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The system of organs of state power for the protection of human rights in the sphere of national security

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Abstract

The purpose of the study is to provide scientifically based conclusions on the definition of the system of state authorities for protecting human rights in the field of national security in the context of modern challenges and threats based on scientific research. The methodological basis of the study is a complete and coordinated system of methods, which allowed properly analysing the subject matter; in particular, methods of analysis, synthesis, induction, and deduction were used. The theoretical basis of this publication is the papers by Ukrainian researchers devoted to the study of state authorities on the protection of human rights in the field of national security. The scientific originality of the publication is conditioned by the fact that it included a systematic analysis of legal enactments in the field of legal regulation of the system of state authorities for the protection of human rights in the field of national security. It is established that the activities aimed at the protection of human rights and national security are bilateral in nature: the protection of human rights guarantees state security – and protection of state security safeguards human rights. The study highlights the incompleteness of the reform of this system of bodies that certify the shortcomings of the legal regulation of their activities, in particular: 1) the National Guard of Ukraine has the status of a military formation. At the same time, the National Guard of Ukraine is a military formation with law enforcement functions, which belongs to the system of the Ministry of Internal Affairs of Ukraine; 2) the National Police of Ukraine as the central executive authority belongs to the security and defence sector. At the same time, the Law of Ukraine “On Central Executive Authorities” does not specify the National Police as the central executive authority; 3) the subjects of the intelligence community among others, according to the Law of Ukraine “On intelligence”, is the security service of Ukraine. However, in Part 2 of Article 12 of the Law of Ukraine “On National Security of Ukraine”, the Security Service of Ukraine is defined as a separate body in the field of ensuring national security. It is noted that the double indication of the same bodies in the system of state authorities for the protection of human rights in the field of national security is legally unsound

Keywords:

state authority; protection of human rights; National Security; National Guard of Ukraine; Ministry of Internal Affairs of Ukraine; National Police of Ukraine; Security Service of Ukraine

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Introduction

Protection of human rights in the field of national security has become increasingly relevant in recent years. This is conditioned by the military aggression of the Russian Federation, increased threats in the information sphere, cyber-attacks, etc. Reforms are underway in public authorities, in the way administrative services are provided and in the transition to a new, digital reality. This refers to the creation of services such as the Diia app, eMalyatko, eCase, etc.

Therefore, the protection of human rights in the field of national security should be carried out considering the processes of digitalisation taking place in the country.

The dictionary of modern Ukrainian language and slang defined the word of 2019 as “digitalisation” [1]. Such a choice is quite appropriate, primarily due to the frequency of use of this word by representatives of society and authorities. The neologism, which appeared in the Ukrainian language only a few years ago, and according to the dictionary definition, means changes in all spheres of public life related to the use of digital technologies. The word is a simplified form of the term “digital transformation” and a manifestation of the global digital revolution [1].

The term “digitalisation” is still almost not used in Ukrainian legal science. However, it is obvious that modern science cannot stay away from these processes, primarily due to the fact that for any changes it is necessary to develop a scientific basis.

Separately, it should be noted about the relationship between digital transformation and the protection of human rights in the field of national security. This connection can be traced in the fact that new challenges are constantly emerging – not only in the field of law enforcement and the state border, but also in the field of information technology. That is why ensuring information and digital security is a component of national security in the context of digitalisation.

In this regard, it is necessary to investigate the topic of defining the system of state authorities to protect human rights in the field of national security in the context of reforming the national security system and digital transformation of the state.

The chosen topic is related to scientific and practical tasks that include: the determination of the list of bodies responsible for the protection of human rights in the field of national security, their competence, and identification of law enforcement problems.

Analysis of scientific sources indicates the existence of fragmentary research on this issue. In particular, I. Doronin devoted his study to the theoretical and legal investigation of the national security of Ukraine in the information age. The author considered the actual scientific problem of developing a conceptual approach to the legal regulation of public relations in the field of national security in the information age. He focused on

the legal and organisational principles of the development of the system of subjects of ensuring the national security of Ukraine [2]. S. Drobotov analysed the constitutional and legal support of national security in Ukraine [3]; O. Kubetska, T. Ostapenko, Ya. Paleshko defined the conditions for ensuring the national security of the state [4]; V. Antonov studied the constitutional and legal foundations of the national security of Ukraine at the monographic level. Among other things, he highlighted the political and military components of the national security system, the protection of constitutional human rights and ensuring their personal security in the face of modern challenges and threats, etc. [5].

Despite a significant number of studies in this area, the system of state authorities for the protection of human rights in the field of national security in the context of modern challenges and threats has been underinvestigated.

The purpose of the study is to provide scientifically based conclusions on the definition of the system of state authorities for protecting human rights in the field of national security in the context of modern challenges and threats based on scientific research.

To achieve this goal, the following tasks were set:

- carry out a systematic analysis of legal enactments in the field of legal regulation of the system of state authorities for the protection of human rights in the field of national security;
- determine the state authorities responsible for the protection of human rights in the field of national security;
- determine the correlation between the activities of various bodies for the protection of human rights and national security;
- determine the shortcomings of the legal regulation of the list and the competence of state authorities for the protection of human rights in the field of national security

Presentation of Main Material

Article 3 of the Constitution of Ukraine recognises a person, his or her life and health, honour and dignity, inviolability and security as the highest social value [6], which also provides for ensuring security in general, that is, national security. Recognition as the highest social value requires the protection of human rights, in particular, in the field of national security. It is possible to establish a two-way link between the protection of human rights and ensuring national security. After all, only in a country that ensures national security at the proper level, it is possible to talk about the protection of human rights.

In the Law of Ukraine “On National Security of Ukraine”, national security is defined as “protection of state sovereignty, territorial integrity, democratic constitutional order, and other national interests of Ukraine from real and potential threats” (paragraph 9

of Part 1 of Article 1) [7]. In fact, at the level of ensuring national security, it is necessary to discuss the security of its main objects, the list of which is not exhaustive. Researchers claim that the triad of objects of national security of the state consists of the security of the individual, society, and the state [8].

This law defines the principles of democratic civil control in Article 4. In particular, “the civil control system consists of control carried out by the President of Ukraine; control carried out by the Verkhovna Rada of Ukraine; control carried out by the National Security and Defence Council of Ukraine; control carried out by the Cabinet of Ministers of Ukraine, executive authorities, and local self-government bodies; judicial control; public supervision” [7]. The cited legislative provisions determine the list of state authorities whose powers include ensuring national security in the field of civil control:

- Verkhovna Rada of Ukraine;
- National Security and Defence Council of Ukraine;
- Cabinet Of Ministers Of Ukraine;
- executive authorities and local self-government bodies; judicial authorities.

The President of Ukraine is a special subject in the field of ensuring national security. However, taking into account the subject of the study – state authorities, this issue will not be considered in the paper.

After the constitutional reform of 2016 and the clarification of the functions of the prosecutor’s office, it is no longer subject to civil control over the security and defence sector.

In addition to civil control, the Law of Ukraine “On National Security of Ukraine” defines the security and defence sector. In particular, “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 Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Anti-Terrorist Centre under the Security Service of Ukraine, the Judicial Protection Service, the State Security Service of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the staff of the National Security and Defence Council of Ukraine, intelligence agencies of Ukraine, the central executive authority that ensures the establishment and implementation of the national military-industrial policy” (Part 2, Art. 12) [7].

Thus, the system of state authorities for the protection of human rights in the field of national security covers two groups of bodies: civil control bodies and security and defence bodies.

Commenting on Article 12 of this Law, researchers claim that after updating the legislation in the field of national security and defence in 2018, the system of the

security and defence sector was partially changed by introducing new terms: “security and defence sector”, “security forces”, and “defence forces”. All state bodies that ensure the national security of Ukraine belong to the security and defence sector and, accordingly, to its individual components. According to, I. Doronin, it is necessary to consider the composition of the security and defence sector and the corresponding powers of its components, based on the systematisation defined by a legislative act. In contrast to the simple list of subjects of ensuring national security of Ukraine in the Law of Ukraine

“On the fundamentals of national security of Ukraine”, the current legislative act proposes to build a certain system of the security and defence sector, which contains four components. In particular:

- security forces;
- defence forces;
- military-industrial complex;
- citizens and public associations.

The first two components of the security and defence sector are not differentiated in the requirements of Part 2 of Article 12 of the Law of Ukraine “On National Security of Ukraine”. At the level of terminological explanation, Article 1 of the Law notes that the “security forces” include: law enforcement agencies, intelligence agencies, special-purpose state bodies with law enforcement functions, civil protection forces, and other bodies that are entrusted by the Constitution and Laws of Ukraine with the functions of ensuring national security of the state. The defence forces include: the Armed Forces of Ukraine, military formations, law enforcement agencies, and intelligence agencies, organs of special purpose with law enforcement functions, which are assigned by the Constitution and laws of Ukraine to ensure the defence of the state [2]. Cited above Part 2 of Article 12 of the Law of Ukraine

“On National Security of Ukraine” actually provides two formulations – security bodies and defence bodies, in general, it has 17 relevant state bodies. Two of them have the status of ministries – the Ministry of Defence of Ukraine, the Ministry of Internal Affairs of Ukraine, the rest – different bodies and formations.

The Armed Forces of Ukraine have the status of a military formation. The National Guard of Ukraine also has the status of a military formation. At the same time, the National Guard of Ukraine is a military formation with law enforcement functions, which belongs to the system of the Ministry of internal Affairs of Ukraine. Since the legislator refers the Ministry of Internal Affairs of Ukraine to bodies in the field of national security, the question arises about the expediency of specifying in the law its structural divisions as separate bodies entrusted with powers in this area [9].

The National Police of Ukraine belongs to the security and defence sector.

The National Police of Ukraine [10] is a central executive authority that serves society by ensuring the protection of human rights and freedoms, countering crime, and maintaining public security and order (Part 1 of Article 1 of the Law of Ukraine “On the National Police”) [10]. At the same time in the Law of Ukraine

“On Central Executive Bodies” does not refer to the National Police as the central executive body.

Unlike other bodies whose names are used in their legislative formulation, the legislator uses a generalising concept for intelligence agencies. Until 2020, a specialised law – “On Intelligence Agencies of Ukraine” – was in force, but it became invalid on the basis of Law No. 912-IX of September 17, 2020. The intelligence agencies previously included the following: the Foreign Intelligence Service of Ukraine, the intelligence body of the Ministry of Defence of Ukraine, the intelligence body of the specially authorised central executive body for the protection of the state border. On September 17, 2020, the Law of Ukraine “On Intelligence” came into force, Article 4 of which states that in order to effectively perform intelligence tasks, an intelligence-gathering community operate in Ukraine. The subjects of the intelligence community are: 1) the coordinating body for intelligence issues; 2) intelligence agencies defined by Law; 3) the Security Service of Ukraine; 4) other components of the security and defence sector defined by the National Security and Defence Council of Ukraine, which are attracted by intelligence agencies to perform intelligence tasks and strengthen the intelligence capabilities of the state [11]. Consequently, the question arises about the appropriateness of using the term “intelligence agencies”, since it has been replaced by “intelligence community”.

The analysed legislative provisions also refer to such a body as the Security Service of Ukraine. However, in Part 2 of Article 12 of the Law of Ukraine “On National Security of Ukraine”, the Security Service of Ukraine is defined as a separate body in the field of ensuring national security. It is noted that the double indication of the same bodies in the system of state authorities for the protection of human rights in the field of national security is legally unsound.

Developing the topic of defence bodies, attention should be focused on the digital transformation of the Armed Forces and ensuring information security. In particular, in September 2021, the President of Ukraine V. Zelensky [12] approved the Strategic Defence Bulletin of Ukraine [13], which defines the digital transformation of the Armed Forces and ensuring information security as one of the priorities. Based on the above, it can be stated that the defence sector is beginning its reform in accordance with the challenges of our time towards information security of a person, society, and state bodies.

Among the listed shortcomings in the field of identifying bodies that ensure national security, it is

also advisable to highlight the need to coordinate the activities of these bodies. In addition to duplicating bodies in different structural units, their powers are also duplicated. At the same time, the legislator does not provide advantages to a particular body.

In addition, there are no uniform requirements for the order, urgency, specific officials of state bodies who will prepare relevant reports, and most importantly – the method of communicating the report as a generalised result of the activities of state authority to the public. It seems that such a report should provide for an open format, that is, accessible to citizens at any time. The only exception is information that constitutes a state secret.

The paper provides a systematic analysis of legal enactments in the field of legal regulation of the system of state authorities for the protection of human rights in the field of national security. It is established that the activities aimed at the protection of human rights and national security are bilateral in nature: the protection of human rights guarantees state security – and protection of state security safeguards human rights. After all, only in a country that ensures national security at the proper level, it is possible to talk about the protection of human rights.

The study of relevant regulations indicated that the system of state authorities for the protection of human rights in the field of national security covers two groups of bodies: civil control bodies and security and defence bodies. It was established that the defence sector has begun its reform in accordance with the challenges of our time towards information security of a person, society, and state bodies.

Conclusions

The system of state authorities for the protection of human rights in the field of national security and their competence is determined by special legislation. It can be stated that the reform of this system of bodies is incomplete, as evidenced by the shortcomings of the legal regulation of their activities, in particular:

- the National Guard of Ukraine has the status of a military formation. At the same time, the National Guard of Ukraine is a military formation with law enforcement functions, which belongs to the system of the Ministry of Internal Affairs of Ukraine. Since the legislator refers the Ministry of internal affairs of Ukraine to bodies in the field of national security, the question arises about the expediency of specifying in the law its structural division as a separate body entrusted with powers in this area;

- the security and defence sector includes the National Police of Ukraine as a central executive authority that serves society by ensuring the protection of human rights and freedoms, countering crime, and maintaining public security and order. At the same time, the Law of Ukraine “On Central Executive Authorities” does

not specify the National Police as the central executive authority;

– the subjects of the intelligence community, among others, in accordance with the law of Ukraine “On Intelligence”, are the Security Service of Ukraine. However, in Part 2 of Article 12 of the Law of Ukraine “On National Security of Ukraine”, the Security Service of Ukraine is defined as a separate body in the field of ensuring national security. It is noted that the double indication of the same bodies in the system of state authorities for the protection of human rights in the field of national security is legally unsound; legal enactments do not have a coordinated system of interaction

between the relevant state authorities, there is a duplication of bodies in different structural units, and their powers are also duplicated;

– uniform requirements have not been formed regarding the procedure, urgency, specific officials of state bodies who will prepare relevant reports, and most importantly, the method of communicating the report as a generalised result of the activities of state authority to the public. The study suggests that such a report should provide for an open format, that is, it should be available to citizens at any time. The only exception is information that constitutes a state secret.

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Система органів державної влади щодо забезпечення прав людини у сфері національної безпеки

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Анотація

Мета статті – на підставі наукового дослідження надати науково обґрунтовані висновки стосовно визначення системи органів державної влади із забезпечення прав людини у сфері національної безпеки в умовах сучасних викликів і загроз. Методологічне підґрунтя наукової статті становить цілісна й узгоджена система методів, що дала змогу належно проаналізувати предмет дослідження, зокрема використано наукові методи аналізу, синтезу, індукції та дедукції. Теоретичним підґрунтям цієї публікації стали праці вітчизняних учених, присвячені дослідженню органів державної влади щодо забезпечення прав людини у сфері національної безпеки. Наукова новизна публікації полягає в тому, що в роботі було виконано системний аналіз нормативно-правових актів у сфері правового регулювання системи органів державної влади щодо забезпечення прав людини у сфері національної безпеки. Встановлено, що діяльність із забезпечення прав людини й національної безпеки має двосторонній характер: забезпечення прав людини забезпечує державну безпеку – забезпечення державної безпеки забезпечує права людини. У статті констатовано незавершеність реформування означеної системи органів, що засвідчують недоліки правової регламентації їхньої діяльності, зокрема: 1) статус військового формування має Національна гвардія України. Водночас Національна гвардія України є військовим формуванням із правоохоронними функціями, що належить до системи Міністерства внутрішніх справ України; 2) до складу сектору безпеки й оборони належить Національна поліція України як центральний орган виконавчої влади. Водночас у Законі України «Про центральні органи виконавчої влади» немає вказівки на Національну поліцію як центральний орган виконавчої влади; 3) суб'єктами розвідувального співтовариства поміж інших, відповідно до Закону України «Про розвідку», є Служба безпеки України. Утім у ч. 2 ст. 12 Закону України «Про національну безпеку України» Службу безпеки України визначено як окремий орган у сфері забезпечення національної безпеки. Вбачається, що подвійне зазначення одних і тих самих органів у системі органів державної влади щодо забезпечення прав людини у сфері національної безпеки є юридично некоректним

Ключові слова: орган державної влади; забезпечення прав людини; національна безпека; Національна гвардія України; Міністерство внутрішніх справ України; Національна поліція України; Служба безпеки України