

PARKHNOMENKO M. M.,
Candidate of Law Sciences,
Senior Teacher
(*Industrial Institute of the State Higher
Educational Institution*
“Donetsk National Technical University”)

SUKHOBRUS L. S.,
Candidate of Philological Sciences,
Senior Teacher
(*Industrial Institute of the State Higher
Educational Institution*
“Donetsk National Technical University”)

UDC 3538:351.86(477.62)

LEGAL ANALYSIS OF ENACTMENT LEGISLATION ON THE STATUS OF INHABITED LOCALITIES WHERE ANTI-TERRORIST OPERATION TOOK PLACE, EVIDENCE FROM POKROVSK TOWN

There is an investigation of facts on cooperation of Pokrovsk town community and head of Donetsk military and civil administration that improves legal awareness and patriotic education of people. Also it facilitates the development and stability of Pokrovsk region. It is shown in the paper that authorities of local public administrations and military and civil administrations differ. The author accentuates that military and civil administrations have larger powers on the particular territory concerning social, economic and cultural spheres. It is determined that solution of forced migrants' problems needs cooperation of government, local communities and social activity of forced migrants.

Key words: *internal migrants, legal status, social and psychological adaptation, social protection, assistance in employment.*

У статті проаналізовано взаємодію Покровської міської громади та голови Донецької військово-цивільної адміністрації, що дає позитивні зміни щодо стану правосвідомості та патріотичного виховання населення громади, розвитку та стабільності в Покровському районі. Визначено, що повноваження місцевих державних адміністрацій та військово-цивільних адміністрацій відрізняються. Військово-цивільні адміністрації мають істотно ширші повноваження на відповідній території щодо соціально-економічної та культурної сфери. Встановлено, що для вирішення проблеми вимушених переселенців потрібна взаємодія держави, місцевих громад та соціальна активність самих переселенців.

Ключові слова: *внутрішньо переміщені особи, правовий статус, соціально-психологічна адаптація, соціальний захист, працевлаштування.*

В статье проанализированы взаимодействие Покровской городской общины и председателя Донецкой военно-гражданской администрации, что дает позитивные изменения состояния правосознания и патриотического воспитания населения общины, развития и стабильности в Покровском районе. Определено, что полномочия местных государственных администраций и военно-граж-



данских администраций отличаются. Военно-гражданские администрации имеют существенно более широкие полномочия на соответствующей территории касательно социально-экономической и культурной сферы. Установлено, что для решения проблемы вынужденных переселенцев необходимо взаимодействие государства, местных общин и социальная активность самих переселенцев.

Ключевые слова: *внутренне перемещенные лица, правовой статус, социально-психологическая адаптация, социальная защита, трудоустройство.*

Statement of the problem. In April 2014 escalation of violence was observed in the region. Armed groups of activists captured administrative facilities and police departments in cities of Donbass region in particular Slavyansk, Artemivsk and Kramatorsk.

At the same time at the border with Ukraine there was formation of Russian military forces [1, p. 84–85].

According to the Constitution of Ukraine [2], Law of Ukraine “On the fight with terrorism” [3] Ukrainian authority made a decision to conduct anti-terrorist operation on the territory of Donetsk and Luhansk regions with attraction of available armed forces, national guard and security service.

Initial phase of anti-terrorist operation made apparent a list of problems. They demonstrate lack of effectiveness of state authorities and law enforcement agencies towards resistance of particular risks and shortcomings in organization of their cooperation and management within anti-terrorist operation zone [1, p. 84–85]. That is why topicality of this research is timely.

Although legal and administrative status of civilian-military administrations has not been researched as a theory and methodology study by scientists in Ukraine, there are proceedings of the scientists in particular Y.P. Vakulenko, A.M. Lysenko, V.M. Tarasov, S.A. Trofymov and others.

The purpose of the research is analysis of legislation that regulates the legal status of inhabited localities where anti-terrorist operation took place including mutual relations of civil and military administrations on the territory of populated localities, defining their positive and negative signs.

Legislation changes on legal regulation of the emergency situation concerning occupied territories have been lasting since 2014:

1) Decree of the President of Ukraine “On Decision of the National Security and Defense Council of Ukraine” of April 13, 2014, “On Urgent Measures to Suppress Terrorist Threat and Preserve Ukraine’s Territorial Integrity” [4];

2) Law of Ukraine on Temporary measures for the period of the Anti-terrorist operation of 02.09.2014. This Law specifies temporary measures to support business entities operating within the anti-terror operation area and persons, who reside within the anti-terror operation zone or have resettled there from during the said operation [5];

3) Cabinet of Ministers of Ukraine Order “A list of settlements on territory temporarily uncontrolled by government authorities and list of landmarks located at contact line” dated 07.11.2014 [6];

4) Cabinet of Ministers of Ukraine order “A list of settlements on territory where anti-terrorist operation took place and defining as lost validity according to some of orders of Cabinet of Ministers” dated 02.12.2015 [7]. According to the order Pokrovsk town is defined to the list of settlements within which anti-terrorist operation has been carried out.

5) The law of Ukraine “On the civil-military administrations” dated 3 February 2015 [8];

6) Decree of the President of Ukraine “On creation of military and civil administrations” № 123/2015 dated 05.03.2015 [9];

7) Decree of the president of Ukraine “On creation of military and civil administrations” № 469/2015 dated 07.08.2015 [10];



8) Decree of the president of Ukraine “On creation of military and civil administrations” № 472/2015 dated 13.08.2015 [11];

9) Decree of the President of Ukraine “On suspension of authority of some military and civil administrations” № 125/2016 dated 04.04.2016 [12].

According to the law of Ukraine “About temporary measures for conducting anti-terrorist operation” – the territory of conduction anti-terrorist – the territory of Ukraine in which the settlements determined in the list approved by the Cabinet of Ministers of Ukraine where the anti-terrorist operation begun according to the Presidential decree of Ukraine “About the decision of the National Security and Defense Council of Ukraine” of April 13, 2014 “About urgent measures for overcoming terrorist threat and preserving territorial integrity of Ukraine” of April 14, 2014 No. 405/2014 was performed are located [5].

According to the law mentioned above Cabinet of Ministers of Ukraine approved the list of settlements where the anti-terrorist operation is carried out [7].

There are 28 cities of regional significance including Krasnoarmeysk city, modern name – Pokrovsk out of Donetsk region in the list [7].

But the legislation hasn't given an opportunity to fix all the current problems.

Bodies of local self-government have not managed to implement their authorities imposed by the Constitution and laws of Ukraine for a long period of time; in particular it is a result of their factual dissociation from implementation of their authorities. It has had an extremely adverse impact on security and life support in certain areas of Donetsk and Luhansk regions. Implementation of new methods of governance was caused by the mentioned problems. New focus area for implementation of executive authority in Ukraine became amending Ukrainian legislation as to creation of military and civil administrations [13, p. 161].

According to the article of law of Ukraine “On the civil-military administrations” [8] civil-military administrations are temporary official body in villages, cities, districts and regions that are included in the Anti Terrorist Center at the Security Service of Ukraine. They are assigned to enforce the Constitution and the laws of Ukraine, ensure safety and normalization of day-to-day existence of the population, law and order, preventing humanitarian disaster in the districts where anti-terrorist operation is carried out.

To implement the law of Ukraine “About military and civil administrations” the President of Ukraine issued two decrees “On creation of military and civil administrations” № 469/2015 dated 06.08.2015 [10] and № 472/2015 dated 13.08.2015 [11]. According to them the following military and civil administrations were set up: Pershotravneva district civil-military administration of Donetsk region; civil-military administration of Mar'inka city and Pobeda vottage in Mar'inka district Donetsk region; civil-military administration of Kominterove, Vodyanove and Zaichenko villages in Volnovasikiy district Donetsk region; civil-military administration of Artemivsk district in Donetsk region; civil-military administration of Volodarsk district in Donetsk region; civil-military administration of Konstyantynivka district in Donetsk region; civil-military administration of Tel'minivski district in Donetsk region; civil-military administration of Yasynuvatski district in Donetsk region.

According to the decree of The President of Ukraine “On suspension of authority of some military and civil administrations” № 125/2016 dated 04.04.2016 [12] part eleven of Article 3 of the law of Ukraine “On civil-military administrations” [8] functioning of Artemivska, Volnovahska, Volodarska, Kostyantynivska, Mar'inska and Pershotravneva civil-military district administrations in Donetsk region was terminated.

According to parts 13–28 of the Law of Ukraine “On local state administrations” dated 09.04.1999 [14] local state administrations:

1) plan protects' programs on social and economic development and apply for approval in appropriate council, ensure their implementation, report on appropriate council for their implementation;

2) ensure effective use of natural, working and financial resources;

3) determine and establish consumption standards of housing and communal services and exert control of their maintenance;



4) implement management of the objects which of state ownership and within its control, facilitate quality control system establishment, systems of ecological control and other control systems in accordance with national or international standards, pass decisions on establishment, reorganization and liquidation of enterprises, organizations which belong to its management sphere and implement delegated functions on estate administration by the particular council;

5) develop and conduct examination of city planning documentation of settlements according to government regulations and standards;

6) carry out state policy on science, education, health care, culture, physical education and sport, motherhood and childhood, family and youth;

7) implement state policy on social protection and social security of socially unprotected citizens. This category includes pensioners, disabled people, orphan children, single incapacitated people, children deprived of parental care, persons belonging to single mothers, large families, and other citizens who need social support from the State because of low material security level.

According to part four of the law of Ukraine "On civil-military administrations" [8] civil-military administrations have following authorities on defined inhabited settlements:

1) planning and adoption of social-economic and cultural programs of particular administrative territorial units, target programs and other local governance issues;

2) formulation of local tax rates according to Tax Code of Ukraine, if there is no particular councils' decision on the issues;

3) decision making on benefits and payment of local taxes and charges according to the legislation if there is no particular council's decision on the issues;

4) setting of procedure within taxes on living, municipal, transport and other services (except heat energy, public water supply or drainage, treating domestic waste, central heating services, public hot water supply services, drainage services (using internal system of the dwelling) which are set by the national committee, that implement state control;

5) fixing the amount of proceeds for enterprises and organizations which belong to municipal property of particular territorial communities to contribute to local budget;

6) facilitation of extension of house building, providing citizens who require dwelling with assistance housing; providing owners of flat (houses) with assistance in restoration in case of damage after terrorist attacks or diversions; arrangement of building, reconstruction and repairs of the public infrastructure, social-cultural buildings, dwelling houses, roads of local significance at their own expense or on cost sharing basis; implementation or delegation of client's functions on building, reconstruction and repair of dwellings and other objects of production and social infrastructure of municipal property to the general building organizations or contractors on a competitive basis;

7) reservation of jobs for people bound to military service in organizations according to the legislation;

8) according to the legislation decision making on providing army units, organizations, educational facilities of armed forces of Ukraine with service rooms, dwelling space and communal-general services; implementation of control;

9) accomplishment of measures for making appropriate conditions for functioning of checkpoints across the border of Ukraine;

10) accomplishment of measures for citizens' security and defense culture;

11) establishment of institutions for providing cost-free primary legal assistance with funding from the local budget, appointment, renewal and dismissal of the their heads, attraction of physical and judicial persons of private law to provide primary legal assistance in accordance with the law;

12) according to the legislation arrival at decisions on holding elections to central and local government, elections for chairpersons of authorities for local administration within particular administrative and territorial unit [8].

Having analyzed above mentioned authorities of local state administrations and civil-military administrations the author specifies civil-military administrations have substantially large powers on their territories concerning social economic and cultural spheres.



Experience of operating civil-military administrations is unique for Ukraine, because it is of one kind in the world. There is only experience of operating civil administrations in the world.

Israeli people were the first to use this control system. The result of Six-day war of 1967 was Israel's control of Sinai Peninsula, the West Bank and Gaza strip, Eastern Jerusalem and Golan Heights. Having taken control over the territories Israeli leaders encountered a problem of normalization of life there because civil machinery of government could not execute their powers fully.

That is why in 1981 Civil administrations were formed on the territory of the West Bank and Gaza strip. Civil administration was a part of Coordinator of Government Activities in the Territories (COGAT). It is a part of Ministry of Defense of Israel and it deals with coordination of civil issues between the Government of the country, the Israeli Defense Forces, international organizations and the Palestinian Authority [15, p. 160–161].

According to the military decree № 947 “On institutions of Civil Administrations” civil administration is established in order to manage civil cases in accordance with the laws and directives for general welfare of the region's population, to provide and implement government services and also arranged management and maintenance of civil order in the region. The decree regulates authorities of the head of civil administration and his rights and duties [16].

The administration worked on issues of administrative arrangement and issues of displacement of persons through the territory (grant work permit for the Palestinians), construction and maintenance of houses for local citizens and establishment of demarcation line between Israeli and Palestine. Later in 1994 Palestinian national administration was formed on these territories. It has been administrating over the territories so far [17].

Civil and military administrations in Ukraine implement both protection and social and economic functions.

Since the fifth of March, 2015 Donetsk regional state administration works as Donetsk regional civil and military administration in accordance with the decree of the president of Ukraine “On creation of military and civil administrations” № 123/2015 dated 05.03.2015 [9]. Since 11th of June, 2015 Pavlo Zhebrivskyi has been at the head of Donetsk regional civil and military administration. He was appointed the post of the Governor of Donetsk regional state administration with the decree of the President of Ukraine [18]. In accordance with the Law of Ukraine “On local state administrations” dated 09.04.1999 [14] he participates in implementation of State policy relating to regional state administration; he accomplishes measures on adaptation of the legislation of Ukraine to European Union legislation; he coordinates actions related to implementation of technologies for e-governance; he gives methodological assistance on implementation of his authorities. That is why Pokrovsk city council directly interacts with the head of Donetsk regional civil and military administration. From 2015 to 2017 Donetsk regional civil and military administration implemented about 800 of projects as to development of Donbas. There were carried out following activities particular in Pokrovsk and Pokrovsk region:

1) Participation in celebration of Europe day on 11 of June, 2017 – 11 of June the first day of visa-free regime between Ukraine and European Union coming into effect. Europe day was celebrated in Pokrovsk of Donetsk region. A lot of people took to the streets dressed in national costumes of different European countries. The celebration began at 11 o'clock with a festive parade. Its participants dressed in national costumes and walked along the city streets with the Governor of Donetsk region Pavlo Zhebrivskyi [19].

2) Opening of customs station in Pokrovsk on 10.07.2017 – Custom station that was opened in Pokrovsk should facilitate export of goods and simplify the work of entrepreneurs of the region. The governor of Donetsk regional state administration Pavlo Zhebrivskyi declared it during inauguration of the station. He also mentioned that municipal authorities had spent nearly 1,5 million grivnas on accomplishment of the custom station. According to him, the city gained new employment opportunities, new revenues for the budget [20].

3) Opening of the soccer field in Pokrovsk region 20.06.2017 – festive opening of mini-soccer field took place in Grishyno Village of Pokrovsk region on the territory of the educational complex. The field has been the first out of 85 similar fields, which have been accomplished this year



to 85th anniversary of Donetsk oblast. The proponent of this project is the Governor of Donetsk region P.I. Zhebriskiy [21].

4) He attended the opening of Pokrovsk School of new type 28.08.2017 – the school of new type was founded on the basis of the school № 9. All funding came from the regional budget [22].

Conclusions. Cooperation of the Pokrovsk city community and the head of Donetsk civil and military administration improve development and stability in Pokrovsk. It facilitates patriotic education in the region. However, in general there are weak points in the implementation of authorities of civil and military administrations. That is why, in authors opinion, further studies and researches of legal status of the civil and military administrations in Ukraine are topical.

References:

1. Donbas and Crimea: return at what price?: monograph / under the General Editorship of V. Horbulin, O. Vlasiuk, E. Libanova, O. Liashenko; translated into English by P. Burkovskiy, N. Haluhan, N. Koval, V. Kravchenko, T. Isakova. Kyiv: NISS, 2016. 178 p.
2. Constitution of Ukraine: law of Ukraine №254k/96-VR dated 28.06.1996. Official web portal of Verkhovna Rada of Ukraine. 1996. № 30. P. 141.
3. On fight against terrorism: Law of Ukraine of 20.03.2003. VVR. 2003. № 25. P. 180.
4. Decree of the President of Ukraine “On Decision of the National Security and Defense Council of Ukraine” of April 13, 2014, “On Urgent Measures to Suppress Terrorist Threat and Preserve Ukraine’s Territorial Integrity” № 405/2014 dated 14.04.2014. URL: <http://zakon4.rada.gov.ua/laws/show/405/2014>.
5. About temporary measures for conducting anti-terrorist operation: law of Ukraine № 1669-VII of 02.09.2014. VVR. 2014. № 44. p. 2040.
6. The list of settlements on territory where “A list of settlements on territory temporarily uncontrolled by government authorities and list of landmarks located at contact line”: Cabinet of Ministers of Ukraine Order № 1085-p dated 07.11.2014. URL: <http://zakon3.rada.gov.ua/laws/show/1085>.
7. A list of settlements on territory where anti-terrorist operation took place and defining as lost validity according to some of orders of Cabinet of Ministers: Cabinet of Ministers of Ukraine order № 1275 of 02.12.2015. URL: <http://zakon3.rada.gov.ua/laws/show/1275-2015>.
8. On military and civil administrations: Law of Ukraine № 141-VIII dated 03.02.2015. VVR. 2015. № 13. P. 87.
9. On creation of military and civil administrations: Decree of the President of Ukraine № 123/2015 dated 05.03.2015. URL: <http://zakon5.rada.gov.ua/laws/show/123/2015>.
10. On creation of military and civil administrations: Decree of the President of Ukraine № 469/2015 dated 07.08.2015. URL: <http://zakon5.rada.gov.ua/laws/show/469/2015>.
11. On creation of military and civil administrations: Decree of the President of Ukraine № 472/2015 dated 13.08.2015. URL: <http://zakon5.rada.gov.ua/laws/show/472/2015>.
12. On suspension of authority of some military and civil administrations: Decree of the President of Ukraine № 125/2016 dated 04.04.2016. URL: <http://zakon5.rada.gov.ua/laws/show/125/2016>.
13. Raimov R.I. The definition and features of civil-military administrations. International scientific magazine. 2016. № 6. V. 3. P. 161–166.
14. On appointment of P. Jebrivskiy to the post of Head of oblast government administration: Decree of the President of Ukraine № 326/2015 dated 11.06.2015. URL: <http://zakon3.rada.gov.ua/laws/show/326/2015>.
15. On local state administrations: Law of Ukraine № 586-XIV dated 09.04.1999. VVR. 1999. № 20-21. P. 190.
16. Sikorskiy O.P. Civil and military administrations as safeguarding of security and normalization of social safety on the territory where antiterrorist operation takes place. Scientific notes Volodymyr Vynnychenko Central Ukrainian State Pedagogical University. Law. 2017. Vol. 1. Pp. 160–164.



17. On civil administrations institutions: Military Order № 947. URL: <http://www.israellaw-resourcecenter.org/israelmilitaryorders/fulltext/mo0947.htm>.

18. Israeli Civil Administration. Wikipedia. URL: http://en.wikipedia.org/wiki/Israeli_Civil_Administration.

19. On submission for the appointment of Pavlo Zhebrivskyi as Donetsk Regional State Administration head: Decree of the President of Ukraine № 326/2015 dated 11.06.2015. URL: <http://zakon3.rada.gov.ua/laws/show/326/2015>

20. Participation in Europe Day celebrations dated 11.06.2017. Official site of Donetsk oblast state administration. URL: <http://dn.gov.ua/uchast-u-svyatkuvanni-dnya-yevropy/>.

21. Customs station was opened in Pokrovsk dated 10.07.2017. Official site of Donetsk oblast state administration. URL: <http://dn.gov.ua/u-pokrovsku-vidkryly-mytnyj-post/>.

22. Pavlo Zhebrivskyi opened a soccer field in Pokrovsk region dated 20.06.2017. Television company “Orbita”. URL: <http://orbita.dn.ua/pavel-zhebrivskij-otkryl-futbolnuyu-ploshhadku-v-pokrovskom-rajone.html>.

23. President of Ukraine opened a school of a new type in Pokrovsk as a solemn occasion dated 28.08.2017. Television company “Orbita”. URL: <http://orbita.dn.ua/opornuyu-shkolu-v-pokrovske-torzhestvenno-otkryl-prezident-ukrainy.html>.

ПИСЄВА В. В.,

здобувач, завідувач лабораторії
біоетики і біобезпеки
(Науково-дослідний інститут
інтелектуальної власності
Національної академії
правових наук України)

УДК 34

ПОРТФЕЛЬ ОБ’ЄКТІВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ НА ЛІКАРСЬКИЙ ЗАСІБ В УКРАЇНІ

Стаття присвячена аналізу складових частин портфеля об’єктів інтелектуальної власності для лікарського засобу відповідно до законодавства України. При характеристиці об’єктів інтелектуальної власності, в яких відображається лікарський засіб, автор виділяє специфіку кожного з них, а саме: винаходу, корисної моделі, промислового зразку, знаку для товарів і послуг та підкреслює особливість їх взаємодії та взаємозалежності. Також автор приділяє увагу ролі портфеля інтелектуальної власності на лікарський засіб у питанні боротьби з контрафактними продуктами.

Ключові слова: інтелектуальна власність, портфель об’єктів інтелектуальної власності, лікарський засіб, винахід, корисна модель, промисловий зразок, знак для товарів і послуг, назва лікарського засобу.

Стаття посвящена анализу каждого компонента портфеля объектов интеллектуальной собственности на лекарственное средство в соответствии с законодательством Украины. Характеризуя объекты интеллектуальной собственности, в которых отображается лекарство, автор подчеркивает специфику

