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MILITARY-CIVIL ADMINISTRATIONS AS THE MECHANISM OF SPECIFIC DECISION MAKING PROCESS UNDER CONDITIONS OF ANTI-TERRORIST OPERATION

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Abstract

In the article the author has examined the specific conditions of public administration functioning in the zone of anti-terrorist operation. Also it was mentioned that the condition of hybrid military conflict in which Ukraine appeared, requires extraordinary decision making. In order to form specific decisions on the basis of technologies of civil-military collaboration, this work studies the process of building and improving the network of military-civil administrations.

Key words

military-civil administrations of Ukraine, anti-terrorist operation in Ukraine, civil-military collaboration, administrative decisions, military conflict in Ukraine.

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1. Introduction

Addressing speech of the UN Secretary General on the occasion of the fifth independence anniversary of Ukraine was noted that after the “cold war” there had happened unprecedented outbreak of military conflicts, most of which had internal nature, especially within the territories of former Soviet Union (Національна безпека..., 1997). Conducting the anti-terrorist operation (ATO) on the territories of Luhansk and Donetsk oblasts, situation with Crimea annexation, conservation of long-term social and political tensions in certain regions of Ukraine and

repeated tension of anti-state political forces – all these prove the necessity of formation and implementation of the system of anti-crisis public management in order to make the effective decisions in proper time. In order accept dynamic decisions under conditions of the hybrid warfare, on the January 25, 2015 the National Security Council of Ukraine (NSC) has proposed to create military-civil administrations (MCA) in the settlements of Donetsk and Luhansk oblasts (Про рішення..., 2014). This approach has provided the opportunities to resolve the issues of absence of governments at the liberated territories, when all elected deputies of local councils left

their positions because of proclaiming separatism. Thus, it is planned to maintain the system of public administration in the capable functioning conditions until holding local elections. Based on this we can state that the purpose of this article is to analyse prospective tendencies for development of MCA administration system, especially in decision-making process by taking into consideration civil and military technologies.

2. Research results analysis

In 2015 the President of Ukraine signed the Law № 141-VIII, where it was written that within Donetsk and Luhansk oblasts, being a part of the Antiterrorist Center at the Security Service of Ukraine, there have been formed the MCAs – temporary state agencies created: to ensure the compliance of the Constitutional regulations and Laws of Ukraine; to maintain security and to support normal conditions of life for population; to guarantee the rule of law and to combat the sabotage and terrorist operations, as well as to prevent humanitarian disaster in the area of anti-terrorist operation (Про військово-цивільні..., 2015). This law came into effect on February 28, 2015. The MCAs have authorized to solve issues in tax and business activities, unless a local council does not able to solve these problems. In order to optimize special decision-making process, the Law on Military-Civil Administrations (Law on MCA) brought certain changes into the Law of Ukraine "On Fighting Terrorism" (Про боротьбу з тероризмом..., 2003). The Law on MCA was prolonged in February, 2016 based on the Decree of the President of Ukraine which was approved by the Verkhovna Rada of Ukraine (Parliament of Ukraine). This Law may lose its validity in the case when Ukraine implements legal military situation at particular territories, or in the case of war declaration. The Law "On Military-Civil Administrations" adopted by the Parliament of Ukraine became a response to those ones who tried to force the President of Ukraine to announce military situation the state and to provoke global military confrontation (Про військово-цивільні..., 2015). Another reason to create an optimal system of administrative decision-making under specific conditions of public administration was the "Military-Administrative Division of the Territory of Ukraine", approved by Decree of the President of Ukraine № 498/2013 on September 2, 2013 (Про затвердження..., 2013; Про затвердження..., 2016) According to this regulation there were defined the areas of responsibilities and the settings for special

decision-making for the Armed Forces of Ukraine and other enforcement agencies and armed units.

In 2015, the President of Ukraine signed the Decrees on creating MCA (the Decree №123 on March 5 (Про утворення..., 2015), the Decree №286 on May 26 (Про утворення..., 2015), the Decree №469 on August 7 (Про утворення..., 2015) and the Decree №472 on August 1 (Про утворення..., 2015)) where have been specified the particular division of administrative areas. Also, the responsibilities, main directions of activities were designed and the heads of MCAs were appointed on their positions. Finally, there were created 30 MCAs, and thus, have formed the optimal conditions for efficient cooperation between civil and military structures under the crisis situation. In the field of activities between civil and military authorities there were introduced the concept of civil-military collaboration (CMC) and the experience of Armed Forces of Ukraine related to the military conflicts in other states was applied. By enacting these regulations, many problems began to resolve in the Donetsk and Luhansk oblasts. As a result, some local self-government bodies were eliminated from executing of their responsibilities. In the cities and settlements where public bodies were paralyzed, their functions had been taken by the structures that formed in case of necessity with the goal to prepare and to adopt topical administrative decisions. These structures and their creation were assumed the by the Decree of the President of Ukraine. Those structures are equipped by militaries such as military servants, officers and soldiers – assigned representatives of law enforcement authority (police), and the employees who signed a contract with the Anti-Terrorist Center under the Security Service of Ukraine.

Authorities given to the MCAs are much wider than the ones given to local state administrations. State administrations have usual range of authorities provided by laws, but the powers given to military representatives and civilian administrations could be divided into three types. First type – are the authorities (powers) belonged to the local public administrations, second type – are the ones given to the local self-government bodies, third type – special powers, like curfews, restricts in the trading activities, construction of the checkpoints within settlements and beyond them. This decision-making system is grounded on the practical experience gained during collaboration between Ukrainian and foreign military and civilian structures (Цивільно-військове..., 2015). Representative of the General Staff of Armed Forces of Ukraine Mr. M. Ordynovych has emphasized that in the US Army there is a strict rule: it must be established a strong centralization in

decision-making process and full decentralization in the process of their implementation – this could ensure the effectiveness in decisions and used in the MCA activities. Today Ukrainian militaries have a good experience and can share it with the representatives of MCAs, they can teach CMA members certain tactical elements of conducting ATO, as well as how to operate under conditions of hybrid warfare, including experience of specific decision-making system СМС (Ординович, 2015). Following Yu. Lutsenko's words, in this way it will be settled the right of oblast state administrations (OSA) to establish checkpoints, to assign issues of controlling and passing them, to implement tax goods trade regime at the front-line area, to adopt the budget of the local self-government council. And, in the case of absence of local deputies, the village head could be replaced by civilian or military person according to decree of OSA. Positive changes for problematic territories would be visible while executing the effective mechanism of MCA law implementation. At the same time, the law contains some problematic issues concerning the interaction of local administrations with Anti-Terrorist Center, but these issues can be settled down.

The rate of problem areas development has been declined by 30%. Every day business facilities are destroyed, the coal shafts are flooded, and production has stopped. Unless combat actions do not stop, this trend will rise and quite negatively impact to the economy development of Donetsk and Luhansk oblasts as well as to Ukraine, in general (Ковальов, 2015). According to the preliminary calculations in the Donetsk region there were more than twenty villages and towns where people had to overcome many problems on their own and to survive somehow. Status of temporary state agencies in the Donetsk region has received Donetsk oblast MCA, Mariyska and Volnovakha raions MCAs, Krasnogorivka, Vugledar, Avdeevka towns MCAs. They obtained all powers and functions given to temporary state agencies, they are responsible for civil order and public safety. Concerning real situation, the Donetsk Oblast Administration works under conditions of emergency. Special committee and headquarters took the responsibility to solve the contemporary issues. The MCA work at the territory under control of Ukraine could strengthen discipline and turn on the mechanism of operative and effective decision-making process. Among critical problems we can mention about the following ones: the bypass issue, which caused numbers of complaints had already adjusted; the costs needed to carry out the tasks of life support at the region are involved from the State Budget of Ukraine.

Similar processes are deployed in the Luhansk oblast. There was created the Luhansk Oblast MCA, the Stanycno-Luhansky, Popasny and Novoaydarsky raions MCAs (active combat operations had been conducted within mentioned territories, and those territories mostly affected by the military attacks). MCAs have been organized in such settlements as Triokhizbenka, Novotoshivka and Troitske. It is still under discussion the issues of creating military-civil administrations in other towns and settlements. In the case of military operations state administrations usually do not carry out their duties. Newly created MCAs fulfil all functions related to the life support for civilian population – from birth to death. Administration can limit traffic on certain streets and territories, it can barred the entrance to the city, to prohibit sale of alcohol, weapons, to withdraw armour even the one, which was purchased legally, to make decisions about curfew and disallow public events if there is a risk for life. Yu. Lutsenko thinks that the Law on Military-Civil Administrations should be extended to the territories of Kharkiv and Odessa oblasts (Луценко, 2015). Today the mechanism of humanitarian aid delivering has adjusted within Ukraine's temporarily not controlled territories. This field is under the interest of common population, public administrations staff, international humanitarian missions, including "Red Cross". The law provides for the item where it is stated that regional MCA creates favourable conditions for carriage of goods to the civilian population living on territory which is not controlled by Ukrainian authorities (Конарева et al, 2015). In some parts of the ATO zone the process of establishing peaceful life has been set up. There were eight MCAs which stopped their work in April, 2016 based on the Decree №125 / 2016 signed by the President of Ukraine (Питання припинення..., 2016). The decision was made on the opening day of the first session of newly elected local councils and MCAs have lost their authorities in these raions. Thus, there were liquidated such MCAs at: Artemivsk, Volnovaha, Volodarsky, Constantynivsk, Maryinsky and Pershotravnevy raions (within Donetsk oblast), and, Novoaydarsky and Stanichno-Luhansky raions (within Luhansk oblast).

At the same time the mechanism of MCA functioning is quite complex and not always promotes the adoption of best possible solutions. The legal peculiarity of the MCA's is that it is considered as a state body with cross-subordination to: the President of Ukraine – because the President is responsible for MCA's creation and he appoints MCA's heads; the Anti-Terrorist Center under the Security Service of Ukraine (SSU) – from the point of legislative statement and specific functions performed within the



Fig. 1. The system of influences on decision-making process of military and civil administrations

Source: developed by the author.

ATO; the Cabinet of Ministers of Ukraine – under vertical subordination while executing functions of state administration of relevant area or oblast; Verkhovna Rada of Ukraine (Parliament of Ukraine) – by implementing military-civil collaboration (Шевченко, 2016).

This subordination significantly complicates the decision making process, but it has an objective reason because of tasks associated to providing mission of the Armed Forces and participating in ATO (Fig. 1).

Today the problem of decision-making process in the system of MCA is considered wider than just the strengthening of public administration within a particular region by the military organization. M. Sungurovskiy, Military Programs Director at the Razumkov's Center thinks that creating such MCA's typical for military or paramilitary situation or, for conditions when the country is getting out of the conflict, when at some areas it is necessary to recover economy as well as legal conditions and to fight against the rest of destructive forces. The problem is that creating MCA is only one component for establishing stability in the Eastern Ukraine. Full complex of reconstructive work includes not only creation of MCAs, but mainly, formation of content of their activities. Razumkov's Center previously proposed to deploy special reconstructive projects by involving foreign partners at the ATO zone (Сунгуровський, 2014). Temporary administration must mostly deal with: preparation to the new government elections, development different events needed for restoration of infrastructure and industrial facilities. It is necessary to launch new business projects in order to create regional product, and to provide with jobs. Only combining these activities, people who live on these territories could feel confidence to the government. The law draft on MCA issues has lack a systematic approach and has no detailed analysis of the whole complex of problems within the areas which appeared under the military conflict. There are still a lot of issues concerning organization and conducting of military mobilization. The issue of confidence to the government also becomes a topical one. On

this case M. Sungurovskiy says that the Law on MCA determines the right direction for stabilization the situation and puts the legal basis for the rest of further steps. But, the Head of the Center for Political and Legal Reforms I. Koliushko thinks that it was not necessary to adopt a new legislative regulation. At this stage it was enough to adopt the amendments into the already existing laws e.g. Law on Local Self-Governmental Bodies or Law on Combating Against Terrorism, and to add the positions (norms) that allow to engage military representatives into public executive bodies in the ATO zone. He points out to inconsistencies among some legislative regulations that, without fail, will cause some conflicts (Андрусенко, 2015).

Continuing formation of the system of military-civil administration there was developed and implemented the Law of Ukraine "On Legal Regime of Martial Situation" in 2015 (Про правовий режим..., 2015). S. Pashynsky noted that the draft of the law received 88 amendments (Верховная Рада..., 2015). According to him, Ukraine should not exclude the option when the conflict in the ATO zone could be escalating any time. The document determines the content of legal bases of martial situation, the procedure of its beginning and withdrawal, legal basis for decision-making by public administration bodies, military command staff and military administrations as well as by local self-government bodies, enterprises, establishments and organizations under the martial situation. It is important to pay attention to the rest of issues related to the organization of military-civil administration while acting under the martial situation. Under the process of preparation of the Law of Ukraine "On Legal Regime of Martial Situation", Main Scientific and Expert Department of the Verkhovna Rada stated that the system of military administrations, the procedure of their creation and subordination, that was offered in the Law might be complicated and ineffective under the warfare conditions (Про правовий режим..., 2015). In the case of implementation of martial situation, the efforts of the governmental bodies should be

aimed to organize the defence of the country as soon as possible, and the system of public administration should be based on the principles of hierarchical subordination and clear delegation of powers. Governmental bodies should reorganize their work in short terms, and the procedure of such reorganization must be minimal bureaucratic. The analysis of the law draft shows that creation of the system of military administrations does not meet that goal.

Administrations should include military representatives, but not consist of only militaries, noted the experts of the Council. Specialists from the Main Scientific and Expert Department believe that it is possible to increase powers of oblast and raion administrations and to include military personnel as their staff thus, to subordinate the militaries to the General Staff without bringing changes into the title (name) of organization. The law draft provides that the Oblasts and Raions State Administrations in times of crisis "acquire the status of" military administrations, that is why the experts are warning that changes in the name of organization would require re-registration as a legal entity, to solve staff and organizational issues, while under the martial situation the efforts should be directed not at the reorganization of public administrations, but to the improvement of their effectiveness and strengthen of the defence. Experts believe that the phrase "acquired status" has no legal grounds but could create a situation of legal uncertainty when many issues related to the functioning of the newly established bodies could show up. Experts also point out that the establishment of military administrations can be justified only in terms of actual inaction of local self-governmental bodies in villages, towns and cities, where there are no public executive bodies. At the same time, experts mention that at the level of oblasts and raions where public executive bodies are functioning, it is enough to bring changes into the competence, order of formation and to subordination system of these bodies.

The Law of Ukraine "On Legal Regime of Martial Situation" implies that the military administrations created by the decision of the President of Ukraine based on proposal of Oblast State Administrations or military commanders (Про правовий режим..., 2015). It is planned to create military administrations with different competency and at different territorial levels (in the towns, raions, oblasts). In the scientific and expert fields, people are concerned that finally we can receive rather complicated system of administrative bodies. Except military administration, the system of public administration includes local self-government bodies (their executive departments), local state administrations, military administrations

of the settlements, raions and oblasts (according to the project, they will have different authorities (powers) depend on reasons of their creation), civil-military administrations. In such circumstances it is unclear what is the way of functioning of this complex system of administration, and, which part of mentioned bodies are subordinated to the General Staff, or, to the Cabinet of Ministers of Ukraine.

The effectiveness of administrative system as well as the decision-making process in the ATO zone are under the active influences of social and psychological aspects. In the framework of program "Overcoming Social Consequences of the Conflict in Donbas and Illegal Annexation of Crimea under Support of State Bodies in Ukraine and Civil Society", which was implemented by Canadian NGO "Stabilization Support Services" with support of the British Embassy, there was conducted a survey and investigated the level of conflict in communication process among militaries and civilians, including those categories in the ATO zone. It was figured out that military professionals and civilians give their preferences to the peaceful strategies of conflicts resolving. But these strategies are the strategies of avoidance, which means the lack of active dialogue and common approaches to mutual understanding. Up to 84% of respondents believe that violence is not acceptable, but 38% considered that the psychological pressure effects are acceptable, though. The analysis of behavior in a conflict situation between civil and military representatives testifies (up to respondents' opinion) that civilians should demonstrate respect for the militaries (30% civilian and 34% militaries) do not argue (67% civilian and 59% militaries), sometimes be silent (28% civilian and 39% militaries), to reduce contact with unknown persons (33% civilian and 31% militaries). For military personnel within the military units, MCA, expert groups it is necessary to find peaceful conflict resolution (70% of civilian and 69% militaries) (85% українців ..., 2017).

We also conducted researches according to which we can state that 93% of population in the ATO zone has psychological damage of different genesis and levels. Among civilian population there are 71% of people who have post-traumatic stress and 53% from the military representatives. It is identified that the soldiers (militaries) who were in the ATO zone, the ones who had to work directly with civil population, have more higher level of aggressiveness (up to 22 points by the method L. Pochebut) and lower level of anxiety (up to 32 points for the methodology of Ch. Spilberg and Y. Hanin). A key role belongs to volunteers and social workers who adjust communication links at the ATO zone. However, 41% of them are now feeling fatigue and loss

of motivation. Up to 14% of volunteers and 8% of social workers, 6% of psychologists note that they are at the first stage of professional burnout. Up to 80% of respondents complained about media bias and lack of objective information for public (У 25% переселенцев..., 2014).

Parliament experts emphasize that cooperation of military administrations with other administrative bodies in Ukraine cannot be implemented situationally, because such a system cannot be effective under martial situation. The law draft provides that the mechanism of collaboration between the military command and military administrations with administrative executive bodies is determined by the Supreme Commander of the Armed Forces of Ukraine. The Scientific and Expert Department representatives are recommended (as a general framework) to identify the appropriate mechanisms of interaction. Based on mentioned above it is necessary to consider the possibility to establish the unified system of administration that starts operating simultaneously with the putting into work the martial situation and does not require any special decision-making for creation of relevant bodies for every single territorial unit.

3. Summary

How effective legal regulations will work in practice, only time could demonstrate. Situation which has happened nowadays leaves no doubts about the need for such drastic steps in some regions of Ukraine. The problem is not only in implementing of effective democratic civil control under security sector, but in the radical reforming of relations between civilian and militaries, that is a key part of the issue of ensuring the effectiveness of public administration by the security and defence sectors. In the post ideology society the concept of military-civil relationships should be the cornerstone of a successful process of democratization in the state as well as implementation of its transformations. Further research of this issue is to analyze the experience of advanced European countries of consolidated democracy in the field of decision-making process in the system of civil-military relations. New trends in civil-military relations could initiate studies for prospective technologies of decision-making process by taking into account the high level of uncertainty and risks in situations of military confrontation. Coordination of MCA activity and its functioning structure becomes a complex element of civil-military cooperation, which requires a high level of flexibility in decision-making process conducted by the supreme military

and political leaders of the state. The effectiveness and efficiency of administrative decisions which were taken by the corresponding officials in order to perform tactical tasks of ATO could be achieved based on high level of organizational and legal support of the system of MCA activity and to optimize its structure on the basis of practical experience.

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