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## THE LEGAL STATUS OF THE SECURITY SERVICE OF UKRAINE IN THE CONTEXT OF COUNTERINTELLIGENCE ACTIVITIES IN CONTEMPORARY CONDITIONS

**Abstract. Purpose.** The purpose of the article is to determine the legal status of the Security Service of Ukraine, in particular with regard to the implementation of counterintelligence activities, as well as to define its role and place within the system of public authorities under current conditions. **Results.** The article provides a comprehensive analysis of the legal status of the Security Service of Ukraine as a special state body authorized to conduct counterintelligence activities in the context of modern security challenges. The legal status of the Security Service of Ukraine is considered as a systemic set of normatively defined tasks, functions, powers, and duties enshrined in national legislation, the implementation of which is aimed at ensuring state and national security, protecting the constitutional order, sovereignty, and territorial integrity of Ukraine. It is substantiated that the legal status of the Security Service of Ukraine determines the specificity of its organizational and legal nature and defines the special character of counterintelligence activities, which include the collection, analysis, generalization, and use of information, as well as counteraction to intelligence and subversive activities of foreign special services, terrorist and other threats to national security. The article identifies key features characterizing the special legal status of the Security Service of Ukraine in the field of counterintelligence activities, in particular its affiliation with special bodies endowed with law enforcement functions, the exercise of activities strictly within the limits of the law and accountability to public authorities, as well as the possession of special powers necessary to fulfill the tasks assigned to it in the field of state security. **Conclusions.** Emphasis is placed on the preventive and protective nature of the counterintelligence activities of the Security Service of Ukraine aimed at preventing, detecting, and suppressing unlawful encroachments on state sovereignty, the constitutional order, defense capability, and other vital interests of the state, and it is concluded that there is a need for further improvement of the regulatory framework governing the legal status of the Security Service of Ukraine, taking into account the transformation of threats to national security and the contemporary conditions of functioning of the security and defense sector.

**Key words:** state security, threats, counterintelligence activities, national security, legal status, special body, special powers, terrorism.

### 1. Introduction

The study of the essence and specific features of the legal status of the bodies of the Security Service of Ukraine (hereinafter – the SSU) is of fundamental importance, as it allows, on the one hand, at the level of scientific and theoretical generalizations, a more comprehensive examination of the peculiarities of their structure and functioning, and, on the other hand, the proposal of such a model for enshrining the legal status of the SSU bodies in regulatory legal acts that would ensure the highest efficiency of their activities. A clear definition of all elements of legal status also contributes to strengthening legality and discipline in the functioning of the state mechanism in

general and the bodies of the SSU in particular (Ponomarov, 2012).

The issue of the legal status of the Security Service of Ukraine has repeatedly been the subject of scientific analysis in the works of domestic scholars. In particular, certain aspects of the organizational and legal foundations of the SSU's activities, its place within the system of public authorities, and the specifics of the exercise of its powers were studied by R.F. Baranetskyi, O.V. Brusakova, Yu.V. Harust, O.V. Hridin, O.Ye. Kahlynskyi, M.M. Karpenko, Ye.V. Kobko, A.V. Kumeiko, V.S. Stepanovskiy, M.M. Shvaika, and other researchers. These works formulated theoretical approaches to understanding the legal status of the SSU, ana-

lyzed its normative consolidation, and outlined problematic issues of legal regulation of the Service's activities.

A significant contribution to the development of this issue was made by representatives of the departmental scientific school, whose works examined the legal status of the Security Service of Ukraine through the prism of tasks related to ensuring state security and conducting counterintelligence activities. Such researchers include O.P. Yermenchuk, S.I. Kondratov, A.V. Nosach, D.M. Pavlov, O.S. Peliukh, P.P. Pidiukov, S.S. Telenyk, O.M. Yurchenko, and others. Their scientific achievements contributed to a deeper understanding of the specifics of the legal position of the SSU, the determination of the content of its special powers, and the identification of directions for improving the legal support of state security bodies.

At the same time, an analysis of scientific sources indicates that, under conditions of transformation of the security environment, complication of political, economic, and social processes, as well as the constant growth of threats to the national security of Ukraine, particularly in the context of the armed aggression of the Russian Federation, certain aspects of the legal status of the Security Service of Ukraine remain debatable. This primarily concerns the determination of the content and limits of the counterintelligence component of its activities, as well as the adaptation of the legal framework for the functioning of the SSU to new challenges and threats. In this regard, further scientific research into this issue is objectively necessary, relevant, and of significant theoretical and practical importance.

Based on the analysis of general and special legislation, scholarly positions, and the practical activities of relevant actors within the state system, the article aims to determine the legal status of the Security Service of Ukraine, in particular with regard to the conduct of counterintelligence activities, as well as its role and place within the system of public authorities under current conditions.

## 2. The Security Service of Ukraine as a Structural Element of the System of State Security Bodies

The system of state security should function as an integrated complex of public authorities that closely interact both with each other and with other state bodies and various public organizations, including those that implement state tasks of an information-analytical, scientific, social, socio-political, and other nature. Such a system should, first, promptly identify and forecast threats to nationwide interests, including crisis and other negative trends and processes (of political, social, technogenic,

and other origin), as well as purposeful actions of external and internal origin (that is, certain encroachments on public goods) capable of harming the interests of the state and individual citizens. Second, it should ensure the implementation of measures aimed at preventing, localizing, or neutralizing potential and real threats to the country and society, as well as facilitate the adoption of necessary legislative, administrative, economic, informational, and other decisions intended to safeguard national interests. Third, it should directly counter threats to the security of the state and their carriers (sources), using the full available range of military, operational-search, criminal-procedural, emergency-rescue, technical-organizational, and other means of influence.

In addition, the Security Service of Ukraine, as a distinct structural element of the system of state security bodies, should function as a special service that meets the standards of a civilized European state, is prepared for reform, and is open to oversight, including by civil society organizations, when democratic civilian control over the activities of the Security Service of Ukraine becomes permanent, systemic, and effective (Kumeiko, 2016).

The powers of the Service are undergoing transformation both in view of reform processes aimed at building a national special service modeled on those of states with developed democratic traditions and in light of present-day realities, which place on the agenda the need to address new tasks in the field of national security. The practical aspects of the Service's activities, including the emergence of new areas of operation, require appropriate correlation and a solid legal framework to ensure their effective implementation.

The legal status of the Security Service of Ukraine as a subject of public authority is currently enshrined not only in the **Law of Ukraine "On the Security Service of Ukraine"**, which constitutes a special legislative act regulating its activities (defining its foundations, principles, system and organization, personnel structure, powers of bodies and officers, as well as the system of control and supervision over the Service's activities), but also in a number of other legislative acts that establish the legal bases for the Service's activities in relevant areas within the scope of powers defined by such acts.

The rights of the bodies and officers of the Security Service of Ukraine, granted to them for the fulfillment of their assigned duties in accordance with the provisions of the **Law of Ukraine "On the Security Service of Ukraine"**, are set out in Article 25 of the Law (Law of Ukraine *On the Security Service of Ukraine*, 1992).

Other legislative acts that determine the legal status of the bodies and officers of the Security Service of Ukraine include the following:

– **Law of Ukraine “On National Security of Ukraine”** – establishes the legal foundations and principles of state policy in the fields of national security and defense and defines the role and place of the Security Service of Ukraine within these fields. Pursuant to Article 19 of this Law, the Security Service of Ukraine is a state body of special purpose with law enforcement functions that ensures state security in the following areas: 1) counteraction to intelligence and subversive activities against Ukraine; 2) combating terrorism; 3) counterintelligence protection of state sovereignty, the constitutional order and territorial integrity, defense and scientific-technical potential, cybersecurity, information security of the state, and critical infrastructure facilities; 4) protection of state secrets (Law of Ukraine *On National Security of Ukraine*, 2018).

– **Law of Ukraine “On Counterintelligence Activities”** – defines the status of the Security Service of Ukraine as a “specially authorized state authority in the field of counterintelligence activities” (Article 5), specifies the grounds for conducting such activities, outlines their basic principles, functions, and powers, as well as the social and legal guarantees of the Service’s officers engaged in counterintelligence. The Law provides that, in accordance with Part 2 of Article 7, the bodies, units, and officers of the Security Service of Ukraine, for the purpose of fulfilling the tasks defined by the Law and subject to the existence of the grounds provided for in Paragraph 1 of Article 6 thereof, are vested with the relevant rights (Law of Ukraine *On Counterintelligence Activities*, 2002).

– **Law of Ukraine “On Operational and Investigative Activities”** – includes the Security Service of Ukraine among the bodies authorized to carry out operational and investigative activities and, in accordance with Article 6, defines the grounds for conducting such activities. Article 8 of the Law establishes the list of rights of operational units engaged in operational and investigative activities (Law of Ukraine *On Operational and Investigative Activities*, 1992).

– **Law of Ukraine “On Combating Terrorism”** – designates the Security Service of Ukraine as the main body in the nationwide system for combating terrorist activity (Article 4), details its powers in this area (Article 5), defines the grounds, conditions, and other aspects of conducting anti-terrorist operations (Chapter III), and establishes the principles of international cooperation

in combating terrorism (Chapter VII) (Law of Ukraine *On Combating Terrorism*, 2003).

– **Law of Ukraine “On State Secrets”** – defines the Security Service of Ukraine as a specially authorized state body in the field of protection of state secrets (Article 5) and in the formation of the Code of Information Constituting State Secrets (Article 12); regulates the procedure for activities related to state secrets, secrecy regimes, and authorizes the Service to exercise control over the state of protection of state secrets in all public authorities (Article 37) (Law of Ukraine *On State Secrets*, 1994).

In general, it should be noted that the legal status of the Security Service of Ukraine is, to a greater or lesser extent, reflected in a significant number of legislative acts, which is explained by the multifaceted nature of the tasks in the performance of which the Service is involved, including those related to the conduct of the full-scale Russian-Ukrainian war and the introduction of the legal regime of martial law in the country.

It should also be taken into account that, given the specific nature of the activities of a special service, a significant number of legal acts regulating the activities of the Security Service of Ukraine are classified and are not made publicly available, as noted by V.S. Stepanovskiy (Stepanovskiy, 2023).

In accordance with current legislation, the Security Service of Ukraine is a state body of special purpose with law enforcement functions that ensures the state security of Ukraine and is subordinated to the President of Ukraine. Within the limits of its statutory competence, the Security Service of Ukraine is entrusted with the protection of state sovereignty, the constitutional order, territorial integrity, scientific-technical and defense potential of Ukraine, lawful interests of the state, and the rights of citizens from intelligence and subversive activities of foreign special services, encroachments by individual organizations, groups, and persons, as well as ensuring the protection of state secrets. The tasks of the Security Service of Ukraine also include the prevention, detection, suppression, and investigation of criminal offenses against peace and security of mankind, terrorism, and other unlawful acts that directly pose a threat to the vital interests of Ukraine (Law of Ukraine *On the Security Service of Ukraine*, 1992).

In essence, as noted above, the Security Service of Ukraine is a subject of ensuring national security, which is correspondingly determined and guaranteed by its legal status.

3. Specific Features of the Legal Status of the Security Service of Ukraine

M.M. Karpenko defines the administrative and legal status of the bodies of the Security Service of Ukraine as a set of areas of competence, powers (rights and duties), guarantees of activity, and responsibility enshrined in the current legislation of Ukraine, which enable them to act as participants in administrative and legal relations in the field of ensuring the state security of Ukraine. The structure of the administrative and legal status of the bodies of the Security Service of Ukraine consists of target-oriented, organizational, and competence-based blocks (elements). It also includes guarantees of the activities of the bodies of the Security Service of Ukraine, as well as the liability of their personnel (Karpenko, 2014).

The first element comprises the legally enshrined purpose of establishment and tasks of the body. The second element includes the regulatory framework governing the organization of activities of the bodies of the Security Service of Ukraine, their internal structure, personnel composition, subordination, and related issues. The third element consists of a set of authoritative powers with respect to specific areas of competence of the Security Service of Ukraine. The rights and duties of the bodies of the Security Service of Ukraine, as defined by current legislation, are exercised by them within administrative and legal relations of a law enforcement nature.

Within such relations, the bodies of the Security Service of Ukraine act as representatives of the state and on its behalf, for which purpose they are vested with special authoritative powers enabling them to exert influence on non-subordinate entities. The activities of the bodies of the Security Service of Ukraine are expressed, inter alia, in such a form of administrative activity as the issuance of normative and individual administrative acts. Their personnel are entitled to apply administrative preventive measures, general and special measures of administrative restraint, as well as measures to ensure proceedings in cases of administrative offenses. While performing their official duties, employees of the Security Service of Ukraine act as representatives of public authority, operate on behalf of the state, and are under its protection. The inviolability of their person, as well as their honor and dignity, is protected by the current legislation of Ukraine (Karpenko, 2014).

A.V. Kumeiko considers the administrative and legal status of the Security Service of Ukraine as a subject of combating crime to be a set of tasks, powers, and functions enshrined in the norms of administrative law, with which this body is endowed in accordance with a defined scope of administrative legal personality in the relevant sphere, and for the improper

performance of which the Service bears legal responsibility established by current national legislation. The scholar identifies the main features that were characteristic of the Security Service of Ukraine when it functioned as a law enforcement body of special purpose, namely: the existence of a special legal status; diversity of specific forms and methods of activity; polarity of principles of official activity; the extreme nature of practical work; procedural independence; the possibility of cooperation with foreign intelligence and security services; and the existence of special competence to restrict human and civil rights and freedoms (Kumeiko, 2016).

Thus, the legal status of the Security Service of Ukraine should be understood as a complex of legal provisions that define, within the framework of national legislation, its functions, powers, and duties, the implementation of which in practical activities must ensure an appropriate level of national security and the effective performance of counterintelligence tasks. The legal status determines the specific aspects of the activities of the Security Service of Ukraine, including the collection, analysis, and processing of information, as well as the protection of constitutional values and the sovereignty of the state.

With regard to the legal status of the Security Service of Ukraine in the context of counterintelligence activities, pursuant to the **Law of Ukraine “On Counterintelligence Activities”**, it is, as noted earlier, an authorized state authority in the field of counterintelligence activities (Law of Ukraine *On Counterintelligence Activities*, 2002).

The functions of the bodies, units, and officers of the Security Service of Ukraine engaged in counterintelligence activities are determined by the **Law of Ukraine “On the Security Service of Ukraine”** (Law of Ukraine *On the Security Service of Ukraine*, 1992).

For the purpose of fulfilling the tasks defined by law in the course of counterintelligence activities, the bodies, units, and officers of the Security Service of Ukraine are entitled to:

1. conduct counterintelligence searches and operational and investigative measures using operational and operational-technical forces and means, interview persons with their consent, and use their voluntary assistance;
2. identify, record, and document, overtly and covertly, intelligence, terrorist, and other encroachments on the state security of Ukraine, maintain operational records thereof, and conduct visual surveillance in public places using photo, film, and video recording, optical and radio devices, and other technical means;
3. conduct counterintelligence operations and relevant operational and operational-tech-

nical measures aimed at preventing, timely detecting, and suppressing intelligence and subversive, terrorist, and other unlawful activities detrimental to the state security of Ukraine;

4. maintain overt and covert full-time and non-staff personnel, establish enterprises, institutions, and organizations for the purpose of conspiracy, and use documents concealing the identity or departmental affiliation of personnel, premises, and vehicles of bodies and units engaged in counterintelligence activities;

5. request, collect, and study, where legally prescribed grounds exist, documents and information characterizing the activities of enterprises, institutions, and organizations, as well as the lifestyle of individuals, sources and amounts of their income, in order to prevent and suppress intelligence, terrorist, and other unlawful encroachments on the state security of Ukraine;

6. exclusively for the purpose of preventing, timely detecting, and suppressing intelligence, terrorist, and other encroachments on the state security of Ukraine, obtain information in the interests of counterintelligence on the basis of an appropriate counterintelligence case;

7. detain persons and hold them in specially designated places for this purpose;

8. exclusively for the purpose of suppressing intelligence, terrorist, and other unlawful encroachments on the state security of Ukraine, as well as when pursuing persons suspected of such activities, freely enter and remain at any time on the territory and premises of state authorities and their structural subdivisions, local self-government bodies, enterprises, institutions, and organizations regardless of ownership form, and enter guarded military facilities in accordance with the established procedure;

9. remain, in coordination with the heads of state border protection bodies of the State Border Guard Service of Ukraine, for the purpose of implementing counterintelligence measures within the border strip, controlled border area, at border crossing points, and in the territorial sea of Ukraine;

10. in urgent cases during the conduct of counterintelligence measures, freely use communication facilities belonging to enterprises, institutions, and organizations, and communication facilities belonging to citizens—with their consent—with subsequent reimbursement of expenses upon their request;

11. in the interests of ensuring state security and fulfilling counterintelligence tasks, organize, coordinate, and conduct scientific and scientific-technical research, establish relevant scientific institutions and interagency coordination and advisory bodies in accordance with the procedure established by the legislation of Ukraine;

12. store, carry, apply, and use weapons and special means, apply measures of physical coercion in accordance with the laws of Ukraine and other legislative acts, and transport weapons and special means on all types of transport;

13. exercise the rights provided for by the laws of Ukraine “On the Security Service of Ukraine”, “On State Secrets”, and other laws of Ukraine (Law of Ukraine *On Counterintelligence Activities*, 2002).

The organization and coordination of counterintelligence activities are entrusted to the Central Directorate of the Security Service of Ukraine. The procedure for organizing and carrying out counterintelligence activities is determined by the laws of Ukraine and normative legal acts of the Security Service of Ukraine adopted pursuant thereto, and, in cases provided for by law, by interagency normative legal acts. The Security Service of Ukraine reports on the results of counterintelligence activities to the President of Ukraine and informs the Verkhovna Rada of Ukraine.

Employees of the bodies and units of the Security Service of Ukraine engaged in counterintelligence activities are covered by the social and legal guarantees established by the **Law of Ukraine “On the Security Service of Ukraine”** and the **Law of Ukraine “On the Social and Legal Protection of Servicemen and Members of Their Families”**, as well as other laws of Ukraine (Ponomarov, 2012).

#### 4. Conclusions

Based on the conducted analysis of theoretical conclusions of domestic scholars, including representatives of the departmental scientific school of the Security Service of Ukraine, the provisions and norms of current legislation, and the content of subordinate normative legal acts regulating certain aspects of the activities of the special service bodies, it can be stated that the special legal status of the Security Service of Ukraine, in addition to the main legislative acts, is reflected to some extent in a significant number of normative legal acts. This is explained by the diversity of tasks assigned to the bodies, units, and individual employees of the domestic special service.

The significant number of legislative acts determining the legal status and regulating the activities of the Security Service of Ukraine indicates, in fact, the blanket nature of the **Law of Ukraine “On the Security Service of Ukraine.”**

Summarizing the above, it can be concluded that the legal status of the Security Service of Ukraine as a **“specially authorized state authority in the field of counterintelligence activities”** is characterized by the following factors:



- The Security Service of Ukraine is a special body with law enforcement functions;
- The Service conducts its overall activities, including counterintelligence activities as an integral component, strictly within the framework of current legislation and within the powers and competencies defined therein;
- The Security Service of Ukraine is accountable to the state authorities of Ukraine;
- To successfully accomplish the tasks assigned to it, the Service is endowed with special powers necessary to ensure the state security of Ukraine in the field of counterintelligence activities;
- It is a specially authorized body in the field of counterintelligence activities aimed at preventing, detecting, and suppressing unlawful actions that may harm the state sovereignty of Ukraine, lead to violations of its territorial integrity and inviolability of state borders, undermine the constitutional order, and threaten the foundations of national security and defense.

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## ПРАВОВИЙ СТАТУС СЛУЖБИ БЕЗПЕКИ УКРАЇНИ В АСПЕКТІ КОНТРОЗВІДУВАЛЬНОЇ ДІЯЛЬНОСТІ В УМОВАХ СЬОГОДЕННЯ

**Анотація.** *Мета статті* полягає у визначенні правового статусу Служби безпеки України, зокрема, щодо проведення контрозвідувальної діяльності, її роль і місце в системі органів державної влади в нинішніх умовах. *Результати.* У статті здійснено комплексний аналіз правового статусу Служби безпеки України як спеціального державного органу, уповноваженого на здійснення контрозвідувальної діяльності в умовах сучасних безпекових викликів. Правовий статус Служби безпеки України розглядається як системна сукупність нормативно визначених завдань, функцій, повноважень і обов'язків, закріплених у національному законодавстві, реалізація яких спрямована на забезпечення державної та національної безпеки, захист конституційного ладу, суверенітету й територіальної цілісності України. Обґрунтовано, що правовий статус Служби безпеки України зумовлює специфіку її організаційно-правової природи та визначає особливий характер контр-

розвідувальної діяльності, яка включає збір, аналіз, узагальнення й використання інформації, протидію розвідувально-підривній діяльності іноземних спеціальних служб, терористичним та іншим загрозам національній безпеці. У статті виокремлено ключові ознаки, що характеризують особливий правовий статус Служби безпеки України у сфері контррозвідувальної діяльності, зокрема її належність до спеціальних органів з правоохоронними функціями, здійснення діяльності виключно в межах закону та підзвітна органам державної влади, а також наявність спеціальних повноважень, необхідних для виконання покладених на неї завдань у сфері державної безпеки. **Висновки.** Акцентовано увагу на превентивному та захисному характері контррозвідувальної діяльності Служби безпеки України, спрямованої на запобігання, виявлення й припинення протиправних посягань на державний суверенітет, конституційний лад, обороноздатність та інші життєво важливі інтереси держави. Зроблено висновок про необхідність подальшого удосконалення нормативно-правового регулювання правового статусу Служби безпеки України з урахуванням трансформації загроз національній безпеці та сучасних умов функціонування сектору безпеки і оборони.

**Ключові слова:** державна безпека, загрози, контррозвідувальна діяльність, національна безпека, правовий статус, спеціальний орган, спеціальні повноваження, тероризм.