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STRUCTURE OF ADMINISTRATIVE AND LEGAL MECHANISM FOR INTERACTION OF SECURITY AND DEFENCE SECTOR ENTITIES WITH REGARD TO ENSURING NATIONAL SECURITY

Abstract. Purpose. The purpose of the article is to characterise the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security. **Results.** It is determined that the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security is a controversial topic, enabling to present the original opinion on this issue. In our opinion, these are: rule-making (establishment of rules, procedures, duties, etc.), organisational (collection of information, preparation of documents, etc.), support (methodological support, technical and material equipment, financing, etc.) and managerial (encouragement, persuasion, control and supervision, etc.). **Conclusions.** It is stated that the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security is as follows: 1) Administrative and legal provisions objectified within the regulatory framework consisting of regulations of different legal force, of general and special orientation, the main purpose thereof is to regulate a specific issue within the relations under study; 2) Objects being regulated – the activities and conduct of security and defence sector entities, a clear identification of their composition; 3) Regulatory actors – that is, those actors that form the legal framework and procedures for the interaction under study. These are both the actors of a hierarchically higher structure and the actors of interaction, which is represented by the existence of memoranda of cooperation or the relevant jointly agreed and developed procedures for activities in a particular area; 4) Administrative legal relations that arise between objects being regulated and regulatory actors, as well as those that arise, develop and terminate between representatives of the security and defence sector: these are both horizontal and vertical relations characterised by different content; 5) Administrative and legal means of implementing the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security: rule-making (establishment of rules, procedures, duties, etc.), organisational (collection of information, preparation of documents, etc.), support (methodological support, technical and material equipment, financing, etc.) and managerial (encouragement, persuasion, control and supervision, etc.).

Key words: administrative and legal mechanism, interaction, security, national security, mechanism, national interests, security and defence sector.

1. Introduction

The structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security is a controversial issue, the peculiarity of which is determined by its purely theoretical content. The point is that there can be no unity of scientific opinion in this context due to subjective interpretations of scientists since there is no regulatory consolidation of such elements. Accordingly, we have

the opportunity to present the original opinion on this issue.

The issues presented for analysis have not been covered in the literature at all. The assumptions about the structure of the mechanism under study are based on the general theoretical framework developed and supported by scholars such as: O. Bandurka, O. Holovko, V. Komziuk, S. Naumenko, V. Nehodchenko, O. Perederii, I. Pohribnyi, A. Rusetskyi, O. Salmanova, D. Slynko, L. Soroka, and others.

2. Administrative and legal provisions objectified within the regulatory framework as an element of the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security

In our direct consideration of the stated issues, we would like to clarify that we are of the opinion that the structure of the mechanism under study includes, first, the regulatory component represented by the regulatory framework in this field; second, the organisational component, i.e., object-actor units and relevant legal relations; and third, the instrumental component, which is objectified by the system of administrative and legal means in the instrumental context.

Accordingly, the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security can be presented as follows.

1. Administrative and legal provisions objectified within the regulatory framework consisting of regulations of different legal force, and of general and special orientation, the main purpose thereof is to regulate a specific issue within the relations under study. General regulations are:

- The Constitution of Ukraine, which establishes the fundamental principles of national security and defence in general, as well as the exclusive or basic powers of the key actors in the security and defence sector and those responsible for organising their interaction;

- Laws of Ukraine: a) "On National Security of Ukraine" No. 2469-VIII of 21 June 2018, which specifies the provisions of the Constitution of Ukraine in terms of the principles of national security and defence, public policy in this field, as well as the powers and procedures of the actors involved in the implementation of this process; b) "On Defence of Ukraine" No. 1932-XII of 6 December 1991, which is the basic specialised law in the field of defence; c) "On the National Security and Defence Council of Ukraine" No. 183/98-VR of 05 March 1998, which establishes the legal basis for coordination and special control activities in this field; d) "On the Security Service of Ukraine" No. 2229-XII of 25 March 1992, which defines the principles of activity of the key state security agency, etc;

- Strategic planning regulations, such as: the National Security Strategy of Ukraine, approved by Presidential Decree No. 392/2020 of 14 September 2020, which aims to strengthen Ukraine's capacity to counter internal and external threats; the Strategy for State Security, approved by Presidential Decree No.

56/2022 of 16 February 2022, which defines the areas of optimisation of public policy on state security, the leading of which is the optimisation of interagency cooperation in the security and defence sector; the Military Security Strategy of Ukraine, approved by the Presidential Decree No. 121/2021 of 25 March 2021, which is the main planning document in the field of comprehensive defence; the Concept of Ensuring the National Resilience System, approved by the Presidential Decree No. 479/2021 of 27 September 2021, which aims to implement effective procedures for protecting important sectors of society and the state from adverse factors and influences, etc;

- Other legal regulations, such as, Resolution No. 878 of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on the Ministry of Internal Affairs of Ukraine" of 28 October 2015, which establishes the organisational and practical implementation principles of the internal security and protection function of the state; Order No. 6/315 of the Ministry of Defence of Ukraine and the Ministry of Internal Affairs of Ukraine "On approval of the Procedure for electronic information interaction of the defence intelligence of Ukraine, the Ministry of Internal Affairs of Ukraine and Central Executive Authorities, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine" of 25 May 2022, which defines the relevant mechanism, etc.

3. Objects being regulated by the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security

2. Objects being regulated – in this case, we should talk about the activities and conduct of the security and defence sector actors, and a clear identification of their composition. It should be noted that to date, the concepts officially used in this field have been and are "the sector of national security and defence", "the sector of military security", "the military sector", "the military organisation of the state", etc. They are used in various legal regulations and have not lost their relevance to this day. However, the term "security sector" is increasingly used, including in the context of the implementation of the recently adopted National Security Strategy of Ukraine. Unfortunately, in many scientific sources this concept is interpreted in an expanded way, there are attempts to cover the entire system of national security of the state or to replace this concept with another one, or to reduce it to only one sector (military) or structural component (entity of ensuring military security) (Semenchenko, 2007; Nechkhaiev, 2007;

Sahaniuk, Romanov, Trotsko, Veshchytskyi, 2008). The Law of Ukraine No. 2469-VIII "On National Security of Ukraine" of 21 June 2018 stipulates that the security and defence sector includes: the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Special Transport Service, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Anti-Terrorist Centre of the Security Service of Ukraine, the Court Security Service, the Department of State Guard of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the National Security and Defence Council of Ukraine, intelligence agencies of Ukraine, central executive body responsible for the formation and implementation of the state military-industrial policy (Law of Ukraine On National Security of Ukraine, 2018).

However, this list should not be taken as exhaustive, in particular because of the legislative provisions that state that: "the security and defence sector of Ukraine consists of four interconnected components: security forces; defence forces; defence industry; citizens and public associations that voluntarily participate in ensuring national security (Law of Ukraine On National Security of Ukraine, 2018).

Accordingly, there is still a scientific debate about the legislative definition of such entities. For example, some scholars add to this list the State Bureau of Investigation, the Antimonopoly Committee of Ukraine, the National Agency on Corruption Prevention, the Independent Defence Anti-Corruption Committee, the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes, and other agencies and organisations (Ponomarov, 2018, p. 102; Honcharenko, 2020, p. 43). In addition, there is an opinion that such entities are aggregates, such as: 1) state authorities that carry out strategic and managerial activities in the sectors of national security and defence of Ukraine (the Verkhovna Rada of Ukraine (within general competence), the President of Ukraine and the National Security and Defence Council of Ukraine (within special competence), the Cabinet of Ministers of Ukraine and relevant ministries (within general and special competence depending on the scope of a specific power)); 2) performers of practical tasks defined in strategic and managerial decisions directly related to the development of secu-

urity and defence capabilities of Ukraine, protection and defence of the national interests of Ukraine (a) special entities: the Armed Forces of Ukraine, the State Special Transport Service, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Department of State Guard of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Foreign Intelligence Service of Ukraine, the Defence Intelligence of Ukraine, the Intelligence Agency of the State Border Guard Service of Ukraine; b) general entities: courts of general jurisdiction, the Prosecutor's Office of Ukraine, the National Anti-Corruption Bureau of Ukraine, local state administrations and local self-government bodies, enterprises and organisations of various forms of ownership, citizens of Ukraine, associations of citizens); 3) bodies, institutions, organisations and individual actors involved in the performance of tasks of ensuring the national security of Ukraine (Zhuk, 2021, pp. 53–54).

4. Regulatory actors of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security

3. Regulatory actors – that is, those actors that form the legal framework and procedures for the interaction under study. For example, the provisions of Law of Ukraine No. 2469-VIII "On National Security of Ukraine" of 21 June 2018 include the following: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Security and Defence Council of Ukraine, the Ministry of Defence of Ukraine, the Ministry of Internal Affairs of Ukraine, the Commander-in-Chief and General Staff of the Armed Forces of Ukraine, the Head of the Security Service of Ukraine, etc. It should be noted that the Advisor-Presidential Commissioner for interaction with public associations and volunteer formations involved in ensuring national security is responsible for establishing effective interaction of citizens, public associations, volunteer formations formed or self-organised for the defence of Ukraine and voluntarily participating in ensuring national security, defence and protection of the state, with the Armed Forces of Ukraine, other military formations formed in accordance with the laws of Ukraine and law enforcement bodies (Decree of the President of Ukraine The issue of the Advisor-Presidential Commissioner on issues of interaction with public associations and voluntary formations that participate in the provision, 2022). In

addition, it should be noted that the legal framework and procedures of the studied interaction can be formed by both the actors of a hierarchically higher structure and the actors of interaction, which is represented by the existence of memoranda of cooperation or the relevant jointly agreed and developed procedures for activities in a particular area.

4. Administrative legal relations that arise between objects being regulated and regulatory actors, as well as those that arise, develop and terminate between representatives of the security and defence sector: these are both horizontal and vertical relations characterised by different content.

5. Administrative and legal means of implementing the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security are the appropriate tools for the activities of the entities regulating this type of legal relations. In our opinion, these are: rule-making (establishment of rules, procedures, duties, etc.), organisational (collection of information, preparation of documents, etc.), support (methodological support, technical and material equipment, financing, etc.) and managerial (encouragement, persuasion, control and supervision, etc.).

5. Conclusions

We present original perspective on the structure of the administrative and legal mechanism for interaction of security and defence sector actors in ensuring national security. Its elements are composed on the basis of the general theoretical foundations developed by leading Ukrainian administrative scientists. Moreover, the results of this study do not claim to be "exhaustive", but rather an attempt to contribute to a scientific thought. It is likely that over time, other provisions may be substantiated or developed that will change the current view of the elemental composition of this mechanism, and possibly fill it with qualitatively new content.

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СТРУКТУРА АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ВЗАЄМОДІЇ СУБ'ЄКТІВ СЕКТОРУ БЕЗПЕКИ Й ОБОРОНИ ЩОДО ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ

Анотація. Мета. Метою статті є характеристика структури адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки. **Результати.** Визначено, що структура адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки є дискусійною проблематикою, у зв'язку із чим є можливість висвітлити власну думку щодо цього питання. Адміністративно-правові засоби реалізації механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки – це відповідний інструментарій діяльності суб'єктів регулювання цього різновиду правовідносин. Зокрема, вважаємо, що такими є: нормотворчі (встановлення правил, процедур, зобов'язань тощо), організаційні (збір інформації, підготовка документів тощо), забезпечувальні (методичний супровід, технічне та матеріальне оснащення, фінансування тощо) та управлінські (заохочення, переконання, контрольно-наглядова діяльність тощо). **Висновки.** Сформовано, що структура адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки є такою: 1) адміністративно-правові норми, об'єктивовані в межах нормативно-правової бази, що складається з актів різної юридичної сили й загального та спеціального спрямування, основним призначення яких є врегулювання конкретного питання в межах досліджуваних відносин; 2) об'єкти регулювання – діяльність і поведінка суб'єктів сектору безпеки й оборони, чітка ідентифікація їхнього складу; 3) суб'єкти регулювання – тобто ті суб'єкти, що формують правові рамки та процедури досліджуваної взаємодії. Причому це як суб'єкти ієрархічно вищої структури, так і самі суб'єкти взаємодії, що репрезентується наявністю меморандумів про співпрацю або ж відповідними спільно узгодженими та розробленими порядками діяльності в конкретному напрямі; 4) адміністративні правовідносини, що виникають між об'єктами та суб'єктами регулювання, а також ті, що виникають, розвиваються та припиняються між представниками сектору безпеки й оборони – йдеться як про горизонтальні, так і вертикальні відносини, що характеризуються різним змістом; 5) адміністративно-правові засоби реалізації механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки – нормотворчі (встановлення правил, процедур, зобов'язань тощо), організаційні (збір інформації, підготовка документів тощо), забезпечувальні (методичний супровід, технічне та матеріальне оснащення, фінансування тощо) та управлінські (заохочення, переконання, контрольно-наглядова діяльність тощо).

Ключові слова: адміністративно-правовий механізм, взаємодія, забезпечення безпеки, забезпечення національної безпеки, механізм, національні інтереси, сектор безпеки й оборони.

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