

LEGAL ASPECTS OF THE ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES UNDER MARTIAL LAW

ASPECTOS JURÍDICOS DAS ATIVIDADES DOS ÓRGÃOS DE AUTOGOVERNO LOCAL SOB LEI MARCIAL

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Abstract: The article analyzes the place of local self-government bodies in the system of ensuring territorial development. The analysis of the leading European experience made it possible to determine that the deregulation of territorial management processes is an effective mechanism for ensuring their development. The role of local self-government bodies during political crises was defined. The lack of experience in the implementation of powers by local self-government bodies under martial law determined the need to analyze Ukrainian legislation and its practical implementation after the beginning of the full-scale military aggression of the Russian Federation against Ukraine. The analysis of the needs of the population was carried out by accumulating the results of a sociological survey among Ukrainians conducted after the start of a full-scale military invasion. Based on the assessment, a ranking matrix of the population's requests was developed, which made it possible to form the areas of work of local self-government bodies, which are defined as priorities in the conditions of martial law. Based on the analysis, methodical recommendations are proposed to improve the regulatory and legal regulation of the activities of local self-government bodies in the conditions of martial law.

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Resumo: O artigo analisa o lugar das autarquias locais no sistema de garantia do desenvolvimento territorial. A análise da experiência europeia de referência permitiu constatar que a desregulamentação dos processos de gestão territorial é um mecanismo eficaz para garantir o seu desenvolvimento. Foi definido o papel dos órgãos locais de autogoverno durante as crises políticas. A falta de experiência na implementação

de poderes por órgãos locais de autogoverno sob a lei marcial determinou a necessidade de analisar a legislação ucraniana e sua implementação prática após o início da agressão militar em grande escala da Federação Russa contra a Ucrânia. A análise das necessidades da população foi realizada acumulando os resultados de uma pesquisa sociológica entre os ucranianos realizada após o início de uma invasão militar em grande escala. Com base na avaliação, foi elaborada uma matriz hierárquica dos pedidos da população, que permitiu formar as áreas de trabalho das autarquias locais, definidas como prioritárias nas condições de lei marcial. Com base na análise, são propostas

recomendações metódicas para melhorar a regulamentação regulatória e legal das atividades dos órgãos de governo autônomo locais nas condições da lei marcial.

Palavras-chave: Órgãos locais de autogoverno. Suporte legal. Regulamentação legal. Lei marcial.

1. Introduction

In 2014, Ukraine launched a reform of decentralization of power. The decentralization reform involves the transfer of a number of management powers, including financial ones, to local entities. This transformation is aimed at ensuring a more effective distribution of funds and organizational and economic provision of the urgent needs of the territory, taking into account its specifics: potential, resources, needs, etc. The effectiveness of the method of power decentralization has been proven by the experience of many European countries that have moved to deregulatory processes and were able to ensure an effective symbiosis of state and local power through decentralization and liberalization. The Law of Ukraine "On the Basics of State Regulatory Policy in the Field of Economic Activity" defines the specifics of the implementation of regulatory activity "in conditions of martial law, state of emergency and the declaration of a zone of emergency ecological situation, regulatory activity is carried out taking into account restrictions on the rights and freedoms of a person and a citizen, which in conditions of martial law are established in accordance with the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law". In accordance with the current legislation, the legal regime of the introduction of martial law may provide for the introduction of temporary restrictions on some of the rights, including the activities of local self-government bodies and the exercise of the powers of local authorities, interaction with the local population, the implementation of socio-economic and socio-political tasks [Constitution of Ukraine, Law of Ukraine "On the Legal Regime of Martial Law"].

According to the current legislation and the analysis of the current situation, it is determined that special attention needs to be paid to the study of procedural issues of the implementation of regulatory policy and the change of regulatory powers during martial law in order to ensure the most effective management of territorial development. At the legislative level, there are no specific features of the implementation of regulatory procedures, which is an element of the study.

The purpose of the article. Therefore, taking into account the relevance and practical importance of the search for effective mechanisms of legal regulation of territorial

development processes by determining the powers of local self-government bodies under martial law.

To achieve the goal of the study, the following tasks were performed:

- an analysis of the current legislation related to issues of ensuring the activities of local self-government bodies under martial law was carried out,
- determined the needs of the population from the activities of local self-government bodies during the period of martial law,
- a matrix was developed for ranking the needs of the population from the activities of self-governing bodies in the conditions of martial law,
- methodical recommendations were developed to improve the regulatory and legal regulation of the activities of local self-government bodies in the conditions of martial law.

2. Theoretical framework and literature review

As a result of the full-scale military aggression of the Russian Federation against Ukraine, the world found itself in a situation similar to the consequences of the Second World War: the largest migration crisis, the occupation of the largest areas of the territories of an independent country, the scale of destruction and financial losses, the number of human victims - these are the consequences of military actions from February 24, 2022 year have no analogs in the processes of crisis phenomena in the countries of Europe and the world. Accordingly, the analysis of literary sources regarding the possible search for effective mechanisms of legal regulation of the activities of local self-government bodies in the conditions of the introduction of martial law was not carried out in scientific research. There is no international experience of the leading countries in the legal regulation of the activities of local self-government bodies. Therefore, it is expedient to analyze the general regulatory and legal regulation of the activities of local self-government bodies and to determine promising directions for their provision in Ukraine, taking into account the challenges of martial law.

Analyzing the systems of building effective regulatory systems of legal support of local self-government activities, it is advisable, first of all, to turn to the best experience of the countries of the European Union. A people-centric approach in the system of steam provision of the activities of local self-government bodies determines the priority in the development of legal norms through the determination of the main interests, needs and

preferences of the residents of the community. Local self-government bodies provide citizens with the necessary public goods, which reflects the tendency to decentralize powers from central authorities to territorial associations, which is particularly relevant in the conditions of democratic development of society. Therefore, it is appropriate to determine that the assessment of the effectiveness of local self-government bodies depends not only on the freedom of decision-making by local authorities but also on the financial support of local projects through the transfer of financial powers from central executive bodies to local self-government bodies. The member countries of the European Union use different strategies for financial support of the activities of local self-government bodies and the implementation of local-level projects. Analyzing the leading experience of the EU countries in providing legal justification for decentralization processes, a tendency towards consolidation at the level of local self-government bodies through the legal and financial support of regulatory processes aimed at creating an assumption of improving the overall quality of management in member states was determined [Onofrei, M. and Oprea, F. (2017)].

The analysis of studies by a number of authors determined the importance of the financial basis for the possibility of implementing local projects through the exercise of the powers of local self-government bodies, in particular, the following legal mechanisms for financial support of the activities of local self-government bodies were determined:

- determination of the distribution of financial regulation between central authorities and local self-government bodies,
- determination of opportunities to increase entrepreneurial activity within a separate territory,
- the creation of conditions to ensure the interaction of local self-government bodies with international donors,
- ensuring the effective use of taxes in the system of local self-government from the activities of small and medium-sized businesses,
- the creation of legal conditions for attracting investments at the level of local development,
- ensuring legal regulation of credit relations in the system of project implementation by local self-government bodies [Modrzyński, P. (2020)].

The experience of the countries of the former Yugoslavia can be determined by the practical experience of the implementation of functions and powers by local self-

government bodies in the conditions of military conflict and political instability. In particular, a number of researchers call the following priorities for the development of local self-government bodies in these countries:

- the adoption of anti-corruption laws that ensure monitoring of the activities of local self-government bodies, including by involving the public,
- providing legal experts of local self-government bodies with the legal and economic analysis necessary to solve the strategic tasks of the development of territories through the most effective regulatory support for the activities of local self-government bodies,
- determination of legal norms of activity of subnational local self-government bodies in conditions of inter-national and inter-ethnic conflicts [Michael, B. and Mendes, S. (2012), Guga, E. (2018), Hassall, G. (2020)].

For further analysis and adaptation of the experience of building effective systems of legal regulation of the activities of local self-government bodies in conditions of martial law, the definition given in the system of national legislation was analyzed: "Martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of an armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and provides for the provision of the relevant state authorities, military command, military administrations and local self-government bodies with the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to state independence of Ukraine, its territorial integrity, as well as a temporary, threat-induced, restriction of the constitutional rights and freedoms of a person and a citizen and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions. Nazarchuk, O. studied the nature and nature of legal regulation of joint-stock companies (Nazarchuk, O., 2018) and developed their strategy for protecting financial security (Nazarchuk, O., 2018).

3. Research design and methods

The article conducts a literary analysis of the best European practices for building a management system at the level of state and local self-government. Through the analysis of literary sources, the application of methods of induction and deduction, grouping, comparative analysis, and synthesis, the best mechanisms for the application of regulatory

policy in the system of deregulation of management powers from central authorities to local self-government were identified. These methods and the accumulation of the results of the analysis of the current legislation of Ukraine made it possible to identify elements of regulation in the system of local self-government. Unfortunately, the lack of an opportunity to carry out an analysis of methodological approaches to ensuring the effective development of local self-government in martial law conditions due to the absence of similar situations in Europe after the Second World War, the analysis of the current situation in Ukraine with the activities of local self-government bodies after the start of a full-scale military invasion was investigated using emergent methods on based on the analysis of the current situation and the current legal framework. To determine the elements of ensuring the effectiveness of local self-government bodies in the conditions of martial law, an assessment and analysis of the results of a sociological survey of respondents who are forcibly displaced persons, which was conducted through the "Action" application, was conducted. The results of the survey made it possible to group the requests of the population to the activities of local self-government bodies in the conditions of the introduction of martial law and full-scale military aggression. The authors of the article conducted a survey of the effectiveness and expectations of the population from local self-government bodies in the conditions of the introduction of martial law. By conducting a correlation-regression analysis of selected influencing factors, the requests of the population were ranked. Based on the calculations and analysis of the current regulatory framework, methodical recommendations for improving the regulatory and legal regulation of the activities of local self-government bodies in the conditions of martial law were determined.

4. Results

The analysis of the current legislation in the system of regulating the activities of local self-government bodies made it possible to determine the following:

- basic legal relations in the system of activities of local self-government bodies are regulated by the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine",

in accordance with Article 64 of the Constitution of Ukraine, restrictions on rights and freedoms during martial law are defined,

- among the rights and freedoms of a person and a citizen, which cannot be limited during martial law, are the following:

1) equal constitutional rights and freedoms and equality before the law,
2) "tolerance: equality on the basis of race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language and other characteristics."

- deprivation of citizenship or change of citizenship,
- on the unlimited rights of foreigners, as well as the rights of citizens of Ukraine, on the granting of asylum, in accordance with the procedure established by the current legislation of Ukraine,

- the right to life, the state's duty to protect people's lives,
- the right to respect for dignity,
- a person cannot be subjected to torture, humiliation, medical or scientific experiments without consent,

- the right to freedom and personal integrity.
- the right to appeal to state authorities and local self-government bodies,
- the right to housing and the impossibility of its deprivation,
- the right to equal responsibilities in marriage,
- equality of children's rights,
- the right to protect rights in court,
- the right to compensation at the expense of the state or local self-government bodies for material and moral damage caused by illegal decisions, actions or inaction of state authorities, local self-government bodies, their officials, and employees in the exercise of their powers,

- access to regulatory legal support, the opportunity to know your rights,
- professional legal assistance,
- the right to non-execution of criminal orders,
- presumption of innocence.

Therefore, the analysis of the rights and freedoms of a person and a citizen, which cannot be limited, as defined in accordance with the Constitution of Ukraine, made it possible to highlight the areas of ensuring constitutional rights that are directly related to the activities of local self-government in the conditions of martial law:

- ensuring the human right to housing providing temporary shelter in case of destruction or damage, restoration of utility service delivery systems in case of destruction of networks, their damage,

- citizens who need social protection, housing is provided by the state and local self-government bodies free of charge or for a fee that is affordable to them in accordance with the law,

- the right to participate in local self-government by belonging to the relevant territorial communities,

- organization of the work of enterprises, institutions and organizations that are communally owned by territorial communities in conditions of martial law, assistance in providing opportunities for the functioning of enterprises, institutions and organizations that are not communally owned by territorial communities,

- simplifying procedures for hiring and checking representatives of executive bodies of local self-government,

- a certain simplification of the regulatory mechanisms assigned to the competencies of local self-government bodies regarding the implementation of the provisions of the normative acts: "On access to public information", as well as laws of Ukraine "On the principles of state regulatory policy in the field of economic activity", "On state assistance to economic entities" [About the legal regime of martial law, On Access to Public Information, On the Principles of Regulatory Policy in Economic Activity, On Government Aid for Business Entities].

In the event of the introduction of martial law within the territories of territorial communities, in which 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 in the cases provided for by this Law, military administrations of settlements are formed. The main tasks of military administrations are: measures to ensure defense, public safety and order, protection of critical infrastructure, implementation of measures to ensure the legal regime.

In addition to determining certain limitations in the steam regulation of the activities of local self-government bodies, it is advisable to determine the expansion of powers, in particular, the following measures:

- release of communally owned land plots from illegally placed temporary structures,

- inspection and dismantling of buildings and structures and their structural elements in case of their damage, threat to life and health of people,
- creation of opportunities for donations to meet the needs of the armed forces of Ukraine, territorial defense units,
- fight against natural disasters and cleaning up the consequences, prevention and avoidance of emergency situations.

Analyzing the regulatory documents that regulate the legal basis of the activities of local self-government bodies in the conditions of martial law, it was determined that the powers of local self-government bodies primarily relate to the following areas (Figure 1).

For further analysis, it is expedient to determine the needs of the population from the activities of local self-government bodies during the period of martial law. According to the results of the conducted sociological survey, a diagram of the survey results was formed (Figure 2).

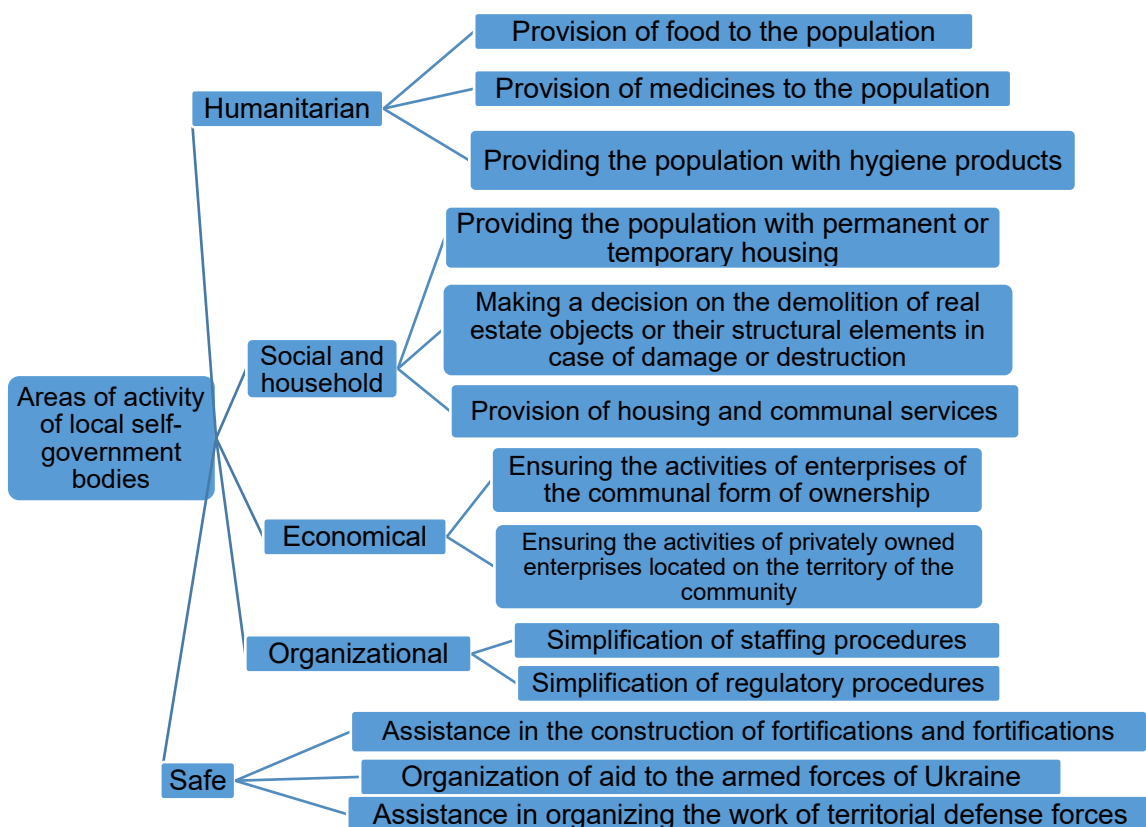


Figure 1. Areas of activity of local self-government bodies during martial law

Resource: developed by the author based on the analysis of the current legislation of Ukraine

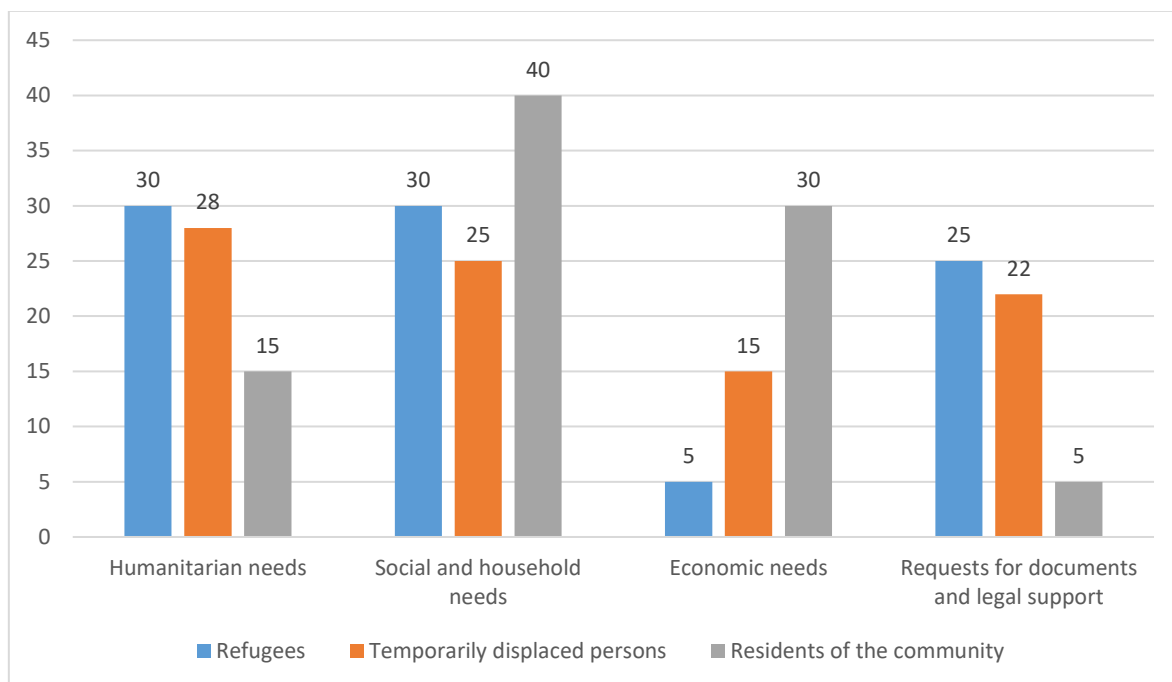


Figure 1. Areas of activity of local self-government bodies during martial law

Resource: developed by the author based on the analysis of the current legislation of Ukraine

According to the results of the analysis of regulatory and legal support and the selection of areas of activity of local self-government bodies that are directly related to the needs of the population, with the determination of the priorities of the population in relation to basic needs in three categories (refugees, forcibly displaced persons, local residents), a ranking of the needs of the population was carried out from activities of self-government bodies under martial law. In accordance with the conducted research, a ranking matrix of the needs of the population from the activities of self-governing bodies under martial law was developed (table 1).

Table 1. Matrix of ranking of the needs of the population from the activities of self-government bodies in the conditions of martial law

	Refugees	Temporarily displaced persons	Residents of the community	Average value	Weight factor
Humanitarian needs	0,3	0,28	0,15	24,33	0,24
Social and household needs	0,3	0,25	0,4	31,67	0,32
Economic needs	0,05	0,15	0,3	16,67	0,17
Requests for documents and legal support	0,25	0,22	0,05	17,33	0,17

According to the conducted analysis and development of the ranking matrix, it was determined that social and humanitarian problems have the highest priority for the

population. Such a situation should be associated with full-scale military aggression against Ukraine, loss of work, closure of business, displacement of persons due to active hostilities, loss of housing and other humanitarian and social factors. Accordingly, it was determined that the priority of local self-government bodies should be to provide opportunities to overcome the consequences of a full-scale military invasion of the Russian Federation by providing solutions to the social and humanitarian needs of the population.

The article developed methodological recommendations for improving the regulatory and legal regulation of the activities of local self-government bodies under martial law, taking into account the ranking of the needs and requests of the population of various categories to local self-government bodies under martial law, in particular:

- regulation of the exercise of powers in the field of personnel decisions in the system of executive bodies and communal enterprises in order to ensure the implementation of social and household functions,

- ensuring legal regulation of processes of interaction between local self-government bodies, state authorities, volunteers, public organizations, etc.,

- legal substantiation of the powers of local self-government bodies in the processes of evacuation of the civilian population by organizing interaction with the armed forces of Ukraine, volunteers,

- legal substantiation of relocation processes and determination of the role of local self-government in ensuring the effective operation of the relocated business,

- ensuring the processes of the development of democracy, in particular determining the place of people's power in the state management system,

- expanding opportunities to involve local residents in discussion and decision-making on territory management issues,

- determination of the legal basis for implementing the right of local self-government bodies to seek financing for the needs of the restoration of de-occupied communities and communities that have suffered destruction as a result of hostilities,

- determination of mechanisms for establishing international cooperation at the level of local self-government bodies, taking into account the need to find financial support and credit funds for the restoration of destroyed infrastructure and housing,

- legal regulation of digitization processes in the activities of local self-government bodies with the development of specific recommendations and proposals.

5. Discussion

As a result of the conducted research, the regulatory and legal principles of regulating the activities of local self-government bodies, which are represented in Ukraine by the Constitution of Ukraine, the Law of Ukraine "On Local Self-Government in Ukraine", were determined. With the beginning of the full-scale invasion of the Russian Federation into Ukraine, certain restrictions on the rights and freedoms of people and citizens were introduced, including restrictions on the activities of local self-government bodies in accordance with the Law of Ukraine "On the Introduction of Martial Law". In addition to limitations in the legal system, as a result of the analysis of the current legislation of Ukraine, a number of expanded powers of local self-government bodies were identified, which relate to the regulation of relations in the system of illegally placed temporary structures, the inspection and dismantling of buildings and structures and their structural elements in case of damage. creation of opportunities for donations to meet the needs of the armed forces of Ukraine, territorial defense units, forcibly displaced persons, cooperation with international funds, partners, public organizations, etc.

That is, the expansion of powers in the system of legal regulation of the activities of local self-government bodies was aimed at ensuring the urgent needs of the population during the period of military aggression.

As a result of the analysis of the areas of activity of local self-government bodies and the prioritization of the population's request for the services of local self-government bodies in the conditions of martial law, a ranking matrix of the areas of activity of local self-government bodies was created, in particular, according to the following requests of the population:

- Humanitarian needs,
- Social and household needs,
- Economic needs,
- Requests for documents and legal support.

The identified requests and the conducted ranking made it possible to develop specific practical mechanisms for improving the regulatory and legal regulation of the activities of local self-government bodies in the conditions of martial law. The results of the sociological survey are debatable because they may differ somewhat in the territories where active hostilities are taking place, territories affected by hostilities, de-occupied

territories, and territories where active hostilities were not conducted. However, Ukrainians who live or were forced to leave the entire territory of Ukraine, some of the temporarily occupied territories, front-line territories and "gray" zones took part in the sociological survey.

Prospects for further research will be issues of legal regulation of the activities of local self-government bodies in the post-war reconstruction system.

6. Conclusion

As a result of the conducted research, it was determined that the consequence of the introduction of martial law and the full-scale military aggression of the Russian Federation against Ukraine was a change in the priorities and requests of the population for the activities of local self-government bodies. Under the conditions of the decentralization reform in Ukraine, the key role of territorial communities was determined, and several powers were transferred from central authorities to local self-government bodies. Such a system ensured higher efficiency of local projects and increased compliance of implemented projects with community requests. In the conditions of the introduction of martial law, the regulatory policy was aimed at preserving the high role of local self-government bodies in the processes of ensuring the security and development of the country. The needs that arose because of a full-scale military invasion became the priority, and were both unified and specific for each region, depending on the severity of the consequences of full-scale military aggression. As a result of the analysis of the requests of three categories of the population: refugees, forced migrants and residents, the requests for the activities of local self-government bodies were identified and ranked. In accordance with priority requests, humanitarian, and socio-economic areas of work of local self-government bodies were included. According to the results of the study, methodological recommendations were formed for the development of a system of steam support for the implementation of the functions of social, household, and humanitarian support of the population as a result of the activities of local self-government bodies in the conditions of martial law.

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