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LEGAL-STRUCTURAL FUNCTIONING OF CIVIL SOCIETY INSTITUTIONS IN THE FIELD OF CIVIL PROTECTION IN WARTIME CONDITIONS - EXAMPLE OF UKRAINE

PRAWNO-STRUKTURALNE FUNKCJONOWANIE INSTYTUCJI SPOŁECZEŃSTWA OBYWATELSKIEGO W ZAKRESIE OCHRONY LUDNOŚCI W WARUNKACH WOJENNYCH – PRZYKŁAD UKRAINY

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Abstract

The article analyzed the issue of the functioning of civil society institutions in the provision of civilian protection under wartime conditions. The authors focused their considerations primarily on the legal-structural dimension of the activities of security actors responsible for this task dimension, as well as the interaction of civil society institutions and the state in the direction of civilian protection. In such a problem-oriented approach, the organization of evacuation of civilians, documentation of war crimes, provision of legal aid and information, influence on the formation of state policy, social control, volunteer movement and humanitarian aid become particularly important. Interesting conclusions on the considered issue of civil protection both in terms of the existing legislation that regulates the sphere of activity of civil society institutions in the direction of ensuring the civilian security of the population, as well as the mechanisms of interaction between civil society institutions and state bodies come from the war-covered Ukraine.

Keywords: civil society institutions, state, armed aggression, non-governmental organisations, war

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Streszczenie

W artykule przeanalizowana została kwestia funkcjonowania instytucji społeczeństwa obywatelskiego w zakresie zapewnienia ochrony ludności w warunkach wojennych. Autorzy swoje rozważania skoncentrowali przede wszystkim na prawnym-strukturalnym wymiarze działalności podmiotów bezpieczeństwa odpowiedzialnych za ten wymiar zadaniowy oraz interakcji instytucji społeczeństwa obywatelskiego i państwa w kierunku bezpieczeństwa cywilnego ludności. W takim ujęciu problemowym szczególnego znaczenia nabiera organizacja ewakuacji ludności cywilnej, dokumentowanie zbrodni wojennych, udzielanie pomocy prawnej i informacji, wpływ na kształtowanie polityki państwa, kontrola społeczna, ruch wolontariuszy i pomoc humanitarna. Interesujące wnioski odnośnie do rozpatrywanej kwestii ochrony ludności zarówno w kwestii istniejącego ustawodawstwa, które reguluje sferę działalności instytucji społeczeństwa obywatelskiego w kierunku zapewnienia bezpieczeństwa cywilnego ludności, jak i mechanizmów współdziałania instytucji społeczeństwa obywatelskiego z organami państwa płyną objętej wojną z Ukrainy

Słowa kluczowe: instytucje społeczeństwa obywatelskiego, państwo, agresja zbrojna, organizacje pozarządowe, wojna

Statement of the problem in general outlook and its connection with important scientific and practical tasks

Russian aggression and the start of active hostilities on a large territory of Ukraine on 24 February 2022 became the starting point for checking the stability of Ukrainian statehood and the degree of development of civil society.

Ukraine faced many challenges that had to be solved quickly and effectively in the conditions of a broad military offensive of constant artillery and rocket attacks on populated areas - all this became a challenge that the state faced. Repelling aggression and defence became the primary task, while the solution to other challenges (for example, the mass migration of the population fleeing from the war zone) took a back seat; under such conditions, the solution to many problems related to the security and livelihood of the people required the mobilisation of not only all resources of the state and business but also human resources, because from the first day of the invasion, civil society, like the state, mobilised and reoriented itself to solving the tasks dictated by the requirements of wartime.

Public organisations, the most institutionally organised and organisationally capable representatives of civil society, promptly changed the vector of their activities to solve the tasks posed by the war. Non-governmental organisations that, as recently as 23 February 2022, were engaged in activities in such areas as human rights, reforms, gen-

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der equality and inclusion, assistance to socially vulnerable segments of the population, etc. were forced to withdraw from their activities to deal with the tasks dictated by the conditions of wartime. Among the spheres of activity that public organisations began to take care of were: assistance to victims of war, collection of funds for the Armed Forces of Ukraine and the population affected by military operations, humanitarian aid and others.

The sphere of security of the civilian population was not an exception, because even here, the activity of public organisations during a full-scale war was marked by activity and significant involvement in solving issues related to overcoming the consequences of the war, including within the sphere of ensuring the civil security of the population. After all, regular shelling, carried out by the Russian Federation, was aimed not only against the Armed Forces of Ukraine but also to intimidate the civilian population infrastructure, becoming targets for the Russian military.

Aims of paper

The activity of civil society and degree of involvement in activities related to overcoming the consequences of war directly depends on the state's situation, whether it can perform its functions, whether it is ready for battle and whether it has appropriate, well-developed algorithms for responding to crises caused by its consequences. In 2014, Ukraine was not ready for war. Therefore, in 2014, civil society institutions did almost everything - from evacuating civilians from the combat zone to purchasing uniforms for the army, as well as providing legal advice to writing bills.

Exposition of main material of research with complete substantiation of obtained scientific results

General characteristics of the activities of civil society institutions in the conditions of martial law:

I. The first consequence of the war on 24 February 2022, as in 2014, was the *mass internal displacement of the population*, which, however, was many times greater in 2022 and covered the entire territory of Ukraine without exception (in 2014, migration affected the eastern regions the most). The solidarity and readiness of Ukrainian society to help each other then became very noticeable in solving the issues of evacuation, accommodation of displaced persons and providing them with the first humanitarian aid. After some time, the state *recovered* from the full-scale attack and began to more actively implement the functions assigned to it for the

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defence and security of the population. However, numerous volunteer initiatives, which arose in the first months of the war thanks to the activities of civil society institutions, later grew into large public organisations, movements and charitable foundations, which continue to help war victims [1]. The war in Ukraine led to a large-scale humanitarian crisis, particularly: 17.7 million people needed humanitarian aid in 2022, including 3.3 million children and 4.2 million older adults [2].

An important place in the activities of civil society institutions was occupied by the organisation of evacuation of people from occupied territories or those under systematic shelling. Numerous *green corridors* that appeared within the occupied territories of Ukraine in the first months of the invasion were organised thanks to the efforts of civil society institutions, because the Ukrainian state authorities did not have access to these territories. Thanks to this, it was possible to save the lives of thousands of Ukrainian residents.

In this process, significant support and material and financial assistance were provided thanks to various social networks, where active citizens quickly spread information about the most pressing problems and options for their solution. Thanks to this, famous personalities, athletes, singers, actors and public opinion leaders could be involved, who, thanks to their knowledge, could help obtain significant resources. With the help of social networks, everyone was also able to join socially beneficial activities [3].

II. As the law enforcement system, which was overburdened in the first months of the war and unprepared for such a large-scale attack, did not function properly, and many human rights organisations began *documenting war crimes* committed during the hostilities. Indiscriminate shelling, killings of civilians, extrajudicial executions, etc. - many public organisations joined in documenting all the horrors committed during the war. In real-time, they worked out techniques for recording damage, interviewing witnesses, studying the mechanisms of applying to various authorities and appealing to them so that the criminals could be punished.

III. *Legal assistance and information* were one field of activity of public initiatives and institutions of civil society after the beginning of the war. After all, hostilities are not only physical destruction and murders, but also numerous problems with lost documents and broken procedures. Civil society organisations launched many hotlines for legal assistance, where consultations were held for the affected population. They opened waiting rooms to provide secondary legal assistance, prepare procedural documents and assist in courts. Through these resources of civil society organisations, internally displaced persons and those who remained within the occupied territory could obtain the necessary up-to-date information.

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IV. When the state sees civil society representatives as partners, we can talk about a transition to another level - *influence on state policy*. This also happened in Ukraine, because experts from public organisations began to be involved in various processes for preparing draft laws. For example, the relevant Law “On Ensuring the Rights and Freedoms of Internally Displaced Persons” was written, in particular, by experts from public organisations. In the future, they will continue to be involved in writing dozens of laws and regulatory documents, including those related to transitional justice and peacebuilding.

V. In parallel with civil society organisations' more or less service role during the war, the *watchdog function - public control* - remained relevant. During war, the task of constantly monitoring the situation and alerting the population about essential issues of the life of society, including security issues, remains relevant. It is well known that wartime always carries the risk of restrictions on the rights and freedoms of the population, which is why public control plays the role of a safeguard that prevents state bodies from making undemocratic decisions and bureaucratic arbitrariness.

VI. A vivid example of the manifestation of civil society during the war was also the volunteer movement. If, in the previous stage of the war (2014–2022) in Donbas, the activities of volunteers were mainly limited to the provision of military equipment, equipment, clothing and food, in recent years, the delivery of humanitarian goods within the territory of the hostilities has then been added actions, informational and psychological assistance. In general, we should talk about the surge of the volunteer movement, which in turn actualised the need to update the legal framework for this activity and optimise the mechanisms of interaction with public authorities. The primary law regulating the specified direction of public activity is the Law “On Volunteering”, which was adopted back in 2011 and has since undergone minor changes regarding the expansion of the scope of volunteer assistance to paramilitary formations and public authorities under martial law and carrying out defence measures and several other organisational points.

Among the main activities of volunteers in war conditions, the following are distinguished:

- ✓ collection and delivery of food, equipment and necessities for the military;
- ✓ provision of medical assistance to persons injured during hostilities;
- ✓ assistance to forcibly displaced persons in seeking asylum, psychological support, etc.;
- ✓ search for missing people and help in freeing prisoners [4].

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VII. *Humanitarian aid* – the institutions of civil society in the initial part of the war were the first to establish channels to supply humanitarian assistance to Ukraine. Strong and well-established ties with foreign organisations and donors facilitated this. In this direction, the most significant changes in legal norms were achieved because the delivery of humanitarian aid from abroad faced some bureaucratic obstacles, to which it was necessary to introduce changes in the legislation quickly. Often, the locomotive of such changes is precisely the institutes of civil society (for example, the resolution of the Cabinet of Ministers of Ukraine, “Some issues of the passage and accounting of humanitarian aid under martial law”, dated 5 September 2023, No. 953 [5]).

The legal basis for the activity of civil society institutions under the conditions of martial law

First, it is worth noting that the interaction process between the state and society in Ukraine during the entire period of independence was accompanied by some problematic issues, contradictions and misunderstandings. Their primary source was imperfect regulatory and legal support and undeveloped organisational mechanisms between state authorities and public society institutions, etc. With the beginning of a large-scale war, Ukraine faced the fact that general powers needed to be more prepared for the development of events in this direction. Therefore, the need to quickly respond to changes came to the fore, which is not always acceptable for power structures, which generally remain conservative and are not able to quickly adapt to dynamic changes because such a process requires the implementation of systemic reforms, which is not possible in wartime conditions, but, instead, the ability to quickly respond to changes and new challenges is possible for civil society institutions.

As of today, the legal foundations of state policy on the development of civil society are laid down in the Constitution of Ukraine [6], the laws of Ukraine “On the Principles of Internal and Foreign Policy” [7], “On Local Self-Government in Ukraine” [8], as well as laws of Ukraine directly determining the legal status and principles of activity of civil society institutions. Society, namely in the laws of Ukraine “On Social Associations” [9], “On Charitable Activities and Charitable Organizations” [10], “On Volunteer Activities” [11], “On Trade Unions, Their Rights and Guarantees of Activity” [12], “On Humanitarian Aid” [13], “On employers' organisations, their associations, rights and guarantees of their activities” [14], “On freedom of conscience and religious organisations” [15], “On self-organisation bodies of the population” [16], as well as several subordinate legal acts, including the Decree of the President of Ukraine “On the National Strategy promoting the development of civil society in Ukraine for 2021–

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2026” [17], Resolution of the Cabinet of Ministers of Ukraine “On ensuring public participation in the formation and implementation of state policy” [18], as well as departmental acts designed to promote the participation of civil society institutions and state authorities (for example, orders, etc.).

As for the legal regime of martial law, the legislation of Ukraine in this direction has not undergone significant changes; thus, civil society institutions are forced to work under the influence of norms that were adopted in peacetime and, therefore, could not foresee all the challenges faced by civil society institutions under the conditions of war.

Security of the civilian population and civil society institutions under martial law

As a result of hostilities, resettlement, explosions and loss of loved ones and relatives, the population is under constant threat. Emergencies and events of a military nature make the normal conditions and activities of the population impossible [19]. Civil protection of the people in Ukraine is provided, considering the features defined by the Law of Ukraine “On National Security of Ukraine” [20] and the Code of Civil Protection of Ukraine [21]. Activities to ensure the civil safety of the population are directly carried out by entities authorised to protect the people, including law enforcement agencies, executive authorities and public organisations. However, the State Service for Emergency Situations is the determining entity for ensuring the civil safety of the population in Ukraine. The Regulation on the State Emergency Service of Ukraine, approved by Resolution No. 1052 of the Cabinet of Ministers of Ukraine, dated 16 December 2015 provides: “The State Emergency Service of Ukraine is a central body of executive power, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs and which implements state policy in the field of civil protection, protection of the population and territories from emergencies and prevention of their occurrence, liquidation of the consequences of emergencies, rescue work, fire extinguishing, fire and man-made safety, activities of emergency and rescue services, as well as hydrometeorological activities” [22].

According to paragraph 8 of the specified Regulation on the State Service of Ukraine for emergencies [22], during the performance of the tasks entrusted to it, it interacts with other state bodies, auxiliary bodies and services established by the President of Ukraine, temporary consultative, advisory and other auxiliary bodies established by the Cabinet of Ministers of Ukraine, local self-government bodies, associations of citizens, public associations, trade unions and employers' organisations, relevant bodies of foreign states and international organisations, as well as enterprises, institutions and organisations.

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Full-scale military aggression presented the State Emergency Service with new challenges of an unprecedented scale: a sharp increase in emergencies due to hostilities (which alone is on par with the catastrophe of the explosion of the Kakhovska HPP dam on 6 June 2023); the need for demining huge territories (as of today, according to estimates, the scale of mined territories is about 200,000 sq. km); the need to assist a large number of the affected population; maintaining the proper functioning of the unified central civil protection system (which, due to the war, is constantly in a state of heightened readiness to respond to emergencies); the task of supporting and improving the infrastructure of shelters for the civilian population. The need to perform these and other duties assigned to the State Service for Emergency Situations in conditions of limited resources and war necessitates cooperation with civil society institutions. It is worth noting that the issue of cooperation of the State Emergency Service is regulated by the norms of the Code of Civil Protection of Ukraine; in particular, Art. 22 provides for the participation of voluntary civil defence formations in the liquidation of emergencies, Art. 23 refers to volitional civil defence formations as civil defence forces, Art. 139 establishes public control over compliance with legislation and other normative legal acts on civil protection issues and is carried out by public organisations on civil protection issues by their statutes [21].

According to the principles of the draft Strategy of Public Security and Civil Protection, approved by the Decree of the President of Ukraine, dated 29 June 2021, one of the principles on which the Strategy should be based is institutional effectiveness and cross-sectoral interaction of the subjects of the formation and implementation of state policy in the field of public security and civil protection, other state bodies, local self-government bodies, civil society institutions and the private sector to achieve the goals of this state policy [23]. To deepen cooperation between the State Emergency Service of Ukraine and institutions of civil society, the Public Council of the State Emergency Service of Ukraine is a temporary consultative and advisory body created to promote public participation in the formation and implementation of state policy on civil protection issues [24]. It is worth noting that the full-scale war strengthened the cooperation of the State Emergency Service with civil society institutions. As part of such cooperation, the State Emergency Service implements various types of activities aimed at improving the sphere of the civil safety of the population; in particular, together with the Eastern Europe Foundation, it implements a joint information campaign developed within the framework of the “Look at your feet!” programme. The campaign provides for the production of photos, video materials and test messages regarding the mine safety of citizens, especially in the de-occupied territories of Ukraine [25].

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The cooperation of the State Service for Emergency Situations with public initiatives on arranging and maintaining shelters in proper condition is particularly noticeable. For example, the public initiative KrymSOS, with the support of the State Service for Emergency Situations, during 2022–2023, was able to equip shelters with a total area of more than 3,000 square metres in various regions of Ukraine [26].

In the capital of Ukraine, Kyiv, a project is underway to improve the condition of shelters for the civilian population, in cooperation with the Department of Municipal Security of the Kyiv City State Administration, the State Emergency Service and the public organisation “Ozon/O3on” [27]. As part of such cooperation, volunteers inspect the objects of the fund of protective structures for the civil protection of the population. In case of detection of violations of the requirements for the arrangement and functioning of nutrients, volunteers of public control immediately notify the state structures. The strategic goals of Ukraine's Public Safety and Civil Defence Strategy are defined [23]. The ways to achieve them involve not only increasing the capacities of subjects of the formation and implementation of state policy in the field of public security and civil protection but also improving the institutional foundations of coordination and strengthening intersectoral interaction in the context of public security. In particular, work on fire safety is constantly carried out by units of the State Emergency Service, local self-government bodies and civil society institutions; the United Nations Development Programme has repeatedly supported projects and activities aimed at strengthening the capabilities of units of the State Emergency Service, local fire protection, citizen safety centres, institutions of civil society and the implementation of preventive. Thanks to the active implementation of the public security and social cohesion approach developed by the United Nations Development Programme, the level of coordination and cooperation regarding civil protection and general security at the community level has significantly increased. Still, since 24 February 2022, due to the full-scale invasion, the list of factors that negatively affect public security significantly increased, which at the same time necessitates additional measures. That is why, within the framework of the Development Programme of the United Nations Organisation in Ukraine, with the financial support of the Government of Canada, under the direction of “Strengthening of public security through the interaction of communities and emergency services in the communities of Donetsk, Dnipropetrovsk, Zaporizhzhia, Kyiv, Luhansk, Mykolaiv, Poltava, Kharkiv, Kherson, of Chernihiv Region”, a grant competition was announced for civil society institutions to strengthen public safety and civil protection through the interaction of communities and the State Emergency Service [28].

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Conclusions

The full-scale invasion of the Russian Federation into Ukraine on 24 February 2022 presented Ukraine with the need for systemic changes. One of the directions that changed was the direction of the civil security of the population. The scale of military aggression and invasion led to the sudden mobilisation of resources for the state and society. On par with state institutions, civil society institutions reoriented their work on solving the challenges brought about by the war. One of these challenges was the need to ensure the safety of the civilian population.

One of the ways to solve the issue of the safety of the civilian population was the involvement of the public and public institutions in this process. Nevertheless, this process has some drawbacks. In particular: a) the current legislation, which regulates the sphere of activity of civil society institutions in the direction of ensuring the civil safety of the population, does not meet the requirements of wartime; b) there is still a lack of mechanisms for the interaction of civil society institutions with state authorities and the State Emergency Service, in particular, in the direction of ensuring the civil safety of the population. Nevertheless, despite the shortcomings, there is still an increase in such cooperation between the state and civil society institutions, which is why there is a need to improve the legislation in the direction of enhancing the interaction and collaboration between civil society institutions and the state and to mobilise as many resources as possible to ensure adequate civil protection of the population in conditions of constant military threat.

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