

IMPLEMENTATION OF STATE GUARD IN UKRAINE: PROBLEM RESOLUTION



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Abstract. The article is devoted to the problem of state guard implementation in Ukraine and ensuring the national security of Ukraine as well as the problems of state regulation of the Department of State Guard of Ukraine (hereinafter referred to as DSGU) in relation to ensuring the normal functioning of the state authorities of Ukraine and the security of officials, and the study of the role of normative and legal principles of the agency's activity in this process is extremely important.

The question is raised about the fact that the DSGU has a special legal status of the state authority, which, along with the Ministry of Internal Affairs of Ukraine, the specially authorized central executive body on the state border protection of Ukraine, other central executive authorities of Ukraine, the Security Service of Ukraine, which within the limits of its competence and in cooperation with the DSGU, take part in the implementation of state protection. The author describes the functions that it is the DSGU, as a state law enforcement agency of special purpose, to ensure, in accordance with the legislation, the proper protection of state authorities, officials and objects against unlawful encroachments and other offenses.

Keywords: *state security, national security, bodies of state power of Ukraine, normative and legal principles, state law enforcement agency.*

Introduction

The Department of State Guard of Ukraine is the main subject in a system that protects the bodies of state power and, first and foremost, ensures the security of senior officials of Ukraine. Therefore, considering the problems of state regulation of the DSGU activity in order to ensure the normal functioning of state authorities of Ukraine and the security of officials. The study of role of the legal and regulatory framework of the body's activity in this process is extremely important.

The purpose of the article is the activity of the DSGU regarding the security of senior officials, as well as the protection of administrative buildings and objects of state authorities. Moreover, the competence of the DSGU includes the protection of official delegations of foreign states, heads of international organizations that arrive in Ukraine or sojourn on its territory.

Statement of the problem. The priorities of the DSGU are to ensure the security of the subjects of authorities, as well the basic principles of the body's activity are the principles of legality, continuity, respect for the rights, freedoms, dignity of man and citizen, unity of command.

Presentation of the main research material. The legal basis of the DSGU activity is the Constitution of Ukraine, international

treaties of Ukraine, the Law of Ukraine "On State Protection of State Authorities of Ukraine and Officials" and other laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, as well as departmental and interagency legal acts, which regulate relations in the field of state security.

It should be noted that laws as well as other normative and legal acts have been

adopted on the basis of the Constitution of Ukraine and must comply with it. The DSGU activity is regulated by the normative and legal acts of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers, normative and regulatory documents of the DSGU.

Let's consider several normative and legal acts of the Verkhovna Rada of Ukraine. Thus, the regulations of the Law of Ukraine "On State Protection of State Authorities of Ukraine and Officials" [1], that establish the legal foundations of state security and the principles of its protection, define the concept of state security aimed at ensuring security of officials and other persons, as well as state protected objects. The main tasks and powers of the DSGU, ways of state guard implementation, duties and rights of servicemen of the DSGU are outlined while ensuring the security of officials, who are subject to state security in the places of their permanent and temporary stay.

Concerning the persons who claim to occupy specified by this law positions connected with the performance of the state or local self-government functions, a special examination is carried out, including information submitted in person. Persons who are subject to the law are prohibited from using their official position in order to obtain unlawful benefits, as well as to exceed their powers.

The Law of Ukraine "On the General Structure and Number of the Department of the State Guard of Ukraine" [2] approves the general structure and number of the DSGU, and the Law of Ukraine "On Combating Terrorism" [3] sets out the basic principles and legal bases of the counter terrorism fight, as well as the powers of subjects of the anti-terrorism struggle, including the DSGU. The Law provides that the Head of the DSGU is part of the Interdepartmental Coordination Commission of the Antiterrorist Center under the Security Service of Ukraine.

According to the provisions of the Law [3], the DSGU is endowed with the following powers:

- to take part in operations to stop terrorist acts directed against officials and objects entrusted to be protected by subordinate units of the DSGU;
- to provide the necessary forces and means to the Antiterrorist Center under the Security Service of Ukraine;

- to provide their effective implementation during anti-terrorist operations.

Nowadays, a number of normative acts should be revised since their provisions do not completely cover those social relations they were adopted for. The legal norms of such acts discussed in the following sections must be brought into line with other laws of Ukraine.

Contradictions also arise within misunderstanding of the essence of the legal norm by the subject of law-enforcement activity owing to the low level of legal culture and legal awareness. Interpretation of legal norms serves as a mechanism for finding out the true meaning of a legal provision, overcoming conflicts and gaps in legislation. However, the role of interpreting legal norms in ensuring legality and improving legislation is not sufficiently taken into account by legal science and legal practice.

Thus, within the years of Ukraine's independence, a lot of efforts have been achieved in the direction of establishing the normative and legal principles of the DSGU about ensuring the implementation of the tasks entrusted to the law-enforcement agency, but the assumed measures failed to form an optimal system of legal regulation in this area. This is explained by the fact that the normative and legal regulation of the DSGU activity in relation to the tasks entrusted to the law-enforcement agency is still at the stage of formation and becoming characterized by a considerable number of gaps and conflicts.

As stated in the Law of Ukraine "On State Protection of State Authorities of Ukraine and Officials" [1], state protection of state authorities of Ukraine and officials (hereinafter - state guard) is a system of organizational, legal, operational, investigative, engineering and technical, and other measures carried out by specially authorized state bodies in order to ensure the proper functioning of the bodies of state power of Ukraine, the security of officials and objects specified by the Law.

The Department of State Guard of Ukraine has been noted above as a state law enforcement agency of a special purpose, subordinated to the President of Ukraine and under the control of the Verkhovna Rada of Ukraine.

The Department of State Guard of Ukraine within the limits of its powers, on the basis of and in compliance with the laws and other

normative legal acts issues orders, organizes and monitors their execution.

The National Police, the specially authorized central executive body for the state border protection of Ukraine, other central executive authorities of Ukraine, the Security Service of Ukraine within their competence and in co-operation with the Department of State Guard of Ukraine participate in the implementation of state security.

The Department of State Guard of Ukraine is carried out the following tasks:

- to ensure state security of the state officials;
- to secure the family members of the officials, determined by the Law, who live with them or accompany them;
- prevention of unlawful encroachment upon officials and their families and objects protected by state, their identification and termination;
- protection of the objects specified by the Law [1];
- ensuring safe operation of vehicles intended for officials specified in the Law;
- participation in venues aimed at combating terrorism.

The servicemen of the Department of State Guard of Ukraine are obliged:

- 1) persistently and sequentially implement the policy of the state in the field of defense and ensuring the national security of Ukraine;
- 2) strictly adhere to the requirements of the legislation and military statutes, to perform their duties effectively and consciously;
- 3) to maintain an appropriate level of professional and legal knowledge, special, combat and physical training;
- 4) to protect and respect the constitutional rights and freedoms of man and citizen, to be a model of high culture, modesty and endurance.

For committed offenses the servicemen of the Department of State Guard of Ukraine bear responsibility for disciplinary, administrative, material or criminal liability in accordance with the law.

The actions of the servicemen of the Department of State Guard of Ukraine may be appealed in accordance with the procedure established by law. The servicemen of the Department of State Guard of Ukraine are extended to the social guarantees provided by

the legislation of Ukraine for servicemen of the Armed Forces of Ukraine.

The serviceman of the Department of State Guard of Ukraine is not liable for the moral, material and physical damage caused by him in connection with the lawful use of physical force, special means and firearms. No one, except direct superiors, has the right to interfere in the official activity of the servicemen of the Department of State Guard of Ukraine. For impediment of their official duties performance, the affront to honor and pride, resistance, threat or violence against servicemen of the Department of State Guard of Ukraine and members of their families, encroachment on their life, health and property in connection with the performance of their duties the responsibility comes under the laws of Ukraine.

As it was stated, during the execution of official duties, personal inspection of a serviceman of the DSGU, as well as things of personal possession, vehicles he uses can't be examined without the authorized representative of the Department of State Guard of Ukraine, except cases of a crime committed by this serviceman.

In order to ensure the security of state protected officials in places of permanent and temporary residence, the DSGU has been issued the Order [4]. The requirements of the order are obligatory for enterprises, institutions and organizations of all forms of ownership, as well as citizens, stateless persons. Paragraph 2 stipulates that when carrying out the state protection of servicemen of the DSGU are guided by the current legislation of Ukraine and the Order.

Paragraph 19 "On the procedure for ensuring the safety of state protected officials in places of permanent and temporary residence" approved by this Order provides: "to apply measures of physical influence, to keep, wear and use firearms and special means on the basis and in accordance with the procedure, provided by the Law of Ukraine "On the Militia", military statutes and "Rules of application of special means in the protection of public order", approved by the Resolution of the Council of Ministers of the USSR [5], to carry weapons and special equipment in all kinds of transport.

It should be noted that these bills have already been abolished, and therefore there is an objective need to make appropriate amendments to the above Procedure [4],

which should include references to new bills such as: the Law of Ukraine "On National Police" and the relevant Government Decree, so far as the relevant provision of the aforementioned bills that are currently guided by the DSGU.

According to paragraph 22 of the Procedure – servicemen of the DSGU have the right to use special vehicles and cars, as well as to use official dogs in the following cases:

- for the guard of the state protected officials, citizens and self-defense against attacks and other acts that pose a threat to their life or health;
- to repel an attack on protected objects (regime territory), adjacent buildings, premises, facilities and vehicles, regardless of their belonging or release in case of capture;
- for the detention and delivery of the persons who have committed an offense to the police or other law enforcement agencies, if the abovementioned persons resist the servicemen of the DSG of Ukraine or if there are reasons to believe that they can escape or harm others or themselves;
- to stop the resistance to servicemen of the DSG of Ukraine and other persons performing their official duties.

The type of special means, the time of beginning and the intensity of its use are determined taking into account the situation, the nature of the offense and the person of the offender.

In accordance with paragraph 23 of the Order the servicemen of the DSG of Ukraine, during the performance of security tasks of state protected officials in their places of permanent and temporary residence have the right to use firearms in the following cases:

- to protect the state protected officials and other citizens from attacks that threaten their lives and health, as well as the release of hostages;
- to repel an attack on a serviceman of the DSG of Ukraine if his life or health is in danger;
- in the case of attempts to forcibly take possession of weapons, combat and other equipment, if other methods and means can not stop this attempt;
- to repel an attack on protected objects, special vehicles, living rooms of citizens, premises of state and public enterprises,

institutions and organizations, as well as to release them in case of capture;

- to detain a person who has been caught in committing a serious crime and is trying to escape;
- to detain a person who commits an armed resistance, attempts to escape from custody, as well as an armed person who threatens the use of weapons and other items that endanger the lives and health of protected officials and/or servicemen of the DSG of Ukraine;
- to stop a vehicle, an unmanned aircraft by damaging it in case of a threat to life or health of the protected official, citizen or serviceman of the DSG of Ukraine.

It is forbidden to apply and use firearms with a significant gathering of people, if unauthorized persons can be harmed.

A serviceman of the DSG of Ukraine has the right to use the weapon to set an alarm or call for help to neutralize an animal that threatens the life and health of state protected official, citizen or a serviceman of the DSG of Ukraine.

The serviceman of the DSG of Ukraine has the right to prepare firearms and to make them readily available if he considers that in certain circumstances there may be reasons for its application. While detaining criminals or offenders the serviceman of the DSG of Ukraine has suspected them in the committing crimes or offenses, as well as in the inspection of suspicious documents, a serviceman of the DSG of Ukraine can make a firearm readily available that is a warning about the possibility of its application.

Attempts of a person detained by the serviceman of the DSG of Ukraine with firearms in his hands, approaching him, reducing the distance he has determined, or touching a weapon give a serviceman of the DSG of Ukraine the right to use firearms.

The use of weapons should be preceded by warnings about the intention to use them, if circumstances permit. Without warning, weapons may be used if there is an immediate threat to the life or health of the state protected official, citizen or a serviceman of the DSG of Ukraine.

In Article 19 of the Law [1], the actions of servicemen of the DSG of Ukraine may be appealed in accordance with the procedure established by law. The serviceman of the DSG of Ukraine, who are prosecuted for committing a criminal offense with the

imposition of a penalty in the form of imprisonment, deprivation of liberty, deprivation of the right to occupy certain positions or deprivation of military rank or for committing an administrative corruption offense connected with violation of the restrictions provided

for by the Law of Ukraine "On the Principles of Prevention and Counteraction of Corruption" are subject to dismissal from service. In addition, the servicemen of the DSG of Ukraine have no right to be in political parties.

Conclusion

Thus, none of the civilized countries of the modern world can do without the reliable state protection of the higher authorities and their officials. One of the directions aimed at preventing criminal acts is the activity of national special bodies and services. In Ukraine, besides the Security Service of Ukraine, such a separate special body is the Department of the State Guard of Ukraine, the tasks, the basis of organization and activity have been considered above. This law-enforcement agency of special purpose, in accordance with the law, has to ensure the proper protection of state authorities, officials and objects against illegal encroachments and other offenses.

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