of dam of Kakhovka HES and so on). Besides, relevant provision has no any practical meaning, because bodies of self-government consciously make decisions in the presence of sufficient financial resources in relevant budgets, and approval by the Ministry of Finance the transfer of such funds has a technical character and leads to increasing terms of transfer of relevant funds to communities, which need them.

References:

Література:
1. Про правовий режим воєнного стану: Закон України від 12.05.2015 року № 389-VІІІ. URL: https://zakon.rada.gov.ua/laws/show/389-19#Text
5. Бюджетний кодекс України. Закон України від 08.07.2010 р. №2456-VI. URL: http://www.rada.gov.ua (дата звернення: 02.03.2024).
6. Про затвердження Порядку виконання повноважень Державною казначейською службою в особливому режимі в умовах воєнного стану. Постанова Кабінету Міністрів України від 09.06.2021р. № 590. URL:https://zakon.rada.gov.ua/laws/show/590-2021-%DO%BF#top (дата звернення: 15.05.2022)