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National security and defense council of Ukraine: Administrative and legal status

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Abstract

The relevance of the study is determined by the resistance to the armed aggression of the Russian Federation, specifically by the security state body – the Council of National Security and Defence of Ukraine, which, to repel the enemy and liberate the occupied territories, activated its operations under the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine. The purpose of this study was to investigate the characteristics of the administrative legal status of the National Security and Defence Council of Ukraine and provide proposals for improving the status, considering the martial law in Ukraine. Multi-level methods of scientific search were used, the most effective and active among which were the comparative method and methods of analysis. The author of the study summarized and confirmed the scientific originality of the subject under study, as well as outlined several gaps in the legal support of the administrative legal status of the National Security and Defence Council of Ukraine. Specifically, to establish the procedure for the work of this body, it is proposed to approve the Regulation, which currently stays relevant. The expediency of developing and approving a strategically important document in the current conditions – the concept of countering Russian aggression and expansion (military and other) – is proved. The author of the study believes that the security state body of the country can initiate a strategy to protect the security of the states of the world, since Ukraine is one of the countries of the world that is currently suffering from the armed aggression of the enemy-neighbour. The practical value of this paper and the conclusions made by the author lie in particular provisions that can be used to improve the effectiveness of the state body under study, especially in conditions of martial law, namely, strengthening the state's defence capability, repelling the perfidious attack of the enemy, improving the functioning of the presidential power, as well as the executive power in general and its branches, especially in ensuring the national security of the state.

Keywords:

Supreme Commander-in-Chief; Armed Forces of Ukraine; security state body; defence capability; martial law; power; president; national security

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Introduction

The National Security and Defence Council of Ukraine was established by the relevant Law of Ukraine¹ back in March 1998, i.e., almost two years after the adoption of the Constitution of Ukraine² and in the eighth year of Ukraine's independence. Chapter V of the Constitution "President of Ukraine" consolidates the constitutional legal status of this body of state power – the National Security and Defence Council of Ukraine (the NSDC of Ukraine). This refers to the legal norms of an eight-part Article 107 of the Constitution of Ukraine. To implement the provisions of the Constitution of Ukraine³, the Law of Ukraine "On the National Security and Defence Council of Ukraine"⁴ was adopted, which is a model of the constitutional law (Article 107 Part 7)⁵ and which consistently, pursuant to the architecture of the mentioned Article, clarifies the rights, obligations, responsibilities and powers, as well as other jurisdictional issues of the activity of this state body, including administrative legal ones.

However, in the modern conditions of military confrontation with the aggressor state of the Russian Federation, especially after the start of a full-scale invasion on February 24, 2022, the security and defence of Ukraine, their effective and complete provision have become not just critical and urgent, as they were in reality, but the factual condition of the very existence of Ukraine and the Ukrainian people, national identity, the Ukrainian legal philosophy of freedom and, ultimately, the starting point or even the decisive point of stopping the absorption of national and international law as a whole by the unlaw.

The NSDC of Ukraine as a coordinating body of activities to ensure the national security and defence of the country under the President of Ukraine in these conditions – the conditions of martial law and population mobilization, when the role of the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine as the general and leading unifying force of the nation, as a state creator, has increased, which should adopt the most effective and sometimes unexpected and unprecedented urgent political, legal, and economic decisions, acquires special importance.

The relevance of the subject under study is confirmed by the analysis of recent monographic studies on the coverage of administrative legal regulation of national security and the formation of the law of national security through the subjectivity of the state in the law of national security (Bohutskyi, 2020) and consideration of the component of national security (Kryshtanovych, Pushak & Fleichuk, 2020). V. Smolianiuk (2017) investigated national security systems and systems ensuring the national security. Investigating the mechanisms of state

administration in the field of ensuring national security in the countries of the European Union, V.S. Murashko (2020) substantiates the interaction of the Euro-Atlantic and Eurasian security spaces and the development of ways to reform the main security institutions (the United Nations Security Council, the North Atlantic Treaty Organization, the European Union) to avoid duplicating the functions of national security subjects, assuming the probability of creating a "defence of the EU Union" involving Ukraine as a potential partner, which during the period of armed Russian aggression proved the combat capability of the Armed Forces of Ukraine, the strength of spirit and will of Ukrainians, as well as experience in protecting not only the sovereignty of the state, but also Europe in general from the aggressor state of the Russian Federation. The studies of scientists on the definition of "national security" (Kobko, 2022) and the components of Ukraine's national security in conditions of military conflict (Hbur, 2022) deserve attention.

The purpose of this study was to characterize the legal basis of the NSDC of Ukraine, its purpose, tasks, functions, and powers (and the author of this paper sets himself such tasks), to define the concepts and components of the administrative legal status of the NSDC of Ukraine, and considering the wartime conditions, to accumulate proposals for improving the latter.

Literature Review

The issue of the constitutional legal status of the NSDC of Ukraine and certain legal issues of its functioning have been investigated sporadically by scientists, including as follows: V. Antonov regarding the constitutional legal foundations of the establishment and formation of the national security system of Ukraine in the conditions of modern challenges and threats (Antonov, 2017), V. Pashynskyi (2017) emphasizes that the NSDC of Ukraine is an independent specially authorized constitutional body of state power, as it does not belong to any of the branches of government, the NSDC of Ukraine, considering changes in the geopolitical situation, is authorized to submit appropriate proposals to the President of Ukraine, i.e., to "unite" all branches of power (Svyda), signs of the present military-political risks, challenges, and threats that pose a danger to the national security of Ukraine in the border area Trembovetskyi, Hulevatyi (2018), who paid attention to the NSDC of Ukraine precisely as a subject of the country's defence. Ways of responding to challenges to national security in the conditions of a military conflict were proposed by O. Tselvelov (2019), having investigated the practices

¹Law of Ukraine No.183/98-BP "On the National Security and Defence Council of Ukraine". (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

²Law of Ukraine No. 254k/96-BP "Constitution of Ukraine". (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254k/96-bp>.

³Ibidem, 1998.

⁴Law of Ukraine No.183/98-BP "On the National Security and Defence Council of Ukraine". (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

⁵Law of Ukraine No. 254k/96-BP "Constitution of Ukraine". (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254k/96-bp>.

of the Border Service of Finland, which in peacetime is a law enforcement agency, and in case of an escalation of the situation performs the functions of a military formation as part of the armed forces; the Republic of Azerbaijan, where the composition of the border service includes a military component, a prototype of the border troops situated on the border of the military conflict in Nagorno-Karabakh; Z. Gbur (2022) claims that the margin of stability of economic security decreases more and more every day of the war, which constitutes a high level of threat, but as a result of measures promptly taken by the state, the state of the components of national security stays under control.

The studies of V. Bilyi, V. Mykhalchuk (2021), S. Prokhorenko (2021), A. Kovalchuk (2016) covered the general legal issues of national security of Ukraine and its operational apparatus. L. Kazakova (2022) considered the conceptual and categorical apparatus of national security of the state. F. Medvid (2017) researched the national interests of Ukraine in a globalized world. V. Smolianiuk investigated the component of the state-creative process in Ukraine on ensuring national security (2017; 2018; 2021). These authors with scientific meticulousness, using the hermeneutic method of scientific research, tried to clarify the term “national security”, each in their own way, including V. Lipkan (2009), A. Amro (2019) and Ye. Kobko (2022), and others.

The author of the present paper factored in all these approaches in this study. V.S. Murashko (2020) and K. Tarasenko (2016) highlighted the same issues of ensuring national security in the countries of the European Union. Specifically, V.S. Murashko (2020) considered the improvement of the legal foundations, principles, and mechanisms of public management decision-making regarding the activities of public administration subjects in the field of national security. M. Buchin (2018), D.S. Melnyk (2021), A.V. Voitsikhovskiy (2020) addressed the application of information technologies and forecasting in the national security system, while V.S. Andreichuk (2018) and O.I. Poshedin (2019) considered the problems of democratic civilian control over the country's security sector.

T.I. Blistov *et al.* (2015) performed a detailed analysis of the legislative provision of national security; Ya.V. Bazyluk (2015) investigated the economic security of the state and its provision as a sector of national security in the conditions of hybrid warfare; P.B. Volotivskiy (2020) raises the issue of ensuring the powers of state authorities in the field of mobilization training and mobilization. Thus, recently, either narrow, sub-sectoral, or general issues of national security and defence have been investigated, attempts have been made to improve the terminology concerning the national security, certain proposals have been made to improve the statutory regulation of this sphere of legal relations, individual issues of improving the efficiency of

activities have been considered, namely avoiding duplication of powers of the structural units of the NSDC Apparatus of Ukraine.

Materials and Methods

The author of this paper used a philosophical-legal and synergistic approach to investigate the subject under study, including the regulatory framework, scientific developments of modern Ukrainian administrative law researchers, the structure of the state body under study and the general state of its activity, problematic issues of its effectiveness in the conditions of foreign military, economic, and informational aggression, the field of its competence, etc. The synergistic approach allowed the author to comprehensively analyse the strategic aspect of the activities of the NSDC of Ukraine, which occupies a special place in the system of state bodies of Ukraine, which includes the heads of many state bodies, and is led by the head of state.

The axiomatic method of scientific cognition allowed the researcher to confirm the urgent role of the NSDC of Ukraine and its strengthening after the full-scale enemy invasion of Ukraine, this also applies to the accumulation of provisions on the competence of the NSDC of Ukraine and its Apparatus.

Along with the analytical method, the application of the hermeneutic method contributed to the identification of gaps in the legislation of Ukraine regarding the regulation of issues of ensuring the national security and defence of Ukraine. This helped interpret the powers of the President of Ukraine in the field of national security and defence, as well as the detailed legal regulation of the functioning of the NSDC of Ukraine in the system of state bodies of Ukraine. The author of this paper also used the same method to understand the key operational concepts of scientific research, which are indicated by the terms included in the title of the article and in the list of keywords, as well as the characteristics of the components of the competence of the NSDC of Ukraine.

The researcher resorted to the logical-semantic method when clarifying the content of the competence of the NSDC of Ukraine, and the structural-logical method helped determine the architecture of this study, the logic, and sequence of its individual parts.

Other methods of scientific research, which helped complete the study with orderly conclusions, included the comparative method, the modelling method, the historical method, the methods of deduction and induction, nomothetic, etc.

Results and Discussion

Administrative legal status of the NSDC of Ukraine.

The administrative legal status of the state body under study is only one of the cross-sections of the legal status of the subject of law and is governed by the legal norms of the administrative legislation of Ukraine, and therefore is sectoral. The NSDC of Ukraine is a participant in

public relations in the sphere of the functioning of the executive power and at its interface with the presidential power, assuming that the “three branches of power” theory is outdated and the presidential power is not only in a presidential but also in a mixed republic, primarily during the period of the president’s exercise of special powers in wartime, has the most superficial manifestation.

Considering the administrative legal status of the NSDC of Ukraine in the current situation, the author of this paper proceeds from the fact that the legal norms of administrative legislation (laws and sub-legislative acts) establish and consolidate administrative legal relations with the direct involvement of this subject of law. Thus, the researcher strives, within the limits of the possible and within the scope of this paper, to determine such points as the formation (reorganization, liquidation) of the NSDC of Ukraine; the list, scale, and scope of its powers; powers of its structural and auxiliary elements; the system of rights and responsibilities of the NSDC of Ukraine as a whole and its elements; issues of legal responsibility, etc.

The legal basis of the NSDC's activities. The legal status of the NSDC of Ukraine is prescribed in the provisions of the Constitution of Ukraine¹ and developed in legislation and, foremost, in the Law of Ukraine “On the National Security and Defence Council of Ukraine”², the latest amendments to which (regarding the alienation or seizure of movable property of defence enterprises in connection with the risk of military occupation) were made most recently – in September 2022. The activities of the NSDC (and its subdivisions) are

regulated by several laws, including, in addition to the Constitution of Ukraine³, the Code of Civil Protection of Ukraine⁴, and the Law of Ukraine “On the National Security and Defence Council of Ukraine”⁵, first of all, the Laws of Ukraine: “On the National Security of Ukraine”⁶; “On the Defence of Ukraine”⁷; “On the Legal Regime of Martial Law”⁸; “On the Fight Against Terrorism”⁹; “On the Central Bodies of Executive Power”¹⁰; “On the Cabinet of Ministers of Ukraine”¹¹; “On Civil Service”¹², etc.

The functioning of the NSDC of Ukraine is also subject to many sub-legislative regulations (Decrees of the President of Ukraine; Resolutions of the Verkhovna Rada of Ukraine, Orders of the Cabinet of Ministers of Ukraine, etc.). The key regulations include Decrees of the President of Ukraine: “On the Introduction of Martial Law in Ukraine”¹³ with the subsequent approval of the Law of Ukraine¹⁴; “On Information and Analytical Support of the President of Ukraine”¹⁵; “The Issue of Control over the Execution of Decrees, Orders, and Instructions of the President of Ukraine”¹⁶, especially the National Security Strategy of Ukraine “Security of the human – security of the state”¹⁷ and the Military Security Strategy of Ukraine “Military security – comprehensive defence”¹⁸. Moreover, the latter of these reflect the political and legal foresight and strategic prospects of national, as well as military security and defence of Ukraine.

The objects aimed at the activities of the NSDC of Ukraine are the national security and defence of Ukraine. Administrative legal relations concerning these objects are derived in nature, are part of general legal relations, and are structurally in the configuration of constitutional

¹Law of Ukraine No. 254k/96-BP “Constitution of Ukraine”. (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254k/96-bp>.

²Law of Ukraine No. 183/98-BP “On the National Security and Defence Council of Ukraine”. (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

³Law of Ukraine No. 254k/96-BP “Constitution of Ukraine”. (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254k/96-bp>.

⁴Code of Civil Protection of Ukraine No. 5403-VI. (2012, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/5403-17#Text>.

⁵Law of Ukraine No. 183/98-BP “On the National Security and Defence Council of Ukraine”. (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

⁶Law of Ukraine No. 2469-VIII “On the National Security of Ukraine”. (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

⁷Law of Ukraine No. 1932-XII “On the Defense of Ukraine”. (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1932-12#Text>.

⁸Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”. (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

⁹Law of Ukraine No. 638-IV “On the Fight Against Terrorism”. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/638-15#Text>.

¹⁰Law of Ukraine No. 3166-VI “On Central Bodies of Executive Power”. (2011, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/3166-17#Text>.

¹¹Law of Ukraine No. 794-VII “On the Cabinet of Ministers of Ukraine”. (2014, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/794-18#Text>.

¹²Law of Ukraine No. 889-VIII “On Civil Service”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

¹³Decree of the President of Ukraine No. 64/202 “On the Introduction of Martial Law in Ukraine”. (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

¹⁴Ibidem, 2022.

¹⁵Decree of the President of Ukraine No. 709/94 “On the Information and Analytical Support of the President of Ukraine”. (1994, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/709/94#Text>.

¹⁶Decree of the President of Ukraine No. 1132/2005 “The Issue of Control over the Execution of Decrees, Orders, and Instructions of the President of Ukraine”. (2005, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1132/2005#Text>.

¹⁷Decree of the President of Ukraine No. 392/2020 “On the National Security Strategy of Ukraine”. (2020, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/392/2020#Text>.

¹⁸Decree of the President of Ukraine No. 121/2021 “On the Military Security Strategy of Ukraine”. (2021, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/121/2021#Text>.

legal jurisdiction. Therewith, the object of national security branches out into separate areas or vectors of national security, prescribed in the sectoral legislation of Ukraine.

The President of Ukraine is the first in the ranking of subjects ensuring the national security of Ukraine (Article 4)¹. Likewise, among the list of his powers, the very first item in Article 106 of the Constitution of Ukraine² stipulates that the head of state ensures state independence and national security; while Item 17 of this Article assigns him the duties of the Supreme Commander-in-Chief of the Armed Forces of Ukraine; Item 18 establishes that he is the head of the National Security and Defence Council of Ukraine, and Item 19 prescribes the possibility of filing a submission to the Verkhovna Rada of Ukraine regarding the declaration of a state of war; this very Item 19 of the mentioned Article recognizes the right of the President of Ukraine to use the Armed Forces of Ukraine and other military formations (organizations) that may be created within the legislative field. Furthermore, Item 19 of Article 106 was amended in 2014, when the Russian invasion of Ukraine factually began. And, finally, Item 20 of this Article gives the head of state the authority to declare mobilization (partial or general), introduce martial law in case of a threat of attack on the state, capture of territory, in case of danger to the independence of the state of Ukraine³.

Structural and organizational order of the NSDC of Ukraine. According to the author of this study, structural and organizational order, in fact, the very architectonics of the NSDC of Ukraine looks, in passing, dualistic. The NSDC is subordinate to the President of Ukraine, who is its chairman; its decisions are put into effect by the head of state, who forms the composition of the latter, and its personal composition includes the Prime Minister of Ukraine, the heads of the “power” bloc of the state (the Minister of Defence of Ukraine, the Head of the Security Service of Ukraine, the Minister of Internal Affairs), the Minister of Foreign Affairs, as written out in legislative norms. Furthermore, membership in the NSDC of Ukraine can, pursuant to the regulatory framework, be obtained by the heads of other central executive authorities of Ukraine, as well as other individuals, if appropriate and at the discretion of the NSDC chairman. Presently, the NSDC includes the Prosecutor General of Ukraine, the Minister of Energy, the Head of the Office of the President of Ukraine, the President of the National Academy of Sciences of Ukraine, the Commander-in-Chief of the Armed Forces of Ukraine,

the Minister of Veterans Affairs of Ukraine, the Head of the Foreign Intelligence Service of Ukraine, the Minister of Strategic Industries, the First Vice Prime Minister of Ukraine – Minister of Economy of Ukraine, Minister of Finance of Ukraine, Chairman of the Verkhovna Rada of Ukraine, Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine, Deputy Prime Minister of Ukraine – Minister of Digital Transformation of Ukraine, Head of the State Financial Monitoring Service of Ukraine, Chairman of the National Bank of Ukraine. A special place in terms of functions and powers in the NSDC of Ukraine is occupied by its secretary. Currently, the NSDC consists of 22 people who represent the key levers of ensuring the functions of both this body and the President of Ukraine, as well as the entire state in terms of ensuring the national security and defence of Ukraine, i.e., they are the direct organizers of the implementation of a strategic, socially determined, and therefore useful purpose, which is at the same time the greatest social need.

The secretary of the NSDC of Ukraine ensures the organization of work and implementation of decisions of this body and has deputies. Currently, the head of state has appointed the first deputy and two deputy secretaries of the NSDC, who form the NSDC's staff and are subject to the Law of Ukraine “On Public Service” as managers, as well as one more official – the head of the NSDC's apparatus⁴. And if until now, as noted, there has been no such regulatory act as the Regulation of the NSDC of Ukraine, then the Regulation on the NSDC Apparatus was approved by a decree of the President of Ukraine back in 2005⁵. This body provides current organizational, informational, and analytical support for the functioning of the NSDC of Ukraine – a total of 17 powers – and in this regard, its tasks are formed within the legislative field. The updated Structure of the NSDC Apparatus of Ukraine was approved by the Decree of the President of Ukraine in February 2021⁶. Apart from the management apparatus and the chief state auditor, it includes 23 services that together comprise the organizational-administrative and executive system of this body. After the start of full-scale Russian aggression in Ukraine, among all the services, the largest load falls on the services: on matters of external security; information security and cybersecurity; on matters of national and public security; on matters of military security; on issues of mobilization and territorial defence. And the beginning of the enemy's massive missile attacks on these

¹Law of Ukraine No. 183/98-BP “On the National Security and Defence Council of Ukraine”. (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

²Law of Ukraine No. 254k/96-BP “Constitution of Ukraine”. (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254k/96-bp>.

³Ibidem, 1996.

⁴Law of Ukraine No. 183/98-BP “On the National Security and Defence Council of Ukraine”. (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

⁵Decree of the President of Ukraine No. 1446/2005 “Regulations on the Apparatus of the National Security and Defense Council of Ukraine”. (2005, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1446/2005#n29>.

⁶Decree of the President of Ukraine No. 76/2021 “Structure of the Apparatus of the National Security and Defence Council of Ukraine”. (2021, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/76/2021#n15>.

objects amplified the demands for the return of such services as critical infrastructure security; on issues of economic security, on issues of social and humanitarian security. It can be argued that even the model of the administrative structure of this body reveals the planned preparation of the authorities for a possible full-scale invasion of Ukraine's north-eastern neighbour and response to it.

Thus, the competence of the NSDC (and its Apparatus) in the structure of the content of the administrative legal status of the NSDC of Ukraine constitutes a set of its powers arising from the goals of ensuring national security and defence of the state by performing tasks and functions prescribed by law. This is possible in forms and methods that do not contradict the norms of law, in legal realization, including their application. It is fair to add that, in addition to its Apparatus, the activities of the NSDC of Ukraine are ensured by other divisions created in different years, endowed with narrow competences. Among them, e.g., the Centre for countering disinformation under the NSDC as its working body, which carries out such countermeasures not only in relation to current, but also in relation to potential threats¹; the interdepartmental scientific research centre on the problems of combating organized crime², etc., the study of the administrative legal status and activities of which is not the subject of the present study.

And separately, it is necessary to emphasize the importance of information resistance to the enemy of the Information Security and Cybersecurity Service in the structure of the NSDC and the aforementioned Centre for countering disinformation under the NSDC of Ukraine, which is the body of the latter³. The Centre and the Service carry out measures to counter and prevent threats to national security in the information sphere, perform tasks to ensure information security. However, they do not duplicate each other, but complement each other. If the said Service is mainly concerned with strategic issues of information security, then the Centre is concerned with the analysis and discourse of the content of real and potential information threats, concrete practical activities to counter and prevent them. Presently, the Centre is actively involved in countering russian military aggression. And, touching on the means of such information-preventive and anti-disinformation activities, one should not overlook the role of the Information and Analytical System (IAS) "SOTA" – the Main Situational Centre of the state. IAS "SOTA" was created and put

into operation by the Apparatus of the NSDC of Ukraine. It is used to coordinate the work of all bodies of Ukraine. The system provides 20 areas of information security and national security in particular. It is a tool for managing risks in the field of national security and defence of Ukraine (Information and Analytical System..., 2022).

One cannot overlook another important body for ensuring strategic leadership of all paramilitary formations and law enforcement agencies of the state – the Staff of the Supreme Commander-in-Chief of the Armed Forces of Ukraine, created by Decree of the President of Ukraine on the day of the start of full-scale armed russian aggression in Ukraine – instead of the Military Cabinet of the NSDC of Ukraine, which terminated its activity in connection with the full-scale aggression of the enemy⁴. This body, as the fierce struggle of the Ukrainian people and the Ukrainian state with the invaders demonstrates, ensuring survival as such, only strengthens the levers of the administrative legal status of the NSDC of Ukraine as a subject of national security and defence.

The author of the study emphasizes an important aspect, namely addresses the fact that until now, the Regulation of the NSDC of Ukraine, which should govern the organization of its activities pursuant to Part 3 of Article 2 of the Law of Ukraine "On the National Security and Defence Council of Ukraine"⁵ was not developed and approved by the decree of the Head of State.

The NSDC of Ukraine is an essential element of the state mechanism, and the type of its activity is determined by its tasks and its subordination in the relevant sector directly to the President of Ukraine. Not being a completely independent organizational unit, the NSDC of Ukraine reports exclusively and directly to the Head of state. Thus, the NSDC of Ukraine, considering its membership and powers, is included in the complex organizational structure of the presidential and executive power. It is common knowledge that the bodies of the executive power of the state are subjects of administrative law and are subject to the force of administrative legislation.

The legal status of the NSDC of Ukraine is characterized by the corresponding vector and scope of the President of Ukraine's activities in relation to national security and defence. Due to the full-scale russian military aggression in Ukraine, the NSDC of Ukraine not only intensified its activity, but also shifted the focus of its activities under the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine to repel the enemy's attack, to liberate all

¹Decision of the National Security and Defence Council of Ukraine No. 106/2021 "On the Creation of the Centre for Countering Disinformation". (2021, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/106/2021#Text>.

²Decree of the President of Ukraine No. 144/2007 "On Regulations on the Interdepartmental Scientific Research Center on the Problems of Combating Organized Crime". (2007, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/144/2007#Text>.

³Decision of the National Security and Defence Council of Ukraine No. 106/2021 "On the Creation of the Centre for Countering Disinformation". (2021, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/106/2021#Text>.

⁴Decree of the President of Ukraine No. 72/2022 "On the Formation of the Headquarters of the Supreme Commander". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/72/2022#Text>.

⁵Law of Ukraine No. 183/98-BP "On the National Security and Defence Council of Ukraine". (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

occupied territories and citizens. It would be appropriate to standardize these points in the law of Ukraine on the President of Ukraine, which is currently not adopted.

The Concept of countering russian aggression and expansion (military and other) can become a key strategic document, since the war, essentially with the enemy of humanity, is concentrated only on the territory of Ukraine, the Ukrainian people, economy, ecology, etc. suffer irreparably. It is the NSDC of Ukraine that could become the initiator of the strategy to protect the security of the countries of the world, through Ukraine's example and understanding of these threats. After all, it is difficult for Ukraine to stand alone against the enemy that poses a threat to the stability of the current world order. Since the russian invasion is large-scale, and the invader, even in this century, has already encroached (and continues to do so) on sovereignty and territorial integrity, on peace not only in different countries (Georgia, Ukraine, intervention in Syria, etc.), but also in entire regions, conducts bloody wars against its own peoples, threatens the world with the use of nuclear weapons, it would be expedient to spread such a Concept in the UN and, especially, among the EU countries, the USA, the countries that are neighbours of the aggressor and countries that have suffered from russian wars and russian expansion in last century.

The NSDC of Ukraine deals with key issues of national security and defence of the state. These concepts are not only consolidated in the current legislation, but are interpreted by legal scientists and practitioners, namely V.A. Lipkan (2009), A. Amro (2019), E.V. Kobko (2022) clarified the concept of "national security" in their studies. The author of the present study, without using other scientific interpretations, for the purposes of this paper interprets the national security exactly as its concept is prescribed in the corresponding law of Ukraine, namely: "national security of Ukraine – protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats" (Article 1)¹. Thus, *national security* is the state and the highest degree of security of the listed objects of such security. The same guidelines were followed when interpreting the term "defence": "the defence of Ukraine is a system of political, economic, social, military, scientific, technological, informational, legal, organizational, and other measures of the state regarding preparation for armed defence and its protection in case of armed aggression or armed conflict" (Article 1)². Therefore, *defence* is an activity complex of the broadest, most accessible and diverse measures of such a legal subject as the state, also factoring in the elements of the subjective side of this concept.

All this leads to an understanding of the vector and plane of competence of the NSDC of Ukraine in the legislative field. It should be recalled that the competence of any state body includes its duties and rights related to the manifestation of state power; legislative consolidation of its subject of competence, as well as objects covered by its authority, and, admittedly, its subordination in the hierarchy of power. In the same way, the competence of the NSDC of Ukraine is determined, keeping in mind that its indicator will be the subject of competence, and not forgetting about the base – the current legislation in a broad sense.

Presently, it is necessary to resort to a brief analysis of the components of the competence of the NSDC of Ukraine, which will help identify this body in the system of subjects of state power.

Since the NSDC of Ukraine is a coordinating body under the President of Ukraine, as stated in Article 1 of the Law "On the National Security and Defence Council of Ukraine"³, and, given the content of its name, is an advisory body, and its decisions are put into effect by regulations of the Head of State, the said law contains legal norms regarding the powers of the chairperson, secretary, and members of the NSDC of Ukraine, as well as defines its functions and competence in general. And here the structural, organizational, and target cross-section of the activities of this body, its vertical and horizontal connections in legal relations, as well as interdependence intersect. Article 4 of the Law divides the competence of the NSDC of Ukraine into ten components, which the author proposes combining into several blocks.

The first block is the development of strategic decisions on national security and defence of Ukraine (Item 1). It includes issues of national interests; conceptual approaches to law-making, organization of power, national security and defence, material, financial, and personnel support, attracting the potential of all bodies of the executive power system, information security, scientific, economic, technical support, ecology, crises.

The second block – emergency – is associated with the declaration of mobilization, martial law or a state of emergency, or war.

The third block concerns the coordination and control of activities (including the implementation of decisions of the NSDC of Ukraine) by executive authorities and local self-government bodies within legally defined limits, the state economy in conditions of emergency and martial law.

Finally, the fourth block covers issues related to the oligarchy (recognition of certain individuals as oligarchs, maintaining a register of oligarchs).

¹Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

²Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1932-12#Text>.

³Law of Ukraine No. 183/98-BP "On the National Security and Defence Council of Ukraine". (1998, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/183/98-%D0%B2%D1%80#Text>.

Thus, even a cursory analysis of competence, certainly factoring in the expanded composition (especially in the current conditions of martial law), allows preliminarily concluding that the NSDC of Ukraine performs an important role and is a necessary body, but cannot go beyond its competence, stipulated by legislation.

The above is also confirmed by the functions of the NSDC of Ukraine, namely principal proposals to the head of state regarding the foreign and internal policy of Ukraine in the field of national security and defence; coordination and control in the mentioned spheres and – in a separate line – the same under conditions of war, state of emergency or crises when they threaten the national security of Ukraine.

According to the author of this paper, some scientists, including O.A. Panchenko (2020), propose to regulate the duplication of powers of subjects of ensuring national security and information security legislatively, thereby improving their interaction. Worthy of discussion is the statement of V.A. Lipkan (2009) regarding the clarification of the name of the subject of national security – “National Security and Defence Council”, which justifies the need to use the term “National Security Council of Ukraine” at the legislative level, without the words “and defence” because, in his opinion, defence is one of the components of national security. E.V. Kobka (2022) fairly proposes the legal consolidation of national security subjects in Ukraine by approving the regulation on interaction and coordination of national security subjects, which defines the subjects, forms, and methods of their interaction and the coordinating body among them.

Conclusions

Having investigated the activities of the NSDC of Ukraine under the President of Ukraine and the composition of the administrative legal status of the NSDC from the standpoint of administrative law, specifically in the conditions of martial law, the author of this paper fulfilled the purpose of this study and concluded as follows:

The administrative legal status of the NSDC of Ukraine as a component of the legal status is embodied in its competence (ranked and allocated four essential blocks), the entire set of its powers aimed at the performance of its goals and tasks, including the order of

formation, the degree of its independence (subordination), the sector of knowledge, functions, architecture (structure, auxiliary bodies, means) and is based on the Constitution of Ukraine, laws of Ukraine, sub-legislative acts, among which decrees of the President of Ukraine occupy a prominent place.

A prerequisite for the administrative legal status of the NSDC of Ukraine is its consolidation in the administrative legislation of Ukraine, which is currently well-developed, but still lacks the Regulations for the work of this body, which is extensive, but justifies its structure in war conditions.

In the context of the full-scale russian military aggression in Ukraine, the NSDC of Ukraine not only intensified its activity, but also shifted the focus of its activities under the President of Ukraine specifically as the Supreme Commander-in-Chief of the Armed Forces of Ukraine to repel the enemy's attack, to liberate all occupied territories and citizens. It would be appropriate to standardize these points in the law of Ukraine on the President of Ukraine, which has not yet been adopted, and to develop the details in the Law of Ukraine “On the National Security and Defence Council of Ukraine”.

The principles of activity of the NSDC of Ukraine and its subdivisions were defined, it is stated that the principle of Ukrainocentrism in this wartime becomes the main one and that it would be correct to consolidate the principles of the NSDC's activity in legislation.

Since the russian invasion is large-scale, and the invader, even in this century, has already encroached (and continues to do so) on sovereignty and territorial integrity, on peace not only in different countries, but also in entire regions, the NSDC of Ukraine to overcome real threats to the states of the world and world order, it is proposed to develop the relevant Concept and spread its strategic approaches at the international level, especially among the EU countries, the USA, and the countries that are neighbours of the aggressor.

Conflict of Interest

None.

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Рада національної безпеки і оборони України: адміністративно-правовий статус

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Анотація

Актуальність дослідження зумовлена протистоянням збройній агресії РФ, зокрема безпековим державним органом – Радою національної безпеки і оборони України, який для відсічі ворога та звільнення окупованих територій активував свою діяльність при Президенті України як головнокомандувачу Збройних сил України. Метою статті є вивчення характеристик адміністративно-правового статусу Ради національної безпеки і оборони України та надання пропозицій щодо вдосконалення статусу з огляду на дію воєнного стану в Україні. Використано різнорівневі методи наукового пошуку, найбільш результативними й активними серед яких стали порівняльний метод і методи аналізу. Автор статті узагальнив і підтвердив наукову новизну досліджуваної теми, а також окреслив низку прогалин щодо правового забезпечення адміністративно-правового статусу Ради національної безпеки і оборони України. Зокрема, для встановлення порядку роботи цього органу запропоновано затвердити Регламент, який наразі залишається актуальним. Доведено доцільність розроблення та затвердження стратегічно важливого документа в умовах сьогодення – Концепції протидії російській агресії та експансії (воєнній та іншій). Автор статті вважає, що безпековий державний орган країни може виступити ініціатором стратегії захисту безпеки держав світу, оскільки Україна є однією з країн світу, яка наразі потерпає від збройної агресії ворога-сусіда. Практична цінність цієї статті та висновків, зроблених автором, полягають у конкретних положеннях, що можуть бути використані для підвищення ефективності діяльності розглядуваного державного органу, особливо в умовах воєнного стану, а саме зміцненні обороноздатності держави, відсічі віроломного нападу ворога, удосконаленні функціонування президентської влади, а також виконавчої влади загалом і її розгалужень, особливо щодо забезпечення національної безпеки держави

Ключові слова:

Верховний Головнокомандувач; Збройні Сили України; безпековий державний орган; обороноздатність; воєнний стан; влада; президент; національна безпека