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PURPOSE, TASKS AND PRINCIPLES OF ADMINISTRATIVE REGULATION IN THE SECURITY SECTOR OF UKRAINE

Abstract. *The research purpose* is to identify prevailing problems in the relevant area based on the study of administrative fundamentals for the support of the security sector and provide suggestions to prevent and overcome them. **Research methods.** The contribution relies on general scientific and special methods of scientific knowledge. **Results.** The author provides conceptual approaches to defining the category of the security sector of Ukraine through the prism of the administrative framework it is grounded on. The essence of principles, purpose, and objectives of the security sector and the fundamentals of their statutory regulation is clarified and covered. Attention is paid to a range of legislative acts that outline the powers of subjects tasked with ensuring the national security of the country. The author highlights shortcomings of the current legal groundwork of the country and provides suggestions for its improvement. **Conclusions.** Having made an in-depth analysis of the administrative framework the security sector of Ukraine is based on, the author concludes the following: it is essential to divide statutory principles the domestic security sector relies on into institutional and normative, which will reduce the regulatory workload of the legislator and entities entrusted to ensure national security. Although the current National Security Strategy separates the tasks and goals of the latter into some logical groups, it does not refer to the tasks conditioned by strategic planning and forecasting policy. European integration processes of Ukraine necessitate considering the proposals and recommendations of international bodies on national security – one of such recommendations is the division of the security sector into some areas with further differentiation of administrative bases between the latter.

Key words: public security, entities entitled to ensure state security, administrative law fundamentals of national security, National Security Strategy.

1. Introduction

The Basic Law of Ukraine defines democracy as a universal model of functioning of the country's political system. First of all, it is expedient to interpret a democratic regime given its values, among which are people's rule, diversity, openness, transparency, and freedom of the country. One cannot fail to agree that a democratic regime is regarded as a universal political value (Rudych, 2011, pp.161-162). Such approaches to the definition of democracy allow suggesting state mechanisms designed to ensure it. In this context, it is worth discussing the personal security of the country and each individual, the enforcement of rights and freedoms of the latter reflecting the focal areas of a democratic society.

The above confirms the need to advance domestic national security as guarantees of sustainable functioning of the state amidst global policy and give pride of place to its development and regulatory support of the legislator.

Such scientists as Balan M.I., Kovalchuk T.I., Korystin O.Ie., Svyrydiuk N.P. Ponomarov S. P. et al. dedicated their contributions to administrative law support of the security and defense sector of Ukraine, threats in the civil security sector of Ukraine, planning and forecasting as an essential prerequisite for the country's security.

Despite the availability of system researches on the administrative support of the security sector, the study of the latter remains a topical issue and requires further developments and suggestions for improvement.

2. Principles of administrative regulation of the security sector: framework of functioning

Any focal point of public policy needs relevant developments and scientific approaches the latter relies on, and the security sector is no exception. The research is based on the methodological principles, guidelines, and tasks arising in national security. Today, there is an urgent need to find qualitatively new administrative and legal tools to influence the organization and support of the security sector (Ponomarov, 2018, pp. 2-3) The above demands the state to generate and improve the system of bodies, means, and organizational principles of state security.

The primary element of state security determines the principles of its operation. The legal literature interprets the principles as a basis of a particular system, original universal ideas which render the guidelines of a legal phenomenon (Kovalchuk, Korystin, Svyrydiuk, 2019, pp. 71-73) the pioneer idea, a mandatory requirement for the regulator of social relations (Hubsykyi, Korableva, Lutchenko, 2006, pp.115-116).

In turn, the author understands the principles of administrative regulation of the security sector as thought-starters and mandatory requirements, which must be applied to subjects of the security sector and determine the essence and focus of their activities.

The latter is enshrined in some laws and bylaws; the Law of Ukraine "On National Security of Ukraine", which highlights the following principles of state policy on national security and defense, is undoubtedly one of the most substantial acts aimed at regulating public safety:

- the rule of law, accountability, legality, transparency, and compliance with the principles of democratic civil control over the functioning of the security and defense sector, and the use of force;
- observation of international law, participation in international peacekeeping efforts in the interests of Ukraine, interstate systems and mechanisms of international common security;
- advancement of the security and defense sector as the main tool for implementing state policy on national security and defense (On National Security of Ukraine: Law of Ukraine dated 21.06.2018).

The Military Security Strategy of Ukraine approved by the Decree of the President of Ukraine as of March 25, 2021, No. 121 / 2021 allows specifying the following principles (fundamentals) of functioning of the security sector:

- maintenance of stability and interaction;
- democratic civilian control;
- encouragement of innovative solutions;
- program-project management of defense resources (About the decision of the National Security and Defense Council of Ukraine of March 25, 2021 "On the Strategy of Military Security of Ukraine": Decree of the President of Ukraine dated 25.03.2021).

In general, it can be stated that if the law outlines more general principles inherent in any sphere of public life, and bylaws, as prescribed in legal theory, clarify the law and lean towards defining and disclosing specific principles of state security.

Keeping the analysis of principles, the security system is based on, it is expedient to refer to the so-called special laws that determine the fundamentals of activities of entities entrusted to ensure security both within the country and abroad. Thus, the Law of Ukraine "On the National Police" states that policing relies on the rule of law, respect for human rights and freedoms, legality, openness, transparency, political neutrality, interaction with citizens on the partnership, continuousness (About the National Police: Law of Ukraine dated 02.07.2015). The Law of Ukraine "On the Security Service of Ukraine" stipulates that its activities are grounded on such principles as legality, respect for the rights and dignity of the individual, non-partisanship, and responsibility to the people of Ukraine. Special attention is paid to the principles of combining unity of command and collegiality, conspiracy and publicity (About the Security Service of Ukraine: Law of Ukraine dated 25.03.1992).

Taking into account the above, it appears that the competence of bodies entitled to ensure national security is determined within the framework of separate laws. However, this does not mean that relevant entities should not follow the general principles set out in the basic laws. In this regard, the author proposes a concept of division (classification) of fundamentals (principles) of the security sector.

It is telling that that the National Security and Defense Council of Ukraine (hereinafter – NSDCU), being one of the key entities supporting national security (the author has stood her ground in this regard in previous studies) does not contain any references to the fundamentals (principles) of its activities in the regulatory framework, which is the Law of Ukraine "About the National Security and Defense Council of Ukraine" (About the National Security and Defense Council of Ukraine: Law of Ukraine dated 05.03.1998). The author considers this fact a gross blunder of legal drafting methodology and supports the need to deter-

mine the principles of activities of the relevant body in terms of legislation. First of all, such an extreme position is due to the fact that in the current political realities, NSDCU has assumed the role of the judiciary, pre-trial investigation bodies and public prosecution. Nowadays, there is a trend according to which NSDCU, on the one hand, acts as a guarantor of national security, on the other hand, restricts the rights of a particular group of persons. In this regard, the author believes that the legislator shall specify not only the scope of NSDCU but also outline an area of competence that would guarantee a reasonable balance between the interests of the nation and the individual.

Based on the analysis conducted by the author, fig. 1 shows the concept of the division of principles of the security sector in general terms:

3. Purpose and tasks of administrative regulation in the security sector: statutory basis and implementation challenges

Proceeding to the purpose and objectives of administrative regulation in the security sector of Ukraine, it is appropriate to state that its purpose is to obtain a predicted result in the form of the protection and defense of the state and society; the task should be regarded as purposeful activities of the security sector aimed at addressing challenges, which threaten or may pose a potential threat to the adequate existence of the state and society.

In addition to the Law of Ukraine "On National Security of Ukraine", a statutory definition of goals and objectives of the security sector is found in the Decree of the President of Ukraine "On the Decision of the National Security and Defense Council of Ukraine as of September 14, 2020 "On the National Security Strategy of Ukraine (About the decision of the National Security and Defense Coun-

cil of Ukraine of September 14, 2020 "On the National Security Strategy of Ukraine": Decree of the President of Ukraine; Strategy dated 14.09.2020). The Law itself generally outlines the purpose and objectives of the security sector through a prism of recognition of man as the highest social value and democratic values. However, the Law refers to the National Security Strategy of Ukraine, which is considered the fundamental document of long-term planning specifying the main directions of the state policy on national security (On National Security of Ukraine: Law of Ukraine dated 21.06.2018).

Therefore, the National Security Strategy allows defining the goals and objectives of the security sector from various perspectives. The author believes that the latter should be grouped under the relevant areas – the author represents them in the following way (Table 1).

Thus, the strategic policy of the state outlined by the National Security Strategy specifies the powers of the state in three major dimensions, namely:

- the priority directions of the state policy are designed to ensure the development of the most important security processes;
- a policy aimed at ensuring national interests – it ensures the stability and coherence of democratic processes within the country;
- reforming the security sector, which should be understood as the state's response to shortcomings found in the security sector.

It should be noted that a separate section of the Strategy identifies problems that currently exist or may arise in the national security sector: COVID-19, escalation of international conflicts, hybrid warfare, destructive propaganda, a lack of adequate modernization of the Ukrainian army, imperfection, and fragmentation of the Ukrainian legisla-

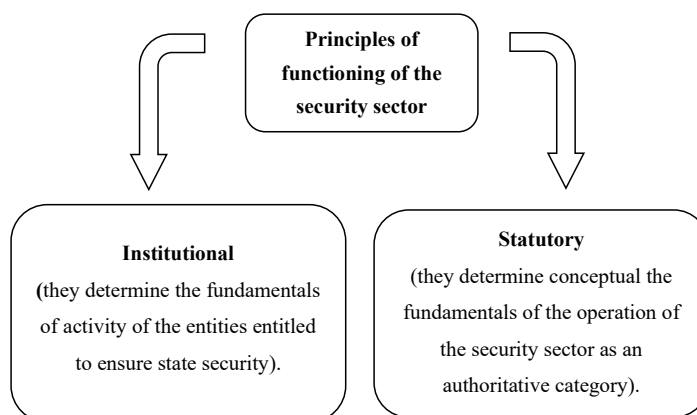


Figure 1. Classification of fundamentals (principles) of the security sector

tion. Given the above, it would make sense to discuss the need to enshrine in the Strategy tasks aimed at solving both current problems and tasks of planning and forecasting in the sphere of national security.

In particular, the author shares the position of Balan M.I., who highlights the need for predicting and conducting a comprehensive, not limited in time, policy and the necessity to shift strategic plans into the monitoring of the threat to national security (Balan, 2019, p. 147).

It is worth mentioning that the introduction of strategic (forecasting) planning processes into the system of objectives will provide a reasonable balance between current and potential problems that may arise in the future in the country's security system.

4. International experience of legal regulation of the security policy of states

In discussing security sector objectives, it is impossible to ignore the international actors entrusted to ensure it. It is primarily

about international organizations, their bodies, and officials. Thus, one of such entities is Geneva Centre for Security Sector Governance (hereinafter – DCAF, Foundation). The foundation proposed the following concept of the security sector (fig. 2) (Geneva Center for Security Sector Governance), according to which its goals and objectives should be formed.

This approach stipulates rationalization and guarantees the maximum efficiency of functioning of the security sector as a whole. It is appropriate to point out that the national security strategy does not delimit its purpose within some areas, much less distribute them between specific actors that somewhat violates the principle of legal certainty, which is the basis of a democratic society.

In addition, there is the concept under which the state outlines more general provisions of the security sector without specifying particular measures focused on its strengthening and advancement. Undoubtedly, there are pro-

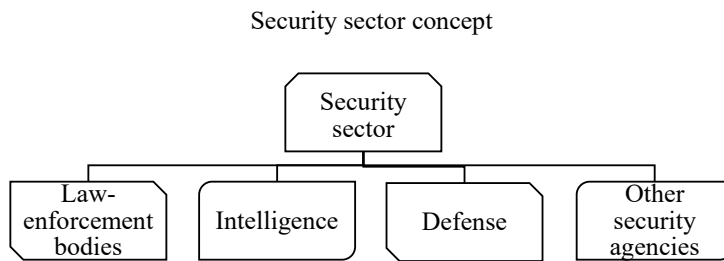


Figure 2. Security sector structure

Table 1

The purpose and objectives of the security sector

Priority areas	Policy aimed at ensuring national interests	Security sector reform
Restoration of peace and security in the temporarily occupied territories	Improvement of sanctions policy	Bringing the army in line with NATO norms, principles, and standards
Counteraction to the aggression of the Russian Federation	Negotiation policy with the aggressor nation under the auspices of mediation	Strengthening the combat potential of the armed forces
Development of partnership with neighboring countries and international organizations	Claim-related work in international institutions	Advancement and strengthening of the defense-industrial complex
Ukraine's full membership in the European Union	Introduction of the national sustainability system	Strengthening the system of democratic civilian control
Strengthening security and cybersecurity systems	Supporting of economic and environmental development of the country	Optimization of the structure of the bodies of the entities entitled to ensure national security
Prevention and counteraction to corruption risks	Prevention of risks that may undermine national security (intelligence and subversive activities, separatism, terrorism, extremism)	Ensuring the automation of the country's defense potential

visions currently available in the Strategy, but it would be wiser to outline a scope of tasks in the context of their division between the security spheres and the relevant bodies – the same concerns the principles of their activities. It is worth consolidating the latter within the Strategy. The above seems relevant given the analysis of current legislation, which is designed to provide statutory support for domestic security actors, that scarcely enshrines the operating principles of the latter.

5. Conclusions

Keeping in mind an in-depth analysis of the administrative framework Ukraine's security sector relies on, it is expedient to make the following conclusions:

– It is noteworthy that the principles defined in the legislation, which are a basis

of the domestic security, should be divided into institutional and regulatory that will reduce the regulatory workload of the legislator and entities designed to ensure national security.

– Although the current National Security Strategy divides the tasks and goals of the latter into certain logical groups (proposed by the author in table 2), it does refer to tasks stipulated by strategic planning and forecasting policy.

– European integration processes of Ukraine necessitate considering the proposals and recommendations of international bodies on national security – one of such recommendations is the division of the security sector into particular areas with further differentiation of administrative operation bases between the latter.

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МЕТА, ЗАВДАННЯ ТА ПРИНЦИПИ АДМІНІСТРАТИВНОГО РЕГУЛЮВАННЯ В СЕКТОРІ БЕЗПЕКИ УКРАЇНИ

Анотація. *Мета* статті – на основі дослідження адміністративних основ забезпечення сектору безпеки виокремити проблеми, що наразі наявні у визначеній сфері, та надати пропозиції, спрямовані на їх подолання й запобігання їм. *Методи дослідження.* Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання. *Результати.* Наведено концептуальні підходи до визначення категорії сектору безпеки в Україні крізь призму адміністративно-правових основ, на яких він ґрунтується. З'ясовано та розкрито зміст принципів, мети й завдань сектору безпеки та основ їх нормативно-правового регулювання. Приділено увагу низці законодавчих актів, що окреслюють повноваження суб'єктів, на яких покладено завдання із забезпечення національної безпеки на території країни. Акцентовано увагу на недосконалоостях наявного правового забезпечення безпеки країни, надано пропозиції щодо його вдосконалення. *Висновки.* Унаслідок поглибленого аналізу адміністративних основ, на яких ґрунтується сектор безпеки України, констатовано, що ці засади доцільно поділяти на інституційні та нормативні, що має на меті зменшити нормативне навантаження на законодавця та суб'єктів, покликаних забезпечувати національну безпеку. Чинна Стратегія національної безпеки хоча й поділяє завдання та цілі національної безпеки на певні логічні групи, проте не містить посилань на завдання, зумовлені стратегічним плануванням і прогностичною політикою. Євроінтеграційні процеси в Україні зумовлюють необхідність врахування пропозицій і рекомендацій міжнародних органів у сфері забезпечення національної безпеки. Однією з таких рекомендацій є поділ сектору безпеки на певні сфери з подальшим розмежуванням адміністративних основ діяльності між ними.

Ключові слова: публічна безпека, суб'єкти, покликані здійснювати забезпечення державної безпеки, адміністративно-правові основи національної безпеки країни, Стратегія національної безпеки.

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