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BY-LAWS OF LEGAL FRAMEWORK FOR ACTIVITIES OF PROSECUTOR'S OFFICE AS AN ACTOR OF SECURITY AND DEFENCE SECTOR

Abstract. Purpose. The purpose of the article is to characterise the legal framework for the Prosecutor's Office as an actor of the security and defence sector, provided for in the provisions of by-laws. **Results.** The author emphasises the importance of outlining and characterising such legal framework for the Prosecutor's Office activity, which is provided for in by-laws. It is emphasised that the effectiveness of the protection of national interests from potential and real threats, as well as the performance of certain areas of their activities, directly depends on how fully and qualitatively the legal framework for functioning of the security and defence sector, as well as its individual actors, in particular the Prosecutor's Office of Ukraine, is determined. It is revealed that by-laws, which define the legal framework for the activities of the Prosecutor's Office as an actor of the security and defence sector, acquire a special status in the system of regulatory and legal mechanism. It is emphasised that in the context of the declaration of martial law, in the need of the prompt respond to potential and real threats to the national security of our state, the by-law regulatory level of public relations under the study is of particular importance. The by-laws that provide for the legal framework for the activities of the Prosecutor's Office of Ukraine as an actor of the security and defence sector are identified. The by-laws that define the legal framework for the activities of the Prosecutor's Office as an actor of the security and defence sector, allowing for the legal force of each of them, are analysed. **Conclusions.** It is established that the adoption of such regulations enables to define the full powers of the relevant structural units of the Prosecutor's Office in a more efficient way, to adjust their tasks and functions, to detail certain areas of activities of the Prosecutor's Office as an actor of the security and defence sector. It is noted that by-laws cannot establish new areas of activities of the Prosecutor's Office or give it additional full powers. They address issues related to the support of a certain area of activities, coordination and interaction, as well as many other organisational principles of the functioning of the Prosecutor's Office as a security and defence sector entity. It is proposed that Article 4 of the Law of Ukraine "On the Prosecutor's Office" should be supplemented with a new part: "2. The organisational framework for the activities of the Prosecutor's Office may be provided for by other legal regulations".

Key words: Prosecutor's Office, security and defence sector, legal framework, legal regulations, by-laws.

1. Introduction

The effectiveness of the protection of national interests from potential and real threats, as well as the performance of certain areas of their activities, directly depends on how fully and qualitatively the legal framework for functioning of the security and defence sector, as well as its individual actors, in particular the Prosecutor's Office of Ukraine, is determined. Analysis of the legal framework for the activities of the Prosecutor's Office as an actor of the security and defence sector is crucial in the context of studying the system of such actors in general and determining the place of this body in it.

The legal framework for the activities of security and defence sector entities has been under study in scientific works by Yu.I. Andriievska, O.M. Bandurka, K.V. Bondarenko, V.K. Horodenko, O. V. Dzhafarova, V.V. Krykun, A.H. Moseiko, O.O. Panova, S.P. Ponomarov, V.B. Pchelin, V.L. Synchuk, G.P. Sytnyk, N.A. Simonian, V.V. Sokurenko, M.M. Stefanchuk, V.P. Tiutiunnyk, V.V. Tsyhanov, S.O. Shatrava, O.M. Shevchuk, and others. However, despite the significant contribution of such achievements, many issues remained little researched or not researched at all. In particular, the issue of the legal framework

for the activities of the Prosecutor's Office as a security and defence sector entity has not been addressed.

The purpose of the article is to characterise the legal framework for the Prosecutor's Office as an entity of the security and defence sector, provided for in the provisions of by-laws.

2. Regulatory and legal mechanism for the activities of the Prosecutor's Office

The place of by-laws is determined by the fact that the legal framework cannot fully foresee the whole range of situations to be legally regulated, as a result of which the legislative level provides for the possibility to independently regulate social relations by the authorities, which, for example, allows to quickly determine the competence of various state bodies, the rights and duties of their officials and employees (Pchelin, 2011). In the context of the declaration of martial law, in the need of the prompt respond to potential and real threats to the national security of our state, the by-law regulatory level of public relations under the study is of particular importance.

As a component of the regulatory legal system of the activities of the Prosecutor's Office as an actor of the security and defence sector, by-laws in their totality can be considered as an independent system. This is due to the fact that the system, as an integral complex of inter-related elements, which, being a lower system, are at the same time elements of a higher system (Alekseev, Panyn, 1999). It should be noted that by-laws that provide for the legal framework for the activities of the Prosecutor's Office of Ukraine as an actor of the security and defence sector should be considered as the structural elements of this system. That is why such system will be much more branched than the higher system under consideration, since there will be much more actors authorised to adopt by-laws defining the legal framework for the activities of the Prosecutor's Office as a security and defence sector entity. We will analyse these legal regulations considering the legal force of each of them.

It should be noted that the possibility of applying the by-laws provided for by the legal framework for the Prosecutor's Office is not mentioned in the current national legislation. According to paragraph 14 of part 1 of Article 92 of the Constitution of Ukraine, the activities of the Prosecutor's Office shall be determined exclusively by the laws of Ukraine (Constitution of Ukraine, 1996). Moreover, according to part 1 of Article 4 (legislation on the Prosecutor's Office and the status of prosecutors) of the Law of Ukraine "On the Prosecutor's Office", the organisation and activities of the Prosecutor's Office of Ukraine, the status

of prosecutors are determined by the Constitution of Ukraine, this and other laws of Ukraine, and international treaties in force, consented by the Verkhovna Rada of Ukraine as binding (Law of Ukraine On the Prosecutor's Office, 2014). We argue that these legislative provisions do not quite correspond to the real activities of the Prosecutor's Office as an actor of the security and defence sector. Indeed, the legal status, full powers of the Prosecutor's Office, the main areas of their activities can be regulated only by the laws and international treaties of Ukraine. However, the issues related to the organisational framework for such activities of the Prosecutor's Office, including as an actor of the security and defence sector, are mostly regulated by by-laws, as evidenced by the analysis below.

Primarily, the regulations of the President of Ukraine, who, in accordance with the provisions of Article 106 of the Basic Law of Ukraine, on the basis and in pursuance of the Constitution and laws of Ukraine, issues decrees and orders that are binding should be mentioned (Constitution of Ukraine, 1996). The examples of legal regulations of the President of Ukraine, providing for the legal framework for organising the activities of Prosecutor's Office as an actor of the security and defence sector, are as follows: Decree of the President of Ukraine "On the Symbols of the Prosecutor General's Office" of October 6, 2021 No. 506/2021; Decree of the President of Ukraine of September 22, 2014 No. 737/2014, which approves the list of positions of military prosecutors and investigators of military Prosecutor's Office and the maximum military ranks for these positions; Decree of the President of Ukraine "On state protection of the Prosecutor General's Office of Ukraine and ensuring the security of the Prosecutor General of Ukraine" of September 23, 1998 No. 1059/98; Decree of the President of Ukraine of June 11, 2021 No. 231/2021, which approves the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023; etc.

The Cabinet of Ministers of Ukraine is another entity that, by adopting the relevant by-law, determines the legal framework for organising the activities of the Prosecutor's Office as an actor of the security and defence sector. According to Article 117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine within its competence issues resolutions and orders that are binding (Constitution of Ukraine, 1996). An example of such by-laws, which define the legal framework for organising the activities of the Prosecutor's Office as an actor of the security and defence sector, is Resolution 1392 of the Cabinet

of Ministers of Ukraine of September 7, 1998, which approves the List and description of uniforms of the Prosecutor's Office's officials who have been assigned class ranks; Resolution 505 of the Cabinet of Ministers of Ukraine "On streamlining the structure and conditions of remuneration of prosecutors" of May 31, 2012; Resolution 205 of the Cabinet of Ministers of Ukraine of April 15, 2015, which approves the Procedure for reimbursement of unforeseen expenses in connection with the recall of prosecutors from annual basic or additional paid leave; Resolution 346 of the Cabinet of Ministers of Ukraine of May 27, 2015, which approves the Procedure for allocation of funds for the burial of a prosecutor or a person dismissed from the position of a prosecutor and determination of their amount; Resolution 1090 of the Cabinet of Ministers of Ukraine of December 9, 2015, which approves the Procedure for payment of monthly bonuses for long service to prosecutors and other employees of the Prosecutor's Office; etc.

3. Departmental legal regulations on the activities of the Prosecutor's Office

Therefore, today a fairly significant number of by-laws are adopted by the above-mentioned supreme public authorities to define the legal framework for the organisation of the activities of the Prosecutor's Office, including as an actor of the security and defence sector. Mostly, such acts regulate general issues of organisation of Prosecutor's Office' activities related to their staffing, financial, material and technical support, etc. The next group of by-laws will define the legal framework for the activities of the Prosecutor's Office as an actor of the security and defence sector in individual areas of their functioning. These are regulations of the Prosecutor's Office. According to Article 9 of the Law of Ukraine "On the Prosecutor's Office", the Prosecutor General issues orders on issues covered by his/her administrative full powers, within the scope of his/her authority, on the basis of and in pursuance of the Constitution and laws of Ukraine. Moreover, orders of the Prosecutor General, which are legal regulations, come into force from the day of their publication, unless otherwise provided by the act itself, but not earlier than the day of publication (Law of Ukraine On the Prosecutor's Office, 2014).

Nowadays, a significant number of these by-laws define the legal framework for the organisation of the activities of the Prosecutor's Office as an actor of the security and defence sector in certain areas, for example: Order 402 of the Office of the Prosecutor General "On the procedure for representation in court by the Prosecutor's Office, ensuring participation

in the consideration of cases by the courts, a party or a third party in which the Prosecutor's Office, their officials and employees (self-representation) appear" of September 2, 2020, which was adopted to increase the efficiency and improve the organisation of activities regarding the Prosecutor's Office representation in court, ensuring participation in court hearings, in which the Prosecutor's Office, its officials and officers (self-representation) are a party or a third party (Order of the Office of the Prosecutor General On the procedure for representation in court by the Prosecutor's Office, ensuring participation in the consideration of cases by the courts, a party or a third party in which the Prosecutor's Office, their officials and employees (self-representation) appear, 2020); Order 4/1gn of the Prosecutor General's Office "On the organisation of prosecutorial supervision over the observance of laws by bodies that conduct investigative activities of December 3, 2012, in accordance with the provisions of which prosecutorial supervision is carried out by the relevant departments of the Prosecutor General's Office of Ukraine (Order of the Prosecutor General's Office on the organisation of prosecutorial supervision over the observance of laws by bodies that conduct investigative activities, 2012); Order 223 of the Prosecutor General's Office of Ukraine "On Order of the Prosecutor General's Office on the organisation of prosecutorial supervision over the observance of laws by bodies that conduct investigative activities, 2012" of September 18, 2015, which was adopted to ensure proper organisation of the work of the Prosecutor's Office of Ukraine in the field of international cooperation in criminal proceedings and effective supervision in this area (Order of the General Prosecutor's Office on the organisation of the work of the Prosecutor's Office of Ukraine in the field of international cooperation, 2015); Order 28 of the Prosecutor General's Office "On the approval of the Procedure for coordinating the activities of law enforcement agencies in the field of combating crime" of February 8, 2021, which defines the main tasks, principles, forms and procedure for coordinating the activities of law enforcement agencies in the field of combating crime (Order of the Prosecutor General's Office on the approval of the Procedure for coordinating the activities of law enforcement agencies in the field of combating crime, 2021); Order 370 of the Prosecutor General's Office "On the specifics of the organisation of the activities of specialised prosecutors' office in the military and defence sphere" of November 22, 2021, adopted to ensure the proper organisation of the work of specialised Prosecutor's Office in

the military and defence sector to perform certain functions, delimitation of their full powers with independent structural units of the Prosecutor General's Office, regional and district Prosecutor's Office (Order of the Prosecutor General's Office on the specifics of the organisation of the activities of specialised prosecutors' office in the military and defence sphere, 2021); etc.

In addition, a number of by-laws that define the legal framework for the organisation of the activities of the Prosecutor's Office as an actor of national security are adopted by the Prosecutor's Office together with other state authorities. For example, Joint Order of the Office of the Prosecutor General, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Ministry of Environmental Protection and Natural Resources of Ukraine, the Ministry of Agrarian Policy and Food of Ukraine of June 16, 2022 No. 94/363/150/226/356, which approves the Procedure for interaction between the Prosecutor's Office, the National Police of Ukraine, the Security Service of Ukraine, authorised state supervision (control) bodies, state specialised institutions during the detection and pre-trial investigation of criminal offenses against the environment; Joint Order of the National Agency of Ukraine for detection, search and management of assets derived from corruption and other crimes, the National Anti-Corruption Bureau of Ukraine, the Prosecutor General's Office of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Finance of Ukraine of 20 October 2017 No. 115/197-o/297/586/869/857, which approves the Procedure for interaction in the consid-

eration of appeals of the authorities, which conduct pre-trial investigations, prosecution and execution of requests from foreign states to identify and trace assets; Joint Order of the Prosecutor General's Office of Ukraine and the National Anti-Corruption Bureau of Ukraine of September 30, 2019 No. 215/114, which approves the Procedure for cooperation between the Office of the Prosecutor General and the National Anti-Corruption Bureau of Ukraine on certain issues; etc.

4. Conclusions

Therefore, the analysis reveals that by-laws should be considered as an independent group of legislation, the provisions thereof determine the legal framework for the organisation of the activities of the Prosecutor's Office as an actor of the security and defence sector. The adoption of such regulations enables to define the full powers of the relevant structural units of the Prosecutor's Office, to adjust their tasks and functions, to detail certain areas of activities of the Prosecutor's Office as an actor of the security and defence sector in a more efficient way. Moreover, by-laws cannot establish new areas of activities of the Prosecutor's Office or give it additional full powers, since this can be done only by adopting new laws or making appropriate changes to existing ones. Meanwhile, by-laws address issues related to the support of a certain area of activities, coordination and interaction, as well as many other organisational principles of the functioning of the Prosecutor's Office as a security and defence sector entity. Therefore, Article 4 of the Law of Ukraine "On the Prosecutor's Office" should be supplemented with a new part: "2. The organisational framework for the activities of the Prosecutor's Office may be provided for by other legal regulations".

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ПІДЗАКОННІ НОРМАТИВНО-ПРАВОВІ АКТИ, ЩО ВИЗНАЧАЮТЬ ПРАВОВІ ЗАСАДИ ДІЯЛЬНОСТІ ОРГАНІВ ПРОКУРАТУРИ ЯК СУБ'ЄКТІВ СЕКТОРУ БЕЗПЕКИ І ОБОРОНИ

Анотація. Мета. Метою статті є здійснення характеристики правових засад діяльності органів прокуратури як суб'єктів сектору безпеки і оборони, які закріплені в положення підзаконних нормативно-правових актів. **Результати.** Акцентовано увагу на важливості виокремлення та здійснення характеристики такої групи правових засад діяльності органів прокуратури, яка визначена в підзаконних нормативно-правових актах. Наголошено, що від того, наскільки повно й якісно визначено правові засади функціонування сектору безпеки і оборони, а також його окремих суб'єктів, зокрема прокуратури України, напряму залежить ефективність здійснення як у цілому захисту національних інтересів від потенціальних і реальних загроз, так і реалізації окремих напрямів їх діяльності. З'ясовано, що особливе місце в системі нормативно-правового регулювання посідають підзаконні нормативно-правові акти, що визначають правові засади діяльності органів прокуратури як суб'єктів сектору безпеки і оборони. Підкреслено, що в умовах оголошення воєнного стану, необхідності максимально швидко реагувати на потенційні та реальні загрози національній безпеці нашої держави, підзаконний рівень регламентації досліджуваної сфери суспільних відносин набуває особливого значення. Виокремлено підзаконні нормативно-правові акти, які закріплюють правові засади діяльності органів прокуратури України як суб'єктів сектору безпеки і оборони. Здійснено аналіз підзаконних нормативно-правових актів, що визначають правові засади діяльності органів прокуратури як суб'єктів сектору безпеки і оборони, з урахуванням юридичної сили окремого з них. **Висновки.** Встановлено, що за допомогою прийняття таких актів стає можливим в більш оперативний спосіб визначити повноваження відповідних структурних підрозділів прокуратури, скорегувати їх завдання та функції, деталізувати певні напрями діяльності органів прокуратури як суб'єктів сектору безпеки і оборони. Зазначено, що підзаконні нормативно-правові акти не можуть встановлювати нові напрями діяльності прокуратури або ж наділяти її додатковими повноваженнями. Вони вирішують питання, пов'язані із забезпеченням певного напрямку діяльності, здійснення координації та взаємодії, а також багато інших організаційних засад функціонування органів прокуратури як суб'єктів сектору безпеки і оборони. Запропоновано, ст. 4 Закону України «Про прокуратуру» має бути доповнена новою частиною: «2. Організаційні засади діяльності прокуратури можуть бути визначені іншими нормативно-правовими актами».

Ключові слова: органи прокуратури, сектор безпеки і оборони, правові засади, нормативно-правові акти, підзаконні нормативно-правові акти.

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