

## Reform Forum's Note

# FEATURES OF PUBLIC ADMINISTRATION ENSURING SECURITY UNDER THE LEGAL REGIME OF MARTIAL LAW IN UKRAINE

**Oleh Ilnytslyi and Natalia Ilkiv**

Submitted on 22 Nov 2022 / Revised 12 Dec 2022 / Approved **09 Jan 2023** /  
Published: **15 Feb 2023**

**Summary:** 1. Introduction. – 1.1. *Ontological foundations of the emergence of scientific interest.* – 1.2. *Research methodology and source base.* – 2. Security as a Sphere of Public Administration under the Legal Regime of Martial Law. – 3. Peculiarities of the Institutional Structure of Local Administration under the Legal Regime of Martial Law. – 4. Changes in the System of Managing Budget Funds under the Legal Regime of Martial Law. – 5. Application of Certain Restrictions in the Order of Introducing Measures of the Legal Regime of Martial Law. – 6. Conclusions.

**Keywords:** *military administration, management of budget funds, restriction of individual rights and freedoms, abuse of authority*

## ABSTRACT

**Background:** *The functioning of the state apparatus under the legal regime of martial law causes significant changes in both the organisational and procedural nature of public administration.*

---

### Oleh Ilnytslyi

Ph.D. (Law), Associated Professor at the Administrative and Financial Law Department, Ivan Franko National University of Lviv, Ukraine [oleh.ilnytskyy@lnu.edu.ua](mailto:oleh.ilnytskyy@lnu.edu.ua) <https://orcid.org/0000-0001-7343-8810>

**Corresponding author**, responsible for writing and research. **Competing interests:** Any competing interests were included here by both co-authors. **Disclaimer:** The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organizations. **Translation:** The content of this article was translated with the participation of third parties under the authors' supervision.

**Managing editor** – Dr. Oksana Uhrynovska. **English Editor** – Dr. Sarah White.

**Copyright:** © 2023 *Oleh Ilnytslyi and Natalia Ilkiv*. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

**How to cite:** O Ilnytslyi, N Ilkiv 'Features of Public Administration Ensuring Security under the Legal Regime of Martial Law in Ukraine' 2023 1(18) Access to Justice in Eastern Europe 125-135. <https://doi.org/10.33327/AJEE-18-6.1-a000109>

### Natalia Ilkiv

Ph.D. (Law), Associated Professor at Department of Commercial Law Disciplines, State University of Internal Affairs in Lviv, Ukraine, [n.v.ilkiv@gmail.com](mailto:n.v.ilkiv@gmail.com) <https://orcid.org/0000-0002-3182-8391>  
**Co-author**, responsible for writing and research.

**Methods:** *The results of research on the functioning of the state apparatus under the conditions of the legal regime of martial law and practice materials in the form of published statistical and journalistic reports from open sources of information were processed using general scientific and special research methods.*

**Results and Conclusions:** *As a result of this research, the following recommendations were formulated in the adaptation of public administration: the need to introduce clear distribution and definition of the competences of military and civil administration bodies, as well as the definition of further control mechanisms when granting an additional scope of powers to military and civil administration bodies under martial law conditions; 'revisions' regarding justification for the exercise of such powers; the implementation of restrictive measures of the legal regime of martial law should take place in a clear, legally defined sequence, taking into account the presence of a legitimate goal of their introduction with special attention to the issue of proportionality between the introduced restrictions and the results of their implementation to achieve the same goal; use of alternative means of communication with citizens with transparent (accessible) presentation of information to establish social dialogue and understanding between governing bodies and citizens; institutionalisation of such means of communication.*

## 1 INTRODUCTION

### 1.1 Ontological foundations of scientific interest

The beginning of the full-scale military aggression of the Russian Federation with the support of Belarus led to the restructuring of the public administration system following the new challenges of ensuring the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security as the most important functions of the state and the affairs of the entire Ukrainian people as per para. 1 of Art. 17 of the Constitution of Ukraine. Today, this constitutional provision is filled with real content, as every citizen of Ukraine or anyone who is legally present on its territory has felt the value of the state as the only mechanism capable of ensuring against external physical threats, the priority and generality of the public interest in preserving state sovereignty against threats of military invasion. The experience gained by Ukrainians and the Ukrainian state should ideally never be needed in the future, but it cannot be forgotten or ignored. The public administration system undergoes a 'crash test' of its ability to function and fulfil its tasks and purpose in the most difficult conditions in recent history. The situation's dynamics require quick decision-making, which objectively cannot be sufficiently substantiated and calculated; therefore, their implementation is not always indisputably clear and effective. However, considering the duration and importance of such measures, certain general recommendations should be developed, which would become universal limits for avoiding the most acute unfair attacks on the sphere of private interests of a person. In the end, this will justify the real goal and expected result of this military confrontation – preserving and developing a sovereign and independent, democratic, social, and lawful Ukraine.

### 1.2 Research methodology and source base

The need for scientific research and the formation of generalisations on the indicated issues is determined by a war that has lasted for more than nine months in the territory of one of the largest European states, which determines the military confrontation between the liberal values of established and new democratic regimes and preserves latent or obvious

autocracies with terrorist-criminal characteristics. In these conditions, the resources and capabilities of the former initially appeared more limited since the defined limits of the state's intervention in the sphere of human rights, freedoms, and interests, its service function, and the management procedures adjacent to bureaucracy significantly influence the choice of forms and methods of confrontation. On the other hand, the opposite camp has practically unlimited human, material, and technical resources, which are mobilised in a forced manner for the needs of waging war.

For a long time, as part of a combination of our academic and human rights research, we have been working on the problems of the response of the public administration system to threats in the conditions of the legal regime of martial law and its changes in connection with this. A coalition of public organisations, the Ukrainian Helsinki Human Rights Union, with the support of the Czech organisation of People in Need Ukraine, within the framework of the SOS Ukraine initiative, prepared a series of analytical reports on ensuring security and law and order under martial law in communities outside of hostilities. The empirical results of these studies became the source base for theoretical generalisations, which formed the basis of the proposed article.<sup>1</sup>

As of today, not enough time has passed, and there are no open sources of information or other organisational opportunities to offer a truly coherent scientific study. However, we are sincerely convinced that voicing the relevant problems and jointly searching for their solution (within the limits allowed by the requirements of protection against the use of information against the security of the state and its citizens) is one of the elements of building a system of public administration resistant to military challenges, and therefore ensuring stability for each of us.

Given the specifics of the topic, goal, and task, a dialectical approach is the basis of the research. The system method was used to establish the content and determine the forms and methods of management in these specific conditions following the regulatory framework. The formal-dogmatic method made it possible to analyse the state's regulatory and legal framework and reveal the functional orientation of the system of protection of the rights and interests of individuals with the participation of subjects of power and their technical and legal perfection. Several other general scientific research methods were also used, in particular: analysis, historical-legal, comparative-legal, and others.

At the same time, the theoretical approaches and the authors' scientific conclusions were substantiated through the wide application of legal practice materials and journalistic reports.

## 2 SECURITY AS A SPHERE OF PUBLIC ADMINISTRATION IN THE CONDITIONS OF THE LEGAL REGIME OF MARTIAL LAW

The concept of security among the tasks of the public administration apparatus has turned from a declarative guarantee into an instinctive need for every person under Ukraine's jurisdiction. Accordingly, its normative and legal significance has acquired new aspects.

The new version of the Law of Ukraine 'On National Security' dated 21 June 2021 revealed this concept through the protection of state sovereignty, territorial integrity, democratic constitutional system, and other national interests of Ukraine from real and potential threats (para. 1.9 of Art. 1). In the category of such interests, the Law included the vital interests of

1 Ukrainian Helsinki Human Rights Union, 'Security and Order Under Martial Law in Non-Combatant Communities: Analytical Report' (*Ukrainian Helsinki Human Rights Union*, 28 October 2022) <<https://helsinki.org.ua/publications/bezpeka-ta-pravoporyadok-v-umovakh-voyennoho-stanu-v-hromadakh-poza-boyovymy-diyamy/?fbclid=IwAR1AjtWrAr2zH4JNBQ9nhFniUX2zWptXB9pFLYG DxTRaPnDi-FhRHrae8Ls>> accessed 22 November 2022.

a person, society, and the state, the implementation of which ensures the state sovereignty of Ukraine and its progressive democratic development, as well as safe living conditions and the well-being of its citizens (para. 1.10 of Art. 1), connected with the concept public safety and order (para. 1.3 of Art. 1).

Applying such a broad normative aspect, the Ministry of Development of Communities and Territories of Ukraine and the Minister of Internal Affairs of Ukraine presented the development of the national concept of ‘Safe Community’, which will provide for the security needs of each community, taking into account its peculiarities and specifics. According to this concept, the objects of security are defined as: security of public services, security of infrastructure, security in family and home, security of business, the safety of work, security of leisure time, and security of the natural environment.<sup>2</sup>

As we have the opportunity to consider these ideas, military aggression continues against all the mentioned aspects of ensuring security, creating a physical threat by influencing a wide range of needs, interests, and spheres of social existence. All this presupposes a fundamental restructuring of institutions and procedures of social management by state and other government institutions.

### 3 FEATURES OF THE INSTITUTIONAL STRUCTURE OF LOCAL GOVERNANCE UNDER THE CONDITIONS OF THE LEGAL REGIME OF MARTIAL LAW

According to para. 1 of Art. 4 of the Law of Ukraine ‘On the Legal Regime of Martial Law’ dated 12 May 2015 (hereinafter, the Act of Martial Law) in the territories where martial law has been imposed to ensure the operation of the Constitution and Laws of Ukraine and ensure, together with the military command, that the introduction and implementation of measures of the legal regime of martial law, defence, civil protection, public safety and order, the protection of critical infrastructure, the protection of the rights, freedoms and legitimate interests of citizens, temporary state bodies, and military administrations, may be formed.

The decision on the formation of military administrations was made by the President of Ukraine at the request of regional state administrations or military command.

In the event of a decision on the formation of district or oblast military administrations, their status is acquired by district or oblast state administrations, respectively, and the heads of districts or oblast state administrations acquire the status of heads of the respective military administrations.

Accordingly, taking into account the introduction of martial law in Ukraine from 05:30 on 24 February 2022 (Decree of the President of Ukraine No. 64/2022 dated 24 February 2022, approved by Law of Ukraine No. 2102-IX dated 24 February 2022, Presidential Decree No. 68/2022 dated 24 February 2022 ‘On the Formation of Military Administrations’), regional military administrations were formed to implement the Act of Martial Law to exercise leadership in the field of defence, public safety, and order.

Also, corresponding district military administrations were formed based on existing district-state administrations. Military administrations of settlements, districts, and regional military administrations exercise their powers during martial law and 30 days after its termination or cancellation.

<sup>2</sup> Ministry of Internal Affairs of Ukraine, ‘The Ministry of Internal Affairs presented the project of the national concept “Safe community”’ (*MIA portal*, 7 October 2022) <<https://mvs.gov.ua/news/mvs-prezentuvalo-projekt-nacionalnoyi-koncepciyi-bezpecna-gromada>> accessed 22 November 2022.

According to para. 7 of Art. 4 of the Act of Martial Law, direction, coordination, and control over the activities of regional military administrations in matters of defence, public safety, and order, the protection of critical infrastructure, and the implementation of martial law measures are carried out by the General Staff of the Armed Forces of Ukraine, and in other matters by the Cabinet of Ministers of Ukraine within its powers. The duality of subordination to the highest body of civil and military command indicates a complex system of powers of these bodies, which according to Art. 15 of the Act of Martial Law not only duplicates the powers of the relevant local state administrations (Art. 119 of the Constitution of Ukraine and the Law of Ukraine 'On Local State Administrations') and local self-government bodies, taking into account the features established by this Law, but also exercises powers in the field of security, for example, regarding the introduction and implementation of measures of the legal regime of martial law; providing assistance to the owners of apartments (houses) in their reconstruction in case of damage as a result of hostilities, acts of terrorism, or sabotage; organising and participating in activities related to mobilisation training and civil protection; assistance to the State Border Service of Ukraine in maintaining the appropriate regime at the state border; the establishment of enhanced protection and ensuring, in cooperation with relevant business entities, the stable functioning of important objects of the national economy, and objects that ensure the livelihood of the population, etc.

One of the important aspects of effectively implementing one's activities is establishing communication between management bodies and citizens. The information space has become a full-fledged front and battlefield due to the implementation of various types of subversive informational and psychological operations. To ensure countermeasures, military administrations as local governing bodies use the information resources of the relevant local state administrations, on the basis of which they are formed, publicising the normative acts adopted in the process of exercising their own powers (following the example of the Lviv Regional Military Administration):

- communal local printed and electronic mass media (regarding the latter, there is a problem with conveying regional information since public broadcasting is broadcasted in the single news marathon mode, which does not allow it to be fully used for communication to local governing bodies);
- holding conferences, presentations, and press events, including in official media centres;
- official sites;
- pages in social networks of both the body itself (<https://www.facebook.com/LvivskaODA>; [https://www.instagram.com/lviv\\_oda/](https://www.instagram.com/lviv_oda/)) and its managers (<https://www.facebook.com/maks.kozytskyy>; <https://www.instagram.com/kozytskiy.official/>);
- telegram channels of the body ([https://t.me/people\\_of\\_action](https://t.me/people_of_action)) and the chief or profile managers ([https://t.me/kozytskyy\\_maksym\\_official](https://t.me/kozytskyy_maksym_official))

At the same time, the Act of martial law provides for several forms of managing a settlement within the relevant community under martial law:

- the continuation of the activity of elected local self-government bodies in the regime of the scope of powers of the legal status of martial law; or
- the formation of military administration of settlements 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 cases provided for by this Law. In the latter case, the military administrations of settlements concentrate in their own hands the entire scope of powers to ensure the management of the corresponding administrative-territorial unit, combining the functions of representative and local executive bodies of executive power and local self-government.

## 4 CHANGES IN THE SYSTEM OF MANAGEMENT OF BUDGET COSTS UNDER THE CONDITIONS OF THE LEGAL REGIME OF THE MARTIAL LAW

Unlike the measures of the legal regime of martial law listed in Art. 8 of the Act of Martial Law, changes in the management of budget funds are applied based on the discretion of the state to ensure proper management in conditions of threats to national security and territorial integrity and are determined precisely by the functioning of the state to repel these primary dangers.

The main changes were related to ensuring the efficiency of decision-making in the budget process and expanding the powers of executive authorities, which received the legal opportunity to strengthen the 'manual management' of budget funds. Thus, the Cabinet of Ministers of Ukraine and executive bodies in the execution of local budgets were authorised to redistribute expenditure amounts within budget allocations, transfer budget allocations, or carry out distribution or redistribution of transfers without agreement with committees or relevant commissions of representative bodies; norms regarding medium-term budget planning, as well as reporting to representative bodies and their involvement in making relevant decisions, etc., have been suspended.

Such powers unequivocally determine the self-limitation by representative bodies of their constitutional budgetary and legal powers. Without denying the validity of the specified changes and their legal purpose, at the same time, one should remember the principle of proportionality, which should be ensured by the effectiveness of control mechanisms or the reassessment of the specified decisions, considering the actual situation in the territories where hostilities are not taking place.

For example, the Lviv City Council authorised the executive committee of the Lviv City Council during the martial law in Ukraine to redistribute expenses, which led to an increase in the approved budgetary appointments of the main managers of budget funds within the general and special funds, in addition to the own revenues of budget institutions, for a total amount which would not exceed 50,000,000 hryvnias with the approval of the Standing Committee on Finance and Budget Planning (Resolution of the Lviv City Council of 24 February 2022 No. 2133 'On Amendments to the Budget of the Lviv City Territorial Community for 2022'). However, the practice of implementing this authority, and especially the validity of its application in today's conditions of 'non-frontline' Lviv, is the cause of sharp disputes between the mayor and deputies.

Approaches to the sources of financing relevant expenses in the field of security have also changed. According to paras. 5, 6, 6-1 of part 1 of Art. 87 of the Budget Code of Ukraine (hereinafter, BC) expenditures on national defence (except for measures and works on mobilisation training of local importance), law enforcement activities, ensuring state security, and civil protection of the population and territories (except for measures specified in clause 16 of part one of Article 91 of the BC), ensuring the functioning of institutions and establishments of the Armed Forces of Ukraine, other military formations formed in accordance with the laws of Ukraine, law enforcement agencies, the Security Service of Ukraine, civil defence agencies that are state-owned belong to the expenses that are carried out from the State Budget of Ukraine, taking into account the state-oriented sovereign nature of the corresponding functions of the body.

At the same time, the development and formation on the basis of the Law of Ukraine 'On National Resistance' of the system of territorial defence, voluntary formations of territorial defence, and the resistance movement led to the formal and actual active involvement of budgetary resources of local self-government in the financing of measures and work on territorial defence and mobilisation training of local significance (p. 17 para. 1 of Art. 91 of the BC, para. 1 of Art. 23 of the Law of Ukraine 'On National Resistance').

For the consolidation of financial resources for the purposes of security and defence, Law No. 2390-X of 9 July 2022 established that during the period of martial law and to repel the armed aggression of the Russian Federation against Ukraine, ensuring national security, measures of territorial defence, support of local infrastructure, and social protection of the population, local self-government bodies, local state administrations, military-civilian administrations, or military administrations (if they are formed) may make decisions on spending, as an exception to the provisions of the second part of Art. 85 of the BC, expenditures not assigned to the relevant local budgets by this Code, and expenses for maintaining budgetary institutions simultaneously from different budgets. Such expenditures are made by providing an inter-budgetary transfer from the relevant local budget.

Within the framework of the study of relevant budget programs of local budgets, the purchase of fuel and lubricants for the transportation of personnel of volunteer formations and for the performance of their functions, special clothing, ammunition, equipment for members of volunteer formations, acquisition of items, materials, equipment, and inventory is envisaged. At the same time, the law limits the directions of spending from local budgets (weapons, ammunition, dual purpose purchases), and the activity of communities in the development and provision of territorial defence varies due to the limited financial resources of the revenue part in the conditions of martial law.

## 5 APPLICATION OF CERTAIN LIMITATIONS IN THE ORDER OF IMPLEMENTATION OF MEASURES OF THE LEGAL REGIME OF MARTIAL LAW

One of the tasks of military and civil administration bodies under martial law is the introduction and implementation of martial law measures, determined on the basis of Art. 8 of the Act of Martial Law in accordance with the Decree of the President of Ukraine.

From the first days of hostilities and the active offensive of the occupying forces, the development of the civil defence system began with the aim of increasing the level of defence of social institutions by identifying and neutralising internal dangers, as well as restraining the advance of troops from the outside. The operative measures were the restriction of freedom of movement and the movement of vehicles, both from the standpoint of strengthening the rules for crossing the state border and the boundaries between administrative and territorial units.

Art. 33 of the Constitution of Ukraine stipulates that everyone who is legally present in the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave the territory of Ukraine, except for restrictions established by law. A citizen of Ukraine cannot be deprived of the right to return to Ukraine at any time.

In accordance with this, the Law of Ukraine 'On the Procedure for Departure from Ukraine and Entry into Ukraine of Citizens of Ukraine' dated 21 January 1994 No. 3857-XI determined that a citizen of Ukraine has the right to leave Ukraine, except for the cases provided for by this Law, and come to Ukraine (para. 1 of Art. 1); citizens of Ukraine cross the state border of Ukraine at checkpoints across the state border of Ukraine upon presentation of one of the documents specified in Art. 2 of this Law; rules for crossing the state border of Ukraine by citizens of Ukraine are established by the Cabinet of Ministers of Ukraine in accordance with this Law and other Laws of Ukraine (to date, this Procedure is approved by the Resolution of the Cabinet of Ministers of Ukraine dated 27 January 1995 No. 57) (Art. 3). Art. 6 of the specified Law establishes grounds for temporarily restricting the right of citizens of Ukraine to leave Ukraine.

According to para. 13, part 23 of the Procedure (as amended by Resolution of the Cabinet of Ministers of Ukraine No. 383 dated 29 March 2022) on the departure of children under the age of 16, accompanied by one of their parents, grandmother, grandfather, adult brother, adult sister, stepmother, stepfather, or other persons authorised by one of the parents in a written application certified by the body of guardianship and care, is carried out without the notarised consent of the other parent and in the presence of a passport of a citizen of Ukraine or a birth certificate of a child (in the absence of a passport of a citizen of Ukraine) or documents containing information about a person, on the basis of which the State Border Service will allow the crossing of the state border. At the same time, in the case of the introduction of a state of emergency or martial law on the territory of Ukraine, the decision to grant permission to leave Ukraine to a male person who accompanies a child who has not reached the age of 16 is taken, considering the accompanying person's membership in the list of categories of persons who are exempt from military service and mobilisation, if they have supporting documents. This norm has two problems that exist today.

First of all, this is the problem of virtually uncontrolled crossing of the border by children under the age of 16 in the first days of the war, which led to the appearance of a significant number of lonely Ukrainian children in the territory of European states. They become potential victims of illegal acts or involved in the commission of crimes due to their high degree of social vulnerability.<sup>3</sup>

Secondly, in accordance with the provisions of the Law of Ukraine 'On Military Duty and Military Service' dated 25 March 1992 No. 2232-XI, men who are fit in terms of health and age 18 to 60 years are conscripted and may be called up for military service during mobilisation is carried out in the manner specified by this Law and the Law of Ukraine 'On Mobilization Training and Mobilization'. Art. 23 of the Law of Ukraine 'On Mobilization Training and Mobilization' contains a list of categories of people who are not subject to conscription for military service during the mobilisation of conscripts. However, more people want to cross the border than the categories listed in the above regulations for both objective and subjective reasons.

According to the statistics of the Western Regional Administration of the State Border Service of Ukraine, more than 2,750 criminals who tried to illegally cross the border of Ukraine were detained within the borders of Lviv, Volyn, Zakarpattia, and Chernivtsi during the first six months of hostilities on the borders with the EU and the Republic of Moldova. During the same period, more than 19,000 people were refused border crossing due to problems with documents and more. In total, in 2022, more than a thousand criminal proceedings were opened for illegal border crossings. 462 persons were detained after reporting suspicion of committing a criminal offence. So far, the court has sentenced 145 of them.

On the western border, more than two thousand documents with signs of forgery were found at checkpoints. These include those that allowed men aged 18 to 60 to cross the state border. These are, in particular, certificates with signs of forgery, birth certificates of children, and various other certificates. Almost 170 fake passports were found.<sup>4</sup>

3 Julia Dauksza and Anastasiia Morozova, 'Dzieci z Ukrainy: samotne w Europie' (*FRONTSTORY.PL*, 30 Aug 2022) <<https://frontstory.pl/dzieci-ukraina-uchodzcy-wojna-nieletni-opieka-europa-lost-in-europe/?fbclid=IwAR1uevgjINC3pNg4reWUgjM3dgY2OVRwj66csIUsLHiRZaW5okuIRhnM42I>> accessed 22 November 2022.

4 Roman Pavlenko and Antonina Kostyk, 'Two Men Even Swam across the River. How Fraudsters are Caught at the Border and What Awaits Them' (*Tvoe misto (City of You)*, 18 August 2022) <[https://tvoemisto.tv/exclusive/kilka\\_cholovikiv\\_navit\\_zagynulo\\_yak\\_uhylyanty\\_probuyut\\_peretnuty\\_kordon\\_ta\\_skilkoh\\_vzhe\\_zatrymaly\\_136131.html](https://tvoemisto.tv/exclusive/kilka_cholovikiv_navit_zagynulo_yak_uhylyanty_probuyut_peretnuty_kordon_ta_skilkoh_vzhe_zatrymaly_136131.html)> accessed 22 November 2022.

At the same time, for a long time, the issue of limiting the right to cross the border has been of significant public interest and is a source of governmental and parliamentary initiatives for both professions (for example, regarding travel abroad for IT workers, business trips for employees of individual economic entities who are not familiar with the state secrecy under guarantees of return), as well as categories of persons who have permission to live abroad, if family members live abroad, by marital status, etc. One of the arguments for such proposals is the restoration of pre-war business activity, the promotion of Ukraine's position abroad, the attraction of private foreign investments, and the disproportionate severity of today's restrictions.

According to the position of the National Agency of Ukraine for the Prevention of Corruption, the Presidential Decree on the introduction of martial law only quotes the Constitution verbatim, allowing for the possibility of restrictions on the ban on travel abroad under martial law in the future, but does not itself contain the necessary direct ban on travel. The regulation of the departure of men abroad under martial law during the last eight months has become a source of corruption schemes and risks. From the beginning of the war until 1 April, there were letters and clarifications from the State Border Service of Ukraine on the basis of which men were prohibited from travelling abroad, and after 1 April, changes were made to the procedure for crossing the border, approved by the Cabinet of Ministers, where norms appeared that, on the one hand, introduce certain permissions, and on the other, certain prohibitions. But this contradicts the Constitution and the Act of Martial Law, which requires bringing this mechanism into compliance with the requirements for protecting individual rights.<sup>5</sup>

From the first days of the military invasion of the territory of Ukraine, a night-time curfew and a special light masking regime were introduced. The regulatory basis for such a decision is the Procedure for the implementation of measures during the introduction of curfew and the establishment of a special regime of light masking in certain areas where martial law has been imposed, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 8 July 2020 No. 573.

The introduction of a curfew and the establishment of a special light masking regime is carried out only in the presence of a real threat to the life and safety of individuals and the interests of society or the state, as well as to ensure public order. In the territory where the curfew has been introduced, it is forbidden to stay on the streets and other public places during the specified period of the day for persons without issued passes, as is the movement of vehicles. To ensure control over the implementation of measures during the introduction of the curfew, a pass system is created, and passes are issued to individuals at the commandant's decision (in agreement with the military command).

During the curfew, entry/exit to/from the territory where the curfew is imposed is carried out only through the checkpoints designated by the commandant's office – a reinforced checkpoint temporarily installed at the entry/exit to/from the territory where martial law has been imposed, and a curfew has been introduced, where places for checking persons, vehicles, baggage and cargo, positions of firearms and military equipment, places for rest and ensuring the vital activities of personnel performing tasks at the roadblock are established.

The establishment of checkpoints in the first days of the offensive of the occupying forces was spontaneous in nature, which led to the stoppage of traffic, including problems with the prompt delivery of military transport, equipment, and personnel of the Armed Forces

5 National Agency for the Prevention of Corruption, *Corruption schemes and risks when leaving Ukraine under martial law* (National Agency for the Prevention of Corruption 2022) <[https://nazk.gov.ua/wp-content/uploads/2022/10/Koruptsiy-ni-shemy\\_ta\\_ryzyky\\_pid\\_chas\\_vyi-zdu\\_z\\_Ukrai-ny\\_v\\_umovah.pdf](https://nazk.gov.ua/wp-content/uploads/2022/10/Koruptsiy-ni-shemy_ta_ryzyky_pid_chas_vyi-zdu_z_Ukrai-ny_v_umovah.pdf)> accessed 22 November 2022.

of Ukraine. That is why this issue was resolved by order of the Lviv Regional Military Administration of 3 March 2022 No. 5/22 'On the Organization of Temporarily Reinforced Checkpoints (checkpoints) on the Territory of Lviv Region', and on 4 March 2022 by order No. 7/22 'On the Settlement Issue of Arbitrarily Established Roadblocks on the Territory of Lviv Region' mandated district military administrations to settle this issue locally. Thus, at the beginning of Russia's full-scale aggression against Ukraine, 544 checkpoints were set up in the Lviv region, and in March, their number was reduced to 100 and later to 30.

The organisation of peaceful gatherings, rallies, marches, and demonstrations, as well as sports, educational, cultural-educational, religious, entertainment, and performative mass events under martial law, is possible only under exceptional circumstances and only under the condition of their written approval. For approval to hold the event, the organisers must apply to the executive bodies of the city, town, and village councils no later than five working days before the day of the event, i.e., the application principle of freedom of peaceful assembly and mass events was replaced by a permissive one. In addition, the event organisers must ensure that the mass event participants observe public order; the availability of first aid equipment; mandatory compliance with fire safety rules and the involvement of fire and rescue units. In the event of an air alarm, the mass event should be stopped immediately, the participants should be notified of the air alarm, and their evacuation should be ensured.

If mass events are held on the premises of relevant institutions, it is mandatory to have equipped shelters in accordance with the number of event participants or to have the possibility to place them in vault facilities located near the place of mass institutions.

By order of the head of LOVA dated 19 March 2022 No. 27/22 in connection with the need to prevent the commission of criminal and administrative offences and ensure the protection of public safety and order in the territory of Lviv region, it was prohibited from 19 March 2022 for the period of the legal regime of martial law to subjects management of all forms of ownership of trade of alcoholic and low-alcohol beverages (including beer) in the territory of Lviv oblast from 9:00 p.m. to 10:00 a.m. and a decree to heads of city, town, and village councils of Lviv oblast to impose restrictions on the trade of alcoholic and low-alcohol beverages (including beer) during the period of martial law. Radical and categorical prohibitions were negatively perceived in the communities as disproportionate, as they led to the loss of a significant source of income by trade establishments without corresponding compensation for the price paid for the license for the right to sell alcoholic and low-alcohol beverages. Today, Ukraine declares the responsibility of the aggressor state for such losses and damage, but there are no real compensation mechanisms nor any possibility of recovery.

## 5 CONCLUSIONS

The conditions of a functioning state apparatus under the legal regime of martial law led to significant changes in both the organisational and procedural nature of public administration. At the same time, the current practice allows for the formulation of certain general recommendations regarding the specified changes:

- 1) the need to introduce a clear distribution and definition of the competences of military and civil administration bodies in matters of security under martial law, as well as the definition of additional specific control mechanisms when granting an additional scope of powers to military and civilian administration bodies under martial law, 'revisions' regarding the validity of carrying out such powers;

2) the introduction of restrictive measures of the legal regime of martial law must take place in a clear, legally defined sequence, considering the existence of a legitimate purpose for their introduction; however, special attention should be paid to the issue of justice – ensuring proportionality between the introduced restrictions and the results of their implementation to achieve the same goal;

3) the use of alternative means of communication with citizens regarding the legal regime and restrictions of martial law with the transparent (accessible) presentation of information with the aim of establishing social dialogue and understanding between governing bodies and citizens, the institutionalisation of such means of communication as normatively defined ways of operationally proving the content of management decisions.

## REFERENCES

1. Dauksza J and Morozova A, 'Dzieci z Ukrainy: samotne w Europie' (*FRONTSTORY.PL*, 30 Aug 2022) <<https://frontstory.pl/dzieci-ukraina-uchodzcy-wojna-nieletni-opieka-europa-lost-in-europe/?fbclid=IwAR1uevgjINC3pNg4reWUgjM3dgY2OVRwj66csIUsLHiRZaW5okulRhnM42l>> accessed 22 November 2022.
2. Ministry of Internal Affairs of Ukraine, 'The Ministry of Internal Affairs presented the project of the national concept "Safe community"' (*MIA portal*, 7 October 2022) <<https://mvs.gov.ua/news/mvs-prezentuvalo-projekt-nacionalnoyi-koncepciyi-bezpecna-gromada>> accessed 22 November 2022.
3. National Agency for the Prevention of Corruption, *Corruption schemes and risks when leaving Ukraine under martial law* (National Agency for the Prevention of Corruption 2022) <[https://nazk.gov.ua/wp-content/uploads/2022/10/Koruptsiy-ni-shemy\\_ta\\_ryzyky\\_pid\\_chas\\_vyizdu\\_z\\_Ukrai-ny\\_v\\_umovah.pdf](https://nazk.gov.ua/wp-content/uploads/2022/10/Koruptsiy-ni-shemy_ta_ryzyky_pid_chas_vyizdu_z_Ukrai-ny_v_umovah.pdf)> accessed 22 November 2022.
4. Pavlenko R and Kostyk A, 'Two Men Even Swam across the River. How Fraudsters are Caught at the Border and What Awaits Them' (*Tvoe misto (City of You)*, 18 August 2022) <[https://tvoemisto.tv/exclusive/kilka\\_cholovikiv\\_navit\\_zagynulo\\_yak\\_uhylyanty\\_probuyut\\_peretnuty\\_kordon\\_ta\\_skilkoh\\_vzhe\\_zatrymaly\\_136131.html](https://tvoemisto.tv/exclusive/kilka_cholovikiv_navit_zagynulo_yak_uhylyanty_probuyut_peretnuty_kordon_ta_skilkoh_vzhe_zatrymaly_136131.html)> accessed 22 November 2022.
5. Ukrainian Helsinki Human Rights Union, 'Security and Order Under Martial Law in Non-Combatant Communities: Analytical Report' (*Ukrainian Helsinki Human Rights Union*, 28 October 2022) <<https://helsinki.org.ua/publications/bezpeka-ta-pravoporyadok-v-umovakh-voyennoho-stanu-v-hromadakh-poz-bovovymy-diyamy/?fbclid=IwAR1AjtWrAr2zH4JNBQ9nhFniUX2zWptXB9pFLYGDxTRaPnDi-FhRHrae8Ls>> accessed 22 November 2022.