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ADMINISTRATIVE AND LEGAL STATUS OF THE NATIONAL SECURITY AND DEFENCE COUNCIL AND THE SECURITY SERVICE OF UKRAINE AS ENTITIES ENSURING NATIONAL SECURITY IN THE CONTEXT OF EUROPEAN INTEGRATION

Abstract. Purpose. The purpose of the article is to reveal the theoretical and practical essence of the concept of "administrative and legal status" in relation to entities ensuring national security of Ukraine in the context of European integration such as the National Security and Defence Council and the Security Service of Ukraine.

Results. It is determined that the regulatory framework of the National Security and Defence Council of Ukraine requires optimisation changes. First, it is necessary to clearly identify its role and purpose, that is, to facilitate or to perform specialised management; second, when distinguishing its powers and functions, the warning provisions of EU law regarding the inadmissibility of limiting the scope of human and civil rights (without proper justification) for reasons of national security should be considered. Therefore, the administrative and legal status of the National Security and Defence Council of Ukraine characterises it as an entity ensuring national security in the context of European integration by the following provisions: it is a body of special competence, which, on the one hand, is responsible for information and analytical support for the national security management system of Ukraine, and, on the other hand, for strategic planning and management of its system through coordination and control powers. **Conclusions.** The author determines that the administrative and legal status of the National Security and Defence Council and the Security Service of Ukraine as entities of special competence in the field of national security in the context of European integration in the substantive aspect characterises the totality of tasks, goals and functions established by legal regulations, the implementation thereof is their direct responsibility and is manifested in the information and analytical field, which in turn is the basis for making managerial decisions (National Security and Defence Council) and implementing law enforcement measures to eliminate threats to state security (Security Service of Ukraine). It is revealed that these entities require to be relieved of uncharacteristic functions and limited in the scope of their powers to meet the purpose of their functioning in the discourse of Ukraine's European future. Furthermore, the National Security and Defence Council should have a more flexible scope of legal capabilities compared to the Security Service of Ukraine, activities thereof should exclude the possibility of discretion. In addition, the issue of adverse legal effects of their activities (establishment of measures of legal liability), including for unlawful decisions and improper performance of functional duties, shall be regulated, since to meet the public interest, they should allow for European standards of the minimum acceptable level of protection of personal rights and values of a person and citizen with the impossibility of their unreasonable restriction.

Key words: administrative and legal status, security, European integration, security provision, competence, system of actors.

1. Introduction

Each state is endowed with the privileged right to independently resolve national security issues. This means that any threat (if it is real

and duly justified as such) can be eliminated in a way that the state's leadership considers appropriate and necessary. Nowadays the global security of the world community is riddled with

acute problems arising from this established dogma because, bypassing the need to prove and justify the existence of a real threat to national security, individual countries are actually undermining the entire global security by abusing this right.

Awareness of this problem and the search for effective legal mechanisms to address it are of both national and international nature. For example, the law of the European Union (hereinafter – the EU) contains a number of caveats regarding the national legislation of its member states in terms of the need to unify the approach to public administration of national security issues (to a greater extent, respect for human and civil rights), and the availability of adequate and effective guarantees in the mechanism for its implementation to prevent abuse of state power functions.

Currently, Ukraine's national security is in the most difficult state since the country's independence, as its external and internal threats have increased and become more complex (Kysloho, Strelbytskoho, 2021). Rebuilding, restoring and renewing of Ukraine are the steps that need to be taken for Ukraine's new European future (Official website of the Cabinet of Ministers of Ukraine, 2022), which must be implemented despite the strong desire of the Russian Federation to prevent a strong, sovereign Ukraine and the victory of democracy and the rule of law in the post-Soviet space (Vahener, 2022). Therefore, cooperation and coordination of global efforts to repel the aggressive efforts of the Russian Federation's leadership is extremely important, as it forms the basis of a renewed democratic world.

It is Ukraine that currently plays an important role in the development of political and economic cooperation on the European continent and in the adjacent areas, ensuring regional stability and security in the face of the Russian Federation's extraordinary military and information aggressive activity (Danylian, 2020). All of this is a merit of actors ensuring the national security of Ukraine, whose activities in crisis situations have been reformatted from the strategic to the tactical level of management, and have proven their effectiveness, as each representative of their system acts as an integral part of a powerful and holistic mechanism for protecting the national identity, dignity and will of the Ukrainian people, its statehood, independence and territorial integrity.

Among these actors, the activity of those with special competence is of importance. In this study, we will try to clarify the theoretical and practical essence of the concept of "administrative and legal status" in relation to the National Security and Defence Council

and the Security Service of Ukraine as entities ensuring national security of Ukraine in the context of European integration.

The concept under study as a direct subject of scientific research is characterised by a triple content. This means that one part of it is sufficiently covered and studied by domestic scientists of administrative law (for example, the works of such scientists who have studied the foundations of the theoretical understanding of the concept of "administrative and legal status" on the example of various subjects) (Vyshneva, 2021), another part relates directly to its features of the actors being analysed, and the last part focuses on entities ensuring Ukraine's national security in the context of European integration. In particular, in the latter aspect, there are no scientific developments of domestic scholars.

2. Administrative and legal status of the National Security and Defence Council

A review of legal literature and certain legal regulations enables to argue that the legal category of "status" is frequently used, and in quite different interpretations. It makes no sense to go into its terminological features, given the number of scientific works by leading scholars of legal science, including administrative science, devoted directly to this topic. We will only clarify that it is mostly used to denote a specific phenomenon, actor or process in a certain space (Zamryha, 2021); its meaning is in something.

Furthermore, the scientific definition of administrative and legal status is complicated due to its theoretical construct without legislative interpretation, therefore there is a lack of unity of both perspectives on and scientific understanding (Vyshneva, 2021) of this concept, as it is derived from a more general term – legal status. Moreover, it should be considered that the general understanding of this term implies an opinion that the category "legal status" refers to a person, while "legal position" refers to a public authority (Zubko, 2019).

Nevertheless, as a rule, the concept of "administrative and legal status" is revealed through the characteristics of its elements or through the competence (Priakhin, Humin, 2014) of a particular public administrator (Prykhodko, 2020) (for example, V. Averianov defines the administrative and legal status as a set of rights and duties enshrined in the provisions of administrative law, the implementation thereof is ensured by certain guarantees (Averianov, 2004)).

Therefore, the administrative and legal status is a legal concept used only by scientists and expressed exclusively within the framework of administrative and legal science, the conceptual component thereof is formed by adding

to the basis of specific actors' legal status elements of essential understanding (Vyshneva, 2021) of the uniqueness of their activities as representatives of a certain system, which have a specific social orientation of the actions taken in the plane of the administrative vector of legal relations, and this determines the meaning and role of their existence in the system of implementing (Vyshneva, 2021) public functions.

With regard to the administrative and legal status of the entities under study, it should be noted that the term "special competence" in this context refers to the implementation of a set of measures organised and performed by individual entities of the security and defence sector and having a functional impact on the objects of their jurisdiction. It means that legal regulations vest such entities with special functions that cannot be exercised/delegated to other entities. It is clear that, for example, the functions of the parliament cannot be performed or delegated to other entities either, but in this aspect, it is not so much about the exclusivity of functions, but rather about their specificity.

Article 107 of the Constitution stipulates that the National Security and Defence Council (NSDC) is a coordinating body on national security and defence under the President of Ukraine. The President of Ukraine shall be its Head and shall form the personal membership; and the Prime Minister of Ukraine, the Minister of Defence of Ukraine, the Head of the Security Service of Ukraine, the Minister of Internal Affairs of Ukraine, and the Minister of Foreign Affairs of Ukraine shall be *ex officio* members. The Chairman of the Verkhovna Rada of Ukraine may participate in NSDC meetings (Constitution of Ukraine, 1996).

That is, the constitutional provisions indicate that the entity under study has a special administrative and legal status in general, not only in the field under analysis.

It should be noted that of all the actors that make up the national security system of Ukraine, its functions in national security management and status are the most detailed. In fact, the Constitution imposed on the NSDC the honourable role of coordinator in this field, namely, the coordinator is the main link in the management and decision-making system. Regardless of whether coordination is only about efficiently gathering information so that the President can make appropriate decisions based on it, or whether it enables effective management of various structures to address current issues (Bidenko, 2006). For example, in Poland, the National Security Council is an advisory body to the president on internal and external security issues and does not have such broad powers as a similar body in Ukraine. Thus, its

function is to study issues and form opinions related to the security of the state, and they include: general guidelines for the security of the state, principles of and trends in foreign policy, areas of development of the Armed Forces, issues related to external security, threats to internal security and resources to counter them (About the National Security Council, 2022).

The fact that the NSDC has a significant scope of powers not only in the field of national security and defence and deals with almost all issues of the country's life is indicated by the provisions of the Law of Ukraine "On the National Security and Defence Council of Ukraine". For example, Article 4 of this Law defines the competence of the NSDC on the basis of its functions (analytical, coordination and control). The powers listed in this article includes quite specific ones, for example, those related to the recognition of a person as having significant economic and political weight in public life (oligarch), as well as the exclusion of a person from the Register of persons having significant economic and political weight in public life (oligarchs) (Law of Ukraine On the National Security and Defence Council of Ukraine, 1998). No other country in the world has such a concept as an "oligarch" at the legislative level and recognises that they can pose a threat to national security and defence given their "significant economic and political weight in public life".

In addition, the list of powers of the NSDC most often includes the power to coordinate and control the activities of executive bodies. This is despite the fact that in most countries similar bodies have advisory functions, as this actually means that interference in the system of executive authorities is permissible. The NSDC is not a part of any branch of government and is only an advisory body to the President of Ukraine (Lipkan, 2009), so the existence of such powers raises a number of questions.

In our opinion, coordination and control over the activities of executive authorities can only be remained for "repulsing armed aggression, organising the protection of the population and ensuring its vital activity, protecting life, health, constitutional rights, freedoms and legitimate interests of citizens, maintaining public order in martial law and state of emergency and in the event of crisis situations that threaten the national security of Ukraine". (Law of Ukraine On the National Security and Defence Council of Ukraine, 1998). Under normal circumstances, this body should perform analytical and advisory functions. Therefore, we believe that part 2 of Article 3 of the Law of Ukraine "On the National Security and Defence Council" should be cancelled.

If such an approach is enshrined in law, it can be stated that the NSDC is a specialised body in the system of national security actors, as it will exercise special powers in exceptional cases. Currently, it is a body that has such powers regardless of the state of affairs in the security environment in the country.

In view of this, K. Tarasenko believes: "The NSDC is a national, integral, systemic, specialised, interdepartmental ("supra-departmental"), comprehensive and collegial state authority of Ukraine" (Tarasenko, 2009).

Therefore, the regulatory framework for the NSDC is imperfect, as the relevant law gives it powers that are too broad in scope. Moreover, the procedures for their implementation are not supported by a mechanism-based approach (in particular, there are no provisions on the responsibility of departments within the Council, no provisions on such important elements of national security management as annual reports, intelligence gathering, responsibility for their actions, etc. (Bidenko, 2006)).

The ineffectiveness of the approach when the NSDC is concerned with everything and nothing can be demonstrated by the example of V. Radchenko's report "On the main results of the work of the National Security and Defence Council of Ukraine and the Council apparatus in 2003" (On the main results of the work of the National Security and Defence Council of Ukraine and the Council apparatus in 2003, 2024). In particular, several paragraphs of this report of the constitutional body reveal measures aimed at reducing accidental alcohol poisoning. The result of the NSDC's work is that "the number of deaths from accidental alcohol poisoning in January-October 2003, compared to the same period last year, decreased by 652 people". This is simply not possible in the report of, for example, the US National Security Council, due to the clear definition of its powers (Bidenko, A. (2006).

Therefore, the above leads to the conclusion that the regulatory framework of the NSDC requires optimisation changes. First, it is necessary to clearly identify its role and purpose, that is, to facilitate or to perform specialised management; second, when distinguishing its powers and functions, the warning provisions of EU law regarding the inadmissibility of limiting the scope of human and civil rights (without proper justification) for reasons of national security should be considered.

Therefore, the administrative and legal status of the NSDC characterises it as an entity ensuring national security in the context of European integration by the following provisions: it is a body of special competence, which, on the one hand, is responsible for information

and analytical support for the national security management system of Ukraine, and, on the other hand, for strategic planning and management of its system through coordination and control powers.

In addition, until important issues such as the NSDC's responsibility for its decisions, the procedure for dealing with a crisis, and a clear definition of national security issues and priorities are resolved at the legislative level, it will remain a purely advisory body that helps provide the Head of State with the most complete information on important issues, analyses potential threats and deals with crisis management (Bidenko, A. (2006).

3. Administrative and legal status of the Security Service of Ukraine

The next entity of scientific interest in this study is the Security Service of Ukraine (hereinafter – SSU). The activities of this entity, as well as its status, are regulated by the Constitution of Ukraine and other legal regulations. For example, the Law of Ukraine No. 2229-XII "On the Security Service of Ukraine" of March 25, 1992 (On the Security Service of Ukraine Law of Ukraine, 1992) defines it as a special purpose state body with law enforcement functions that ensures state security of Ukraine and is subordinated to the President of Ukraine.

That is, like the National Security and Defence Council of Ukraine, this body is also subordinated to the President of Ukraine. However, this law enforcement body's functions differ from the ones of the National Security and Defence Council of Ukraine (Nadon, 2017). In particular, the SSU is responsible for protecting the state sovereignty, constitutional order, territorial integrity, scientific, technical and defence potential of Ukraine, protecting the legitimate interests of the state and the rights of citizens from intelligence and subversive activities of foreign special services, attacks by individual organisations, groups and individuals, and ensuring the protection of state secrets within the scope of its competence defined by law. The SSU is also tasked with preventing, detecting, suppressing and solving criminal offences against peace and security of mankind, terrorism and other unlawful acts that directly threaten the vital interests of Ukraine (On the Security Service of Ukraine Law of Ukraine, 1992).

Accordingly, the SSU has a special administrative and legal status as a national security entity, as it combines two key areas within its competence – information-analytical and law enforcement – while performing special service tasks.

It is noteworthy that nowhere in the civilised world a special service conducts law enforce-

ment activities; its purpose is to collect information within the competence defined by law (Zakharov, 2017).

That is why European experts have consistently emphasised the need to reform the SSU in their conclusions. The first stage of the SSU reform began in 2008-2009, when the National Security Council adopted the decision "On the concept of reforming the Security Service of Ukraine: Decision of the National Security Council, 2008" (enacted by Presidential Decree No. 249/2008) and the "Comprehensive Targeted Programme for Reforming the Security Service of Ukraine" (Decree of the President of Ukraine On the decision of the National Security and Defence Council of Ukraine dated February 15, 2008 "On the Concept of Reforming the Security Service of Ukraine", 2008). A draft law was registered, but later withdrawn from consideration. In 2015, a new reform was announced. International partners again insisted on it. One of the main conditions was the elimination of special units dealing with economic crimes (Ukrinform website, 2022).

A new phase of SSU reform commenced in 2019 with the development of a new draft law on the Service. The main goal of the reform is to set new priorities and make the SSU more effective. It will provide the special service with effective mechanisms to better respond to the threats faced in the modern world. In particular, to successfully counteract the hybrid warfare of the Russian Federation. The relevant draft law was developed by SSU experts, and the final version was prepared by an expert group of the President's Office. It allowed for key proposals from international partners. On 19 May 2020, the Verkhovna Rada of Ukraine considered the draft law and sent it for a second first reading and revision to the Parliamentary Commit-

tee on National Security, Defence and Intelligence (Official website of the Security Service of Ukraine, 2022).

Therefore, the SSU has a special administrative and legal status in the field of national security in the context of European integration, as it is the only state special-purpose body with law enforcement functions with the main purpose to ensure state security.

4. Conclusions

To sum up, the administrative and legal status of the NSDC and the SSU as entities of special competence in the field of national security in the context of European integration in the substantive aspect characterises the totality of tasks, goals and functions established by legal regulations, the implementation thereof is their direct responsibility and is manifested in the information and analytical field, which in turn is the basis for making managerial decisions (NSDC) and implementing law enforcement measures to eliminate threats to state security (SSU).

The entities under study require to be relieved of uncharacteristic functions and limited in the scope of their powers to meet the purpose of their functioning in the discourse of Ukraine's European future. Furthermore, the National Security and Defence Council should have a more flexible scope of legal capabilities compared to the Security Service of Ukraine, activities thereof should exclude the possibility of discretion. In addition, the issue of adverse legal effects of their activities (establishment of measures of legal liability), including for unlawful decisions and improper performance of functional duties, shall be regulated, since to meet the public interest, they should allow for European standards of the minimum acceptable level of protection of personal rights and values of a person and citizen with the impossibility of their unreasonable restriction.

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АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС РАДИ НАЦІОНАЛЬНОЇ БЕЗПЕКИ І ОБОРОНИ ТА СЛУЖБИ БЕЗПЕКИ УКРАЇНИ ЯК СУБ'ЄКТІВ ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ В УМОВАХ ЄВРОІНТЕГРАЦІЇ

Анотація. Мета. Метою статті є з'ясування теоретичної й практичної сутності концепту «адміністративно-правовий статус» щодо таких суб'єктів забезпечення національної безпеки України в умовах євроінтеграції, як Рада національної безпеки і оборони та Служба безпеки України. **Результати.** Визначено, що нормативне регулювання діяльності Ради національної безпеки та оборони України вимагає оптимізаційних змін. По-перше, необхідно чітко ідентифікувати її роль та призначення – сприяти чи здійснювати спеціалізоване управління; по-друге, у разі виокремлення її повноважень та функцій слід враховувати застережні положення права ЄС щодо недопустимості обмеження обсягу прав людини та громадянина (без належного на те обґрунтування) з мотивів національної безпеки. Таким чином, адміністративно-правовий статус Ради національної безпеки та оборони України характеризує її як суб'єкта забезпечення національної безпеки в умовах євроінтеграції такими положеннями: є органом спеціальної компетенції, що, з одного боку, відповідальний за інформаційно-аналітичне забезпечення системи управління національною безпекою України, а з іншого – стратегічне планування та управління її системою через координаційні та контрольні повноваження. **Висновки.** Визначено, що адміністративно-правовий статус Ради національної безпеки і оборони та Служби безпеки України як суб'єктів спеціальної компетенції у сфері забезпечення національної безпеки в умовах євроінтеграції у змістово-сутнісному аспекті характеризує сукупність встановлених законодавчими актами завдань, цілей та функцій, реалізація яких є їхнім прямим обов'язком, та має вияв у інформаційно-аналітичній площині, яка своєю чергою є підставою для прийняття управлінських рішень (Рада національної безпеки і оборони) та здійснення правоохоронних заходів щодо ліквідації загроз державній безпеці (Служба безпеки України). Виявлено, що для цих суб'єктів характерною є необхідність позбавлення їх невласливих функцій та обмеження обсягу повноважень, що відповідатимуть меті їхнього функціонування у дискурсі європейського майбутнього України. При цьому Рада національної безпеки і оборони повинна мати більш гнучкий обсяг правових можливостей порівняно зі Службою безпеки України, діяльність якої має виключати можливість застосування дискреції. Окрім того, нормативного врегулювання потребує питання виникнення несприятливих правових наслідків від їхньої діяльності (встановлення мір юридичної відповідальності), у тому числі за прийняті ними протиправні рішення та неналежну реалізацію функціональних обов'язків, адже, забезпечуючи публічний інтерес, вони обов'язково мають враховувати європейські стандарти мінімально допустимого рівня захисту особистих прав та цінностей людини і громадянина з неможливістю їхнього безпідставного обмеження.

Ключові слова: адміністративно-правовий статус, безпека, євроінтеграція, забезпечення безпеки, компетенція, система суб'єктів.

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