

UDC 351.74:342.95]:342.7(477)(043.5)

DOI <https://doi.org/10.32849/2663-5313/2023.6.11>

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Petrov, Serhii (2023). Particularities of the correlation of functions and full powers of the Main Service Centre and the Territorial Service Centre of the MIA. *Entrepreneurship, Economy and Law*, 6, 62–67, doi <https://doi.org/10.32849/2663-5313/2023.6.11>

## PARTICULARITIES OF THE CORRELATION OF FUNCTIONS AND FULL POWERS OF THE MAIN SERVICE CENTRE AND THE TERRITORIAL SERVICE CENTRE OF THE MIA

**Abstract. Purpose.** The purpose of the article is to determine the particularities of the correlation of functions and full powers of the Main Service Centre of the MIA. **Results.** In scholarly works and legal regulations, the concepts of "functions" and "powers" are used as identical concepts or synonyms for "competence". It is determined that the powers vested in the Main Service Centre of the MIA are a "legal obligation", since they impose an obligation to perform activities defined within its competence and provide a set of powers enabling it to apply methods and means of both regulating relations (exercise of public organisational and administrative powers and provision of public services, or, more generally, performing public service activities). This allows classifying such powers into two categories: 1) binding; 2) empowering. The Regulations on the Main Service Centre of the MIA distinguish between the two, defining the former as functions and the latter as rights of the SSC, although both define its powers.

**Conclusions.** Currently, the functions, powers and principles of activities of the Main Service Centre of the MIA and its territorial units are regulated by a number of legal regulations. This characterises the defining feature of this participant in service relations as an entity with a specialised administrative and legal status subordinated to the MIA of Ukraine. It is emphasised that permitting and registration services are services, the content of which implies provision of an administrative service at the request of the applicant – a private individual. All others are power-administrative, public-organisational and law enforcement functions aimed at ensuring the provision of a legitimate administrative service to an applicant in the field of road traffic safety and road transport operation safety. It is determined that the exercise of public service functions can hardly be called managerial, while management in the field of public service provision is undoubtedly one of the manifestations of managerial activities in which the power and administrative status (power and administrative full powers) is also implemented.

**Key words:** powers, permitting services, legal regulation, interpretation.

### 1. Introduction

Frequently, the concepts of "functions" and "powers" are used as identical concepts in scholarly works and in legal regulations. Sometimes they are even synonymous with "competence". If the competence of the Main Service Centre of the Ministry of Internal Affairs is understood as the scope of issues, the scope of public relations, which the main body in the system of territorial bodies for the provision of service of the Ministry of Internal Affairs is assigned to "administer", then "powers" are understood as the range or even the list of issues that this body is supposed to resolve. In addition, we determine that "competence" dis-

tinguishes such a body (in this case, the Main Service Centre of the MIA) from other subjects of administrative law and participants in administrative legal relations, and such a competence should undoubtedly be recognised as service activity (organisation and provision of service services) as the activity of a specialised state body of state executive power in the system of bodies of the MIA, which are vested with the authority to provide an exclusive list of services (the list of services determined by the MIA of Ukraine and included in the statutory list of services provided by the service centres of the MIA). The purpose of the article is to determine the particularities of the correlation

of functions and full powers of the Main Service Centre of the MIA.

## 2. Functions of the Main Service Centre of the MIA

According to Yu.O. Frytskyi's approach, the competence of a public authority is understood as follows: 1) a sector of public life which is the object of activities of a public authority; 2) a state function which the authority should perform in a certain sector of public life; 3) those powers which are the means of achieving the set goals, tasks and defined functions (Decree of the Cabinet of Ministers of Ukraine On approval of the development strategy of internal affairs bodies of Ukraine, 2014).

Professor B.M. Lazariiev defines competence as a system of powers of a public administration body, which includes "the duty (to the state) and the powers (in respect of administered objects) to perform certain tasks and functions ... in relation to these objects". In other words, the competence of an executive body should be understood as a set of its rights and duties (Decree of the Cabinet of Ministers of Ukraine On some issues of the provision of administrative services by executive power bodies through centers for the provision of administrative services, 2014).

Since the Regulations on the Main Service Centre of the MIA explicitly define the main features of its administrative and legal status, in particular: as an interregional territorial body for the provision of services of the Ministry of Internal Affairs, as an entity that organises the activities of RSCs, controls their activities, provides them with organisational, methodological and practical assistance and their information, analytical, logistical and financial support, and in accordance with the Regulations on the Main Service Centre of the MIA, Section III, para. 1, subpara. 23, (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015) provides administrative and other services, there are sufficient grounds to recognise that it is vested not only with direct powers of "public service" activities, but also with administrative powers, power-administrative ones, since the Head of the Main Service Centre of the MIA is empowered under subpara. 7 of para. 12 of Section V of the said regulation to issue binding regulations within the scope of his/her powers and to ensure control over their implementation.

In order to define the functions of the Main Service Centre of the MIA, we refer to the general theoretical understanding of the category of "function". The Newest Philosophical Dictionary defines the concept of "function" (from

Latin *Functio* – performance, fulfilment) as: activities, the role of an object within a certain system to which it belongs; a type of connection between objects when a change in one of them entails a change in the other, with the second object also being called a function of the first (Hrytsiak, Orzhel, Hladkova, 2011).

Of course, the Main Service Centre of the MIA has a specific field of activities, the field of performing the functions of the state executive power. According to V.B. Averianov, public administration is the main area of activities for executive authorities. In addition, he argues that executive authorities act either as public administrators or as actors of public service, which leads to the reasonable conclusion that public service is not a type of public administration, but a separate field of its administrative activities, that is, activities as a participant in administrative and legal relations (Averianov, 2007).

We determine that the exercise of public service functions can hardly be called managerial, while management in the field of public service provision is undoubtedly one of the manifestations of managerial activities in which the power and administrative status (power and administrative full powers) is also implemented.

O.O. Mozhovyi classifies public services provided by the service centres of the MIA of Ukraine as follows: 1) permitting services (issuance of permits for the installation and use of special and light signalling devices; issuance of certificates of approval of the vehicle design to ensure road safety); 2) registration services (registration and maintenance of the Unified State Register of the MIA; state registration (re-registration), deregistration of vehicles, preparation and issuance of registration documents; register of enterprises, institutions, organisations and other business entities engaged in trade in vehicles and their components with identification numbers); 3) recognition of a certain status, right of a person (issuance of a certificate of criminal prosecution; issuance of a certificate of absence (presence) of a criminal record, its removal, cancellation); 4) information services (provision of access to the Unified State Register of the MIA; maintenance of an electronic register of enterprises, institutions, organisations and other business entities engaged in wholesale and retail trade in vehicles and their component parts with identification numbers; maintenance of a register of subjects of mandatory technical control); 5) services for issuing conclusions in the field of road safety (inspection of business entities for compliance of the material and technical base and documentation with the established requirements for activities related to the sale of vehicles with the issuance of an act (con-

clusion); approval of design projects, determination of technical capabilities and conditions for the conversion of vehicles with the issuance of relevant certificates and conclusions) (Mozhovi, 2019, p. 114). We agree with the proposed classification and determine that the scientist correctly identifies the subject matter of these services – almost all of them have vehicles as their object, the safety of which must be controlled. The main types of services in relation to such objects are permitting and registration services.

That is, out of the entire scope of permitting services provided by the MIA bodies in the course of their authorisation activities, only a part of objects that can be characterised as high-risk objects has been allocated to the MIA service system, i.e. the Main Service Centre of the MIA and its separate structural units, in particular, regional and territorial service centres of the territorial service centres of the MIA. To ensure the safety of their use and security in connection with their use, the authorisation system operates. According to V.A. Humeniuk, it is an organisational and legal activities that should ensure public order, public safety, and the established order of management in a certain field of public relations, which is performed through control and supervision over compliance with the binding rules provided by law: opening and operation of strictly defined business entities, manufacturing, acquisition, sale, accounting, storage, transportation, use and destruction of items and substances, the unlawful use of which may cause significant damage to public and state interests, as well as directly to the life and health of citizens (Humeniuk, 1999, p. 29).

T.O. Kolomoyets proposes the concept of "authorisation system" in the broad and narrow sense. In the broad sense, the permitting system is a set of rules for obtaining permits for certain activities and rules that regulate the control over such activities (manufacture, acquisition, storage, transportation, accounting and use of certain groups of things), including materials and substances that require a special regime of their use to ensure safety, as well as the establishment and operation of enterprises, workshops and laboratories for the creation or use of such facilities, in order to protect the interests of the state and the safety of citizens). In a narrow sense, the authorisation system should be understood as a special procedure for actions, listed in the Regulations on the Authorisation System, that require special permits from the competent authorities (Kolomoyets, 2004).

In general, we agree with this definition and would like to expand on it by defining the elements of such authorisation system: 1) the existence of special rules governing the procedure for handling certain

types of things characterised by increased danger (rules governing the legal regime of such objects); 2) the existence of legal provisions that regulate the procedure for granting and obtaining permits for activities in relation to a certain group of objects with hazardous properties; 3) the system of state executive authorities vested with powers in the field of permitting activities; 4) the activities of entities granting permits for the use and operation of objects with hazardous properties and sources of increased danger; 5) controlled activities of entities on the use and operation of objects with hazardous properties and sources of increased danger; 6) legal relations in which the special legal personality of state bodies in the field of permitting activities and entities using and operating objects with hazardous properties and sources of increased danger is implemented.

It should be noted that other definitions have been proposed by scholars. For example, V.O. Kharytonov defines the authorisation system as a set of legal relations arising between executive authorities authorised to issue permits (permittees) and individuals and legal entities (applicants) regarding the possibility of such applicants to perform actions (exclusive rights) in relation to a certain list of hazardous objects (acquisition, use of substances, materials, objects or engagement in activities that may be dangerous to human life and health, threaten the state interests) with further control and supervision over compliance with the established rules for actions in relation to such facilities (Kharytonov, 1999, p. 43). We believe that this definition should clarify the purpose of such permitting activities. It should be determined not only by the need to ensure human life and health and relate to state interests. We have already substantiated that in the context of human rights protection there is no independent interest of the state – such interest is public, and the state is an apparatus containing the mechanism and means of its ensuring. These public interests also include the interest in protecting the environment as a human habitat, which must be safe. That is why the Regulations on the Main Service Centre of the MIA refer to the control of potential hazards and risk management: ensuring the state registration of registered vehicles, issuance (exchange) of driver's licences, ADR driver training certificates, certificates of training of persons authorised to carry dangerous goods, certificates of admission of vehicles to the carriage of dangerous goods and accumulation of information on these issues in the Unified State Register of the MIA and the Unified State Register of Vehicles, which is focused on ensuring the carriage of dangerous goods (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015).

According to O.O. Mozgovyi, the characteristic features of public services provided

by the service centres of the MIA are 1) the subject matter is the activity of individuals and business entities related to the use of objects with increased dangerous properties, which, if released from control, can cause material damage, including damage to public relations in the field of road safety; 2) dependence of the defined security on hazard control and risk management through the decision to grant a permit, which is an administrative act of individual action; 3) provision of services by authorised entities: the Main Service Centre of the MIA and territorial service centres of the MIA of Ukraine; 4) the activities related to the provision of service are based on the law and specified by by-laws and regulations and are of an organisational and administrative nature; 5) they provided in the procedural form prescribed by law; 6) fee-based nature – the amount of the fee should be determined by the need to cover the costs of the functioning of the authorising state entities; 7) increased requirements for control over the procedure of their provision (Mozghovyi, 2019, p. 114).

Currently, the functions, powers and principles of activities of the Main Service Centre of the MIA and its territorial units are regulated by a number of legal regulations. This characterises the defining feature of this participant in service relations as an entity with a specialised administrative and legal status subordinated to the MIA of Ukraine.

These regulations define the procedure for the provision of services and interaction between public authorities in the course of the Main Service Centre of the MIA exercising its powers.

A comparative analysis of the content of the Regulations on the Main Service Centre of the MIA and the Regulations on the Territorial Service Centre of the MIA based on the dogmatic method of cognition (cognition of the direct content of a legal regulation and its interpretation) enables to understand the different functions and tasks assigned to the Main Service Centre of the MIA and the territorial service centres of the MIA.

According to Section II of the Regulations on the territorial service centre of the MIA, approved by Order No. 1646 of the Ministry of Internal Affairs of Ukraine of 29 December 2015 (Order of the Minister of Internal Affairs of Ukraine Regulations on the territorial service center of the Ministry of Internal Affairs, 2015), the main functions of the SSC of the MIA are to provide paid and free services in the field of ensuring road traffic safety and operation of motor vehicles.

For example, permitting and registration services are services, the content of which implies provision of an administrative service at the request of the applicant – a private individual. All others are power-administra-

tive, public-organisational and law enforcement functions aimed at ensuring the provision of a legitimate administrative service to an applicant in the field of road traffic safety and road transport operation safety.

Nevertheless, the main problem is that Section III, para. 1, subpara. 23, among other functions that we have defined as the functions of organising and performing permitting or registration administrative services, defines the function of providing "administrative and other services".

Instead, under the Regulations on the Main Service Centre of the MIA, approved by Order No.1393 of the Ministry of Internal Affairs of Ukraine of 07 November 2015 (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015) other categories of functions are defined, the specificity of which is determined by the fact that the SSC of the MIA is the main body in the system of territorial bodies providing services of the Ministry of Internal Affairs.

#### **4. Full powers of the Main Service Centre of the MIA of Ukraine**

We determine that the powers vested in the Main Service Centre of the MIA are a "legal obligation", since they impose an obligation to perform activities defined within its competence and provide a number of powers enabling it to apply methods and means of both regulating relations (exercise of public organisational and administrative powers and provision of public services, or, more generally, performing public service activities). This enables to classify such powers into two categories: 1) binding; 2) empowering. The Regulations on the Main Service Centre of the MIA distinguish between the two, defining the former as functions and the latter as rights of the SSC, although both define its powers.

When classifying the binding powers defined in clauses 1, 2 of Section III of the Regulations on the Main Service Centre of the MIA, we determine that they combine two groups of powers: 1) public service: a) permitting services (issuing permits for the installation and use of special and light signalling devices; approval of design projects, determination of technical feasibility and conditions (requirements) for re-equipment of vehicles with the issuance of relevant certificates and conclusions; certificates of approval of vehicle design to ensure road safety); b) registration services (registration, re-registration and deregistration of vehicles; formation of an electronic register of enterprises, institutions, organisations and other business entities, regardless of ownership, engaged in wholesale or retail trade in vehicles and their components; c) pre-judicial (organises the issuance of certificates of criminal prosecution, absence (presence) of a criminal record or

restrictions under the criminal procedure legislation of Ukraine within the system of service centres of the MIA); d) information services (providing access to the Unified State Register of the MIA; maintaining the register of subjects of mandatory technical control; performing the functions of the administrator of the Unified State Register of the MIA, the Unified State Register of Vehicles, and the register of administrative offences in the field of road safety); 2) administrative (power-organisational, power-administrative, aimed at ensuring the functioning of the service centre system of the MIA): a) organisational; b) methodological; c) control; d) monitoring; e) regulatory; f) educational; g) logistical and accounting; h) law enforcement; i) European integration.

The authorising obligations of the Main Service Centre of the MIA are defined for the first time in the theory of administrative law. In the Regulations on the Main Service Centre of the MIA, approved by Order No. 1393 of the Ministry of Internal Affairs of Ukraine of 07 November 2015 (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015), they are defined in Section IV as "Rights of SSC of the MIA". We substantiate this approach by the fact that, unlike civil law, where, according to Part 1 of Article 12 of the Civil Code of Ukraine, a person exercises his or her civil rights freely, at his or her own discretion. It follows that in private relations, no one is obliged to exercise his or her right or use it. In public relations, in particular, in the activities of the Main Service Centre of the Ministry of Internal Affairs, the exercise of these rights is mandatory if the law requires it in a particular situation. Furthermore, we acknowledge that in this case such rights are to a greater extent the powers of such a body, which, along with other elements, determine the specifics of its administrative and legal status.

We classify these "rights" as powers, since they include both the right to act and the right to demand from subordinate entities or participants in legal relations for the provision of service: 1) information: a) to create, use and destroy information: to create, modify, collect, process, store, destroy information on paper and electronic media necessary for the exercise of its powers and maintenance of the Unified State Register of the MIA and the Unified State Register of Vehicles; to provide such information on the basis and in accordance with the procedure established by law, using an electronic document management system, automatic control devices, and an electronic digital signature; b) to receive information: in accordance with the competence, in accordance with the procedure established by law, to receive information, documents and materials necessary to perform its functions from state and local self-gov-

ernment bodies, enterprises, institutions, organisations regardless of ownership and their officials, as well as citizens and their associations; c) to use information databases of the Unified Information System of the MIA, other state authorities, access to which is provided by law, the state government communication system and other technical means in accordance with the procedure established by law; d) to make changes or corrections to the information contained in the Unified State Register of the MIA and the Unified State Register of Vehicles; 2) administrative (power-administrative): to convene meetings to organise the proper performance of its tasks; to engage enterprises, institutions, organisations and individuals, including volunteers, to provide services in the manner prescribed by law on a contractual basis; to inspect the activities of the RSC and TSC of the MIA, to engage scientists, specialists and representatives of civil society institutions to perform certain work and to participate in the study of certain issues; 3) representative: to enter into contracts, to be a plaintiff and defendant in court.

#### 4. Conclusions

Therefore, we determine that these powers are in the line of public policy, affecting the formation of conceptual approaches to the renewal of public administration. No exception is the sector of service provision, which, having been formed in the activities of the MIA service centre system, has entered public life and is subject to new requirements, including quality, transparency, consideration of the needs of consumers of such services, and digitalisation as the main direction of formation of modern civilised e-government, which is based on a new philosophy of high-speed communication, digital document processing and information exchange, online access to registers and services, ensuring the human right to information, to access to information, and to complete and accurate information.

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## **ОСОБЛИВОСТІ СПІВВІДНОШЕННЯ ФУНКЦІЙ ТА ПОВНОВАЖЕНЬ ГОЛОВНОГО СЕРВІСНОГО ЦЕНТРУ ТА ТЕРИТОРІАЛЬНОГО СЕРВІСНОГО ЦЕНТРУ МВС**

**Анотація. Мета** Метою статті є визначення особливостей співвідношення функцій та повноважень Головного сервісного центру МВС. **Результати.** В працях науковців та в нормативно-правових актах поняття «функції» та «повноваження» використовуються як тотожні поняття або синонімами «компетенції». Визначено, що повноваження, які покладено на Головний сервісний центр МВС є «правообов'язком», оскільки покладають обов'язок здійснювати діяльність, визначену в межах його компетенції та надають низку правомочностей, що дозволяють йому застосовувати методи та засоби як регулювання відносин (здійснення публічних організаційно-владних повноважень, так і надання публічно-сервісних послуг, або ж, здійснення публічно-сервісної діяльності). Це дозволяє класифікувати такі повноваження за двома категоріями: 1) зобов'язуючі; 2) управомочуючі. Положення про Головний сервісний центр МВС розподіляє їх, визначаючи перші функціями, а другі – правами ІСЦ, хоча і перші, і другі визначають його повноваження. **Висновки.** Наразі функції, повноваження та принципи діяльності Головного сервісного центру МВС та його територіальних підрозділів регламентовано низкою нормативно-правових актів. Це характеризує визначальну ознаку цього суб'єкта сервісних відносин, як суб'єкта із спеціалізованим адміністративно-правовим статусом, підпорядкованим МВС України. Наголошено, що дозвільні та реєстраційні послуги є сервісними, змістом яких є надання адміністративної послуги на звернення суб'єкта звернення, – особи приватного права. Всі інші є владно-розпорядчими, публічно-організаційно-забезпечуючими та правоохоронними, спрямованими на забезпечення надання правомірної адміністративної послуги суб'єкту звернення у сфері забезпечення безпеки дорожнього руху та безпеки експлуатації автомобільного транспорту. Визначено, що здійснення публічно-сервісних функцій навряд чи можна назвати управлінськими, в той час як управління у сфері надання публічно-сервісних послуг, безперечно, є одним із проявів управлінської діяльності, в якій реалізовується і владно-розпорядчий адміністративно-правовий статус (владно-розпорядчі повноваження).

**Ключові слова:** повноваження, дозвільні послуги, нормативно-правовий акт, тлумачення.

*The article was submitted 17.10.2023*

*The article was revised 07.11.2023*

*The article was accepted 28.11.2023*