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LEGAL AND REGULATORY BASIS FOR SECURITY AND DEFENCE SECTOR OPERATION: CONCEPTUAL APPROACH

Abstract. *The purpose* of the article is to analyse the essence and legal and regulatory basis for the operation of the security and defence sector of Ukraine. **Results.** The authors analyse the essence and legal and regulatory basis for the operation of the security and defence sector of Ukraine through identifying the content of the operation of the security and defence sector, considering the scientific literature review, the essence and basic principles of the operation of the relevant concept in the legal and regulatory aspect, giving specific concepts as the example, as well as make proposals to optimize, from the authors' perspective, the work of the respective area. The authors argue that the concept of "security and defence sector" is understood as a comprehensive security and legal category, which includes not only a list of entities performing such activities but also organizational and legal, procedural and other principles of their operation. With regard to the definition, the essence of the operation of the security and defence sector is proved to require creating conditions to effectively prevent military attack and organise political (diplomatic) economic and armed response to possible aggression against Ukraine at any time and under any circumstances. **Conclusions.** It is justified that the legislative framework for the security and defence sector of Ukraine in general and the operation of individual subjects of security and defence of Ukraine, in particular, consists of: the Law of Ukraine "On the National Security and Defence Council of Ukraine" which defines the basis of the performance of the NSDC and forms its operation as an efficient and effective advisory body headed by the President of Ukraine; the Law of Ukraine "On Defence of Ukraine", establishing the principles of defence of Ukraine, as well as the powers of state authorities in the field of defence; the Law of Ukraine "On the Armed Forces of Ukraine", regulating the functions, the personnel of the Armed Forces of Ukraine, the legal basis for their organization, activities, deployment, command and control, management; the Law of Ukraine "On the Security Service of Ukraine", providing for the mechanism for the protection of state sovereignty, the constitutional order and territorial integrity of Ukraine as the key mission of the Security Service of Ukraine, one of the main actors in ensuring the security and defence of Ukraine.

Key words: security, defence, principles, laws of Ukraine, National Security and Defence Council of Ukraine, Security Service of Ukraine, Armed Forces of Ukraine.

1. Introduction

Relevance of the topic. The proper operation of the security and defence of Ukraine in the context of the armed aggression of the Russian Federation and other contemporary challenges is a priority task to be studied by both scientists and practitioners.

The State, as a social construction, is obliged to make every effort to ensure its

territorial integrity and the inviolability of the state border, as well as take steps to ensure the realization of all human and citizen rights and freedoms provided for in the Constitution and laws of Ukraine.

The security and defence sector, its system of functioning, the list of bodies constituting it, the scope of rights, duties and powers are an effective mechanism for counteracting both

external intrusion and internal subversive conflicts that systematically threaten human and citizen rights and freedoms, as well as territorial integrity. That is why the study of problematic issues in this area is a matter of priority.

However, taking into account the specificities of the regulation of the operation of the security and defence sector of Ukraine, the scattering of the legal and regulatory basis, its systemic and generalized fragmentation into many different elements and areas in various branches of the legislation of Ukraine, in our opinion, the first priority is the analysis of the existing, most significant legal regulations on the functioning of individual institutions (bodies) in the sector of the security and defence of Ukraine.

Literature review. The relevant area in the science of administrative law and other fundamental branches is studied by: M. Butenko, V. Doronin, K. Dmytrenko, V. Kalashnykov, N. Kulak, P. Ledovskyi, M. Marchenko, N. Oharkov, V. Pylypchuk, S. Poliakov, S. Ponomarov, A. Khvorostiankin, M. Tsvik et al.; however, the issue of systematization and development of comprehensive recommendations to optimize the performance of the sector still remains topical.

The purpose of the article is to analyse the essence and legal and regulatory basis for the operation of the security and defence sector of Ukraine, while **the tasks** are: to identify the content of the operation of the security and defence sector, considering the scientific literature review; to determine the essence and basic principles of the operation of the relevant concept in the legal and regulatory aspect, giving specific concepts as the example; to prove proposals to optimize, from the author's perspective, the work of the respective area.

The focus of the study is social relations in the field of the operation of the security and defence sector.

The subject of the study is the legal and regulatory basis for the operation of the security and defence sector institutions.

Material statement. First of all, the above-mentioned requires focussing on the fact that the issue of the legal and regulatory framework for any concept of law is a priority, since it is the adoption of the relevant instrument in the manner provided for by Ukrainian legislation gives it legal force, without which any, even doctrinal, provision has a null and void status.

However, in our opinion, the definition of the concept "security and defence sector" as well as its content is extremely important.

For instance, according to the author of the military encyclopaedic dictionary

N. Ogarkov, up to now, the concepts officially used in this sector have been and are "the field of national security and defence", "the field of military security", "the military sphere", "the military organization of the State", etc. They are used in various legal and regulatory instruments and are still valid today. Although, the concept of "security sector" is applied increasingly, including in the context of the implementation of the adopted Strategy of National Security of Ukraine. Unfortunately, many scientific sources interpret the concept expansively, attempting to cover the entire national security system of the State, or to replace this concept with another, or to reduce it to only one sphere (military) or structural component (subject of military security) (Ogarkov, 1984, p. 50). The definition primarily underlines that the concept of "security and defence sector" is understood as a comprehensive security and legal category, which includes not only a list of entities performing such activities but also organizational and legal, procedural and other principles of their operation.

Moreover, with regard to the interpretation of the concept "security and defence sector", the most fundamental is the definition provided in the thesis by S. Ponomarov, who suggests considering the security sector of Ukraine as a set of State authorities and organizations responsible for the security of the individual, society and the State. According to the main types of security established in the Ukrainian State, the author proposes to distinguish three basic elements of the security sector: 1) personal security of citizens, public order, etc., ensured by the law enforcement bodies; 2) national security ensured by the special services; 3) military security ensured by the Military Organization of Ukraine. The author proves that the relations with regard to state regulation of the security and defence sector are subject to administrative provisions, as they arise between subjects of public authority, are governed by administrative law and are of managerial, law enforcement and public service nature (Ponomarov, 2018).

The legislation stipulates that the current state of the components of the security and defence sector does not facilitate a guaranteed response to current threats to the national security of Ukraine (Military Security Strategy of Ukraine, 2001).

According to scientific estimates, in addition to the legislation, the legal regime of the national security and defence is much broader in the regulation of public relations, in particular: strategic planning in the field of national security and defence; state defence, economic and military-industrial

support for defence activities; counteracting the intelligence and subversive activities of foreign states and organizations using non-military or “hybrid” methods (a combination of military, political, information, economic, energy and other components) to achieve certain objectives; measures to obtain important information outside the State and the influence on other states’ public policy on Ukraine; temporary restrictive measures in situations that threaten the security of the State; and measures to counter terrorist and extremist manifestations; protection of the state border and the legal regime of military security (Pylypchuk & Doronin, 2018).

With regard to the definition of the essence of the operation of the security and defence sector, the following should be stated: scientists argue, and we underline that the most important requirement is to create conditions to effectively prevent military attack and to organise political (diplomatic) economic and armed response to possible aggression against Ukraine at any time and under any circumstances.

At the same time, the essence of the legal and regulatory framework, supported by the intermediate conclusion, can be formed by the analysis of existing legal regulations, that is legislation of Ukraine.

According to Article 17 of the Constitution of Ukraine, the protection of the sovereignty and territorial integrity of Ukraine shall be the most important function of the State and a matter of concern for all the Ukrainian people. The defence of Ukraine and protection of its sovereignty, territorial integrity and inviolability shall be entrusted to the Armed Forces of Ukraine. Ensuring the security of the State and protecting the State borders of Ukraine shall be entrusted to respective military formations and law enforcement bodies of the State, whose organisation and operational procedure shall be determined by law (Constitution of Ukraine, 1996).

Moreover, the legal and regulatory framework for the security and defence sector of Ukraine, in our opinion, consists of important elements such as:

2. The Law of Ukraine “On the National Security and Defence Council of Ukraine”

According to the legislation of Ukraine, the National Security and Defence Council of Ukraine (hereinafter – NSDC) is the coordinating body for national security and defence under the Constitution of Ukraine (On the National Security and Defence Council of Ukraine, 1998; Dmytrenko 2013).

The scientists emphasise that the solution to the problems of ensuring the national security of any State is impossible without

the functioning of a special body, mandate of which is to coordinate the activities of all public authorities in the field of national security. In Ukraine, such a body is the NSDC which is responsible, according to Article 4 (Competence of the National Security and Defence Council of Ukraine) of the Law of Ukraine “On the National Security and Defence Council of Ukraine”, for submission of proposals for the implementation of the principles of domestic and foreign policy on national security and defence to the President of Ukraine, and coordination and ongoing monitoring of the activities of the executive authorities in this field (On the National Security and Defence Council of Ukraine, 1998; Dmytrenko, 2013).

Therefore, a structural analysis of the relevant Law of Ukraine makes it possible to substantiate the position that the NSDC is an efficient and effective advisory body headed by the President of Ukraine, whose decisions are implemented by decrees of the President of Ukraine and have substantial legal force.

Moreover, over recent years, this body has been effective due to the development of a monitoring policy with regard to both the security and defence sectors and individual actors of these policies. In addition, NSDC’s active sanctions policy allows it, within the limits of its powers, to perform a preventive and deterrent function in the field of the security and defence of Ukraine.

3. The Law of Ukraine “On Defence of Ukraine”

This Law establishes, first of all, the principles for the defence of Ukraine, as well as the powers of public authorities, the fundamental functions and tasks of military command bodies, local State administrations, local self-government bodies, the duties of enterprises, institutions, organizations, officials, rights and obligations of Ukrainian citizens in the field of defence (On Defence of Ukraine, 1991).

At the same time, Section III of the Law establishes that the territorial defence of Ukraine is a system of military and special measures carried out during the specific period in order to: perform protection and defence of the State border; ensure conditions for the reliable functioning of the public authorities, military command bodies, strategic (operational) deployment of troops (forces), protection and defence of important installations and communications, combating sabotage and intelligence forces, other armed formations of the aggressor and anti-state illegally formed armed formations; maintenance of the legal regime of martial law.

In addition, the law provides for that the Armed Forces of Ukraine, other military

formations formed in accordance with the laws of Ukraine, the National Police, subdivisions of the State Special Transport Service, the State Special Communication and Information Protection Service of Ukraine and relevant law enforcement agencies are involved in the performance of the missions of territorial defence within the limits of their powers (On Defence of Ukraine, 1991).

Therefore, it is essential to draw attention to the importance and ensuring of State's institutional capacity to resist any encroachment on the security of Ukraine that becomes possible due to determining the actors of security and defence, who exercise their powers in a given direction. In addition, such entities are evidently grouped into primary (the Armed Forces of Ukraine) and secondary (that is, those involved by the Armed Forces of Ukraine in the territorial defence of Ukraine), such as the National Police, the State Special Transport Service and others. We believe that this list primarily includes the Security Service of Ukraine and the National Guard of Ukraine.

4. The Law of Ukraine "On the Armed Forces of Ukraine"

The Law of Ukraine regulates that, bearing in mind the need to ensure its own security and defence, being aware of responsibility in maintaining international stability as sovereign and independent, democratic, social, legal state, it has the Armed Forces of Ukraine with the necessary level of readiness and combat capability. This Law provides for the functions, personnel of the Armed Forces of Ukraine, the legal basis for their organization, performance, deployment, command and control, management (On the Armed Forces of Ukraine, 1991).

In accordance with article 1 (functions of the Armed Forces of Ukraine) of the Law, the Armed Forces of Ukraine is a military formation to which the Constitution of Ukraine entrusts the defence of Ukraine and the protection of its sovereignty, territorial integrity and inviolability. The Armed Forces of Ukraine ensure deterrence and repulse of armed aggression against Ukraine and protection of the airspace of the State and the underwater space within the territorial sea of Ukraine.

In addition, the current legislation of Ukraine, including the Law of Ukraine "On the Armed Forces of Ukraine", determines that the Armed Forces of Ukraine may be involved in: the measures of the legal regime of martial law and emergency; strengthening the protection of the State border of Ukraine and the exclusive (maritime) economic zone, the continental shelf of Ukraine and their legal establishment;

eliminating natural and man-made emergencies; rendering military assistance to other States, as well as participate in international military cooperation and international peacekeeping operations on the basis of international treaties of Ukraine and in the manner and under the conditions defined by the legislation of Ukraine (On the Armed Forces of Ukraine, 1991).

Therefore, it should be emphasized not only on the institutional function of the Armed Forces of Ukraine in providing the security and defence Ukraine but also on the specific powers of the Armed Forces of Ukraine such as measures to enhance the defence capability of the country, ensuring the proper operation of the security and defence sector of Ukraine as well as others.

5. The Law of Ukraine "On the Security Service of Ukraine"

According to article 2 (Missions of the Security Service of Ukraine) of the relevant Law of Ukraine, the Security Service of Ukraine is entrusted, within its legal competence, with the protection of state sovereignty, the constitutional order and territorial integrity, the economic, scientific, technical and defence potential of Ukraine, the legitimate interests of the State and the rights of citizens against the intelligence and subversive activities of foreign special services and interference attempted by certain organizations; and protection of state secrets (On the Security Service of Ukraine, 1992).

Furthermore, national scholars emphasize that the Security Service of Ukraine, as a public authority, implements public and state tasks to ensure personal security of both individual citizens, including assistance in their rights and interests, and the global interests of the State and society, such as economic, political, social, information and etc. The activities of the Security Service of Ukraine and its agencies are, first, preventive and, secondly, aimed at detecting and suppressing criminal activities. In order to achieve its objectives, the SSU requires modernization in all aspects of its activities. A new approach is needed to determine the administrative and legal status of the body in general and its employees in particular, as well as to update methods, forms and means of operation of the public authority (Ledovskyi, 2016).

Therefore, it should be noted that the Security Service of Ukraine is the key agency in the security and defence system of Ukraine, which ensures the detection and suppression of criminal activities, attempting to violate the territorial integrity and other bases of national security of Ukraine.

6. Conclusions

Thus, the analysis of scientific perspectives, as well as the study of the legal and regulatory framework, permits establishing a position towards some key provisions within the purpose of the article. The legal and regulatory framework for the security and defence sector is governed by the State in legal and regulatory instruments, which establish the basis for the functioning of subjects, as well as the organizational and legal basis for their functioning and interaction in

the performance of the missions of ensuring the security and defence of the State. In addition, the legal and regulatory basis of the operation of the security and defence sector is covered by many legal regulations of different jurisdictions, indicating the complexity of this sector of public policy. In our opinion, the Laws of Ukraine regulating the activities of other law enforcement agencies ensuring the operation of the security and defence sector of Ukraine require further study.

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НОРМАТИВНО-ПРАВОВІ ОСНОВИ ФУНКЦІОНУВАННЯ СЕКТОРУ БЕЗПЕКИ І ОБОРОНИ: ІНСТИТУЦІЙНИЙ ПІДХІД

Анотація. *Метою* статті є аналіз сутності та нормативно-правового підґрунтя функціонування сектору безпеки й оборони України. **Результати.** Автором здійснено аналіз сутності та нормативно-правового підґрунтя функціонування сектору безпеки та оборони України шляхом визначення змісту його функціонування з урахуванням наукових думок учених, сутності й основних підвалин функціонування відповідного інституту в нормативно-правовому аспекті з наведенням як прикладу конкретних інституцій. Також обґрунтовано пропозиції, які, на думку автора, оптимізують роботу відповідного напрямку. Автором аргументовано, що поняття «сектор безпеки і оборони» розуміється як комплексна безпеково-юридична категорія, що включає в себе не лише перелік суб'єктів, які здійснюють таку діяльність, а й організаційно-правові, процесуальні та інші засади їх функціонування. Щодо визначення сутності функціонування сектору безпеки та оборони аргументовано, що найважливішим є створення таких умов, які уможливають ефективне запобігання воєнному нападу та сприятимуть організації політичної (дипломатичної), економічної, збройної відсічі можливої агресії проти України в будь-який час і за будь-яких обставин. **Висновки.** Обґрунтовано, що законодавчий базис сектору безпеки та оборони України загалом і функціонування окремих суб'єктів забезпечення безпеки й оборони України складається з таких актів: Закону України «Про Раду національної безпеки і оборони України», що визначає засади роботи Ради національної безпеки і оборони України та формує її роботу як дієвого й ефективного дорадчого органу, що очолюється Президентом України; Закону України «Про оборону України», що встановлює засади оборони України, а також повноваження органів державної влади у сфері оборони; Закону України «Про Збройні Сили України», котрий регламентує функції, склад Збройних Сил України, правові засади їх організації, діяльності та дислокації, керівництво й управління ними; Закону України «Про Службу безпеки України», що визначає механізм захисту державного суверенітету, конституційного ладу, територіальної цілісності України як основне завдання Служби безпеки України – одного з основних суб'єктів забезпечення безпеки та оборони України.

Ключові слова: безпека, оборона, засади, закони України, Рада національної безпеки і оборони України, Служба безпеки України, Збройні Сили України.

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