

Organizational and Legal Basis for Increasing the Effectiveness of the Interaction of the Department of the State Guard of Ukraine with Other Entities for the Provision of National Security



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Abstract. *The article examines the state of normative regulation of the interaction of the Department of the State Guard of Ukraine with other security and defense sectors, based on the analysis of doctrinal and expert approaches, the directions of organizational and legal support for increasing the effectiveness of this interaction in the context of security sector reform in accordance with European standards and changing the paradigm of ensuring the national security.*

Keywords: *national security, security and defense sector, cooperation, coordination, state security.*

Problem statement

National security is an integral and predominant function of any sovereign state, which means “the security of state sovereignty, territorial integrity, democratic constitutional system and other national interests of Ukraine from real and potential threats” [1].

The systemic security and defense sector reforms in Ukraine require adequate and sufficient conception of existing and potential threats to legislation, defining the principles of national security and defense leadership, standardizing the structure and complex of the security and defense sector, management, coordination and interaction systems of its bodies, the implementation of a comprehensive risk-oriented approach to planning in the field of national security and defense in order to ensure a productive civil democratic control over the bodies and units of the security and defense sectors.

Taking into account the adoption of the Law of Ukraine “On National Security of Ukraine”, there is a need for the coordination of other normative legal acts with its provisions, including the Law of Ukraine “On Protection of State Authorities of Ukraine and Officials” [2].

Moreover, in conditions of open military aggression against Ukraine, the increase in the level of terrorist threat and manifestations of separatism, the situation is complicated not only by numerous attempts to discredit the bodies of state, but also by the systematic work of the enemy intelligence, aimed at attempts to intimidate and physically destroy officials, the illegal capture of especially important infrastructure objects, the issue of increasing the effectiveness of the Department of the State Guard of Ukraine (hereinafter – DSG), ensuring effective collaboration and cooperation between DSG and other defense and security agencies. The growth of its significance requires further study of this crucial issue.

The subject of the article is the legislative provision to increase the effectiveness of the interaction between the Department of the State Guard of Ukraine and other subjects-providers of national security.

The purpose of the article is to elaborate proposals to the current legislation on improving the mechanism of interaction between the Department of the State Guard of Ukraine and other subjects-providers of national security.

Analysis of recent research and publications.

As the theoretical grounds for studying the problem, we have chosen the works of leading scholars in the field of administrative law: O. Andriiko, V. Averianov, O. Bandurka, A. Berlach, Yu. Bytiak, A. Chubenko, R. Kaliuzhnyi, V. Kolpakov, O. Komisarov, S. Konstantynov, O. Kopan, O. Korystin, M. Kucheriavenko, O. Kuzmenko, V. Lipkan, M. Loshytskyi, M. Lytvyn, T. Minka, S. Mosondz, N. Myronenko, V. Nechai, Nevidomyi, N. Nyzhnyk, V. Olefir, O. Orliuk, L. Savchenko, O. Tkachenko, L. Voronova and others.

Presentation of the main research material.

In accordance with the Law of Ukraine “On National Security of Ukraine” the realization of the tasks for ensuring national security directly relies on the security and defense sector. The structure of the security and defense sector includes: the Ministry of Defense 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 Guard Service of Ukraine, the State Migration Service of Ukraine, the State Service of Ukraine for Emergencies, The Security Service of Ukraine, the Office of the State Protection of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Apparatus of the National Security and Defense Council of Ukraine, central executive authority, which ensure the formation and implementation of the state military-industrial policy.

An analysis of the current and prospective state of a security environment can help to increase the importance of such a direction of law-enforcement activity, as ensuring the proper functioning of public authorities and the security of officials, since it is from this that not least depends on the proper performance of their powers. The security of senior officials of the state is an integral part of the national system of ensuring the national security of Ukraine and includes the implementation of security, information, political, organizational,

operational, technical and other measures and is implemented through the implementation of the state policy of national security [3, p. 1–2].

The protection of state authorities and officials in Ukraine, as a specific area of law enforcement activities, is primarily for the DSG of Ukraine, which, by virtue of its appointment, occupies a separate place in the system of law enforcement agencies. At the same time, the activity of the DSG of Ukraine, like any other law enforcement agency, is aimed at protecting the rights, freedoms and legitimate interests of citizens, the interests of society and the state from various unlawful encroachments [4, p. 55–61].

The legal basis for the interaction of the DSG of Ukraine with other law enforcement bodies of Ukraine is the Constitution of Ukraine, the Laws of Ukraine “On National Security of Ukraine”, “On State Protection of State Authorities of Ukraine and Officials” [2], “On Operational Investigative Activity”, “On Legal the regime of martial law”, “On the National Guard of Ukraine” [5], “On the State Border Guard Service of Ukraine”, “On the National Police” [6], “On the Security Service of Ukraine” [7], the Ordinance of the Ukrainian Armed Forces from May 27, 2011, “On Approval of the Procedure for the Security of Officials, on which the state protection is carried out in places of permanent and temporary residence” [8], as well as interagency instructions and orders regulating the interaction of the MLA of Ukraine and other law enforcement fronts of the state in the sphere of state protection of state authorities of Ukraine and officials.

According to art. 10 of the Law of Ukraine “On State Security of State Authorities of Ukraine and Officials” [2] The National Police, the specially authorized central executive authority on issues of the state border guard of Ukraine, other central executive authorities of Ukraine, the Security Service of Ukraine within its competence and Interaction with the Office of State Security Administration of Ukraine is involved in the implementation of state protection. Interaction takes place on the principles defined in the first place by the normative acts specified above.

The interaction of the DSG of Ukraine with the subjects of ensuring national security in

the broad sense can be regarded as a state of communication between them, which is characterized by mutual influence, and includes the exchange of people, activities, information in order to protect the legitimate interests of individuals and legal entities. Interaction in the narrow sense – this is a common or coordinated in space and time activities of two or more entities to achieve one or more goals.

The issue of interaction is important, since operational information that became known to the SBU and the Ministry of Internal Affairs in relation to offenses and those who are planning them should be transmitted further and proceed to the last point of protection – the RIA of Ukraine in its entirety. Operational information that Ukraine receives from the SBU, SZR, the Ministry of Internal Affairs, the National Police, the State Border Guard Service of Ukraine and other institutions and organizations gives an opportunity to assess the situation that may arise in the surrounding administrative buildings in the near future, on the basis of which decisions are made on the implementation of a number of measures to strengthen the security of objects of protection. Also important is information about individuals who plan or threaten to commit an offense against state authorities. In order to prevent such actions and to ensure safety, in all objects that are subject to state security, especially in buildings where the state authorities are located, the State Protection Department of Ukraine establishes a regime in accordance with the law [9].

Accordingly, the urgent need for the present is to create a unified integrated national security system, where special services work in a coordinated manner and receive information from various sources. Special services should be in constant interaction not only during security measures, but also with training, advanced training, which will significantly improve their interaction. A powerful reserve for improving the efficiency of operational and service activities of the DSG of Ukraine is the activation of scientific and analytical, innovation activities and qualitative improvement of the personnel training of the state security department. In other words, it is a question of increasing the weight of the intellectual, innovative component in the RIA of Ukraine [10].

RIA Ukraine is a highly specialized law enforcement agency, whose activities are aimed at diverse security and the normal functioning of protected public authorities and officials. The effectiveness of its law enforcement activities not least depends on the proper organization and productivity of interaction with law enforcement and other government bodies, enterprises, institutions and organizations. Currently, the administrative and legal regulation of the principles, grounds and order of interaction of the DSG of Ukraine is still rather fragmentary and incomplete, which greatly slows down and complicates the practice of interaction of the DSG of Ukraine with other actors of ensuring national security [3, 11–12]. The general principles of the organization of the interaction of the DSG of Ukraine with the organs of state power of Ukraine, enterprises, institutions, organizations and officials are defined in the Law of Ukraine “On Protection of State Authorities of Ukraine and Officials”, in accordance with art. 14 of which “The Office of the State Security Administration of Ukraine interacts with other bodies of state power of Ukraine, enterprises, institutions, organizations and officials that contribute to the fulfillment of its tasks” [2].

As it is rightly noted in scientific sources, this norm only states assistance from the mentioned subjects of the DSG of Ukraine, while it does not stipulate the obligatory nature of such assistance, does not specify what it is, which can negatively affect the performance of the relations of the DSG of Ukraine with different bodies and organizations. It is difficult to disagree with the fact that the term “assistance” in its content is too abstract, which does not contain any legal limits or the scope of involving the relevant bodies and organizations in the implementation of the tasks of the Office of the State Security Administration of Ukraine [11, p. 80–85].

Another disadvantage is the incompleteness of the legally established circle of subjects of interaction with the DSG of Ukraine. This ambiguity also manifests itself in relation to the principles of interaction between the Security Service of Ukraine and state bodies, enterprises, institutions, organizations and officials who, in accordance with part 1, article 8 of the Law of

Ukraine “On the Security Service of Ukraine”, as well as in relation to the DSG of Ukraine, should “promote” to the tasks of the Security Service of Ukraine [7]. At the same time, at art. 17 of the above-mentioned Law determine the peculiarities of the SBU’s interaction with law enforcement and other state bodies of Ukraine: “The Security Service of Ukraine interacts with the Office of State Security Administration of High Officials of Ukraine, law enforcement and revenue and assembly bodies in accordance with the procedure and on the principles determined by laws, decrees of the President of Ukraine and adopted on they are based on the acts of the Security Service of Ukraine and the relevant department” [7, 11]. It should be noted that the provisions of this article should be clarified as part of the interaction with the DSG of Ukraine (and not the Office of the Security Administration of High Officials of Ukraine).

Similarly, the issues of the organization of interaction, including the DSG of Ukraine, the National Police of Ukraine, are not sufficiently specified. According to art. 5 of the Law of Ukraine “On the National Police of Ukraine”, the police, in the course of its activities, interact with the law enforcement agencies and other state authorities, as well as local self-government bodies in accordance with the law and other normative legal acts [6]. At the same time, the rules are devoted to the peculiarities of interaction with the DSG of Ukraine in the absence of the law.

Another important subject of national security, the interaction of which with the DSG of Ukraine requires a proper legal regulation, is the State Border Guard Service of Ukraine. In particular, taking into account the specifics of existing threats, it is necessary to strengthen the activities aimed at countering terrorist threats and improving existing ones and creating new information-telecommunication systems and databases.

Also, special attention should be paid to the interaction of the DSG of Ukraine with the National Guard of Ukraine, whose functions are in accordance with art. 2 of the Law of Ukraine “On the National Guard of Ukraine” is the provision of protection of state authorities, a list of which is determined by the Cabinet of Ministers of Ukraine, participation in the implementation of

state protection measures of state authorities and officials; protection of important state objects, the list of which is determined by the Cabinet of Ministers of Ukraine; protection of diplomatic missions, consular offices of foreign states, representations of international organizations in Ukraine; participation in activities related to the termination of terrorist activities, etc. The National Guard of Ukraine carries out the tasks assigned to it in cooperation with law enforcement agencies, the Armed Forces of Ukraine, the Office of the State Guard of Ukraine, and other military formations established by the laws of Ukraine, local self-government bodies, prosecutor’s offices, state authorities, public associations and religious organizations, as well as with the administration and the regime bodies of protected objects and the population [5].

It should be noted that the methods of interaction of the DSG of Ukraine with other subjects of ensuring national security can be considered taking into account the following directions of its implementation:

1. In implementation of the state policy of combating unlawful attacks against officials: holding joint meetings of the colleges of interagency ministries and agencies, operational meetings of the heads of their structural units in order to address the most urgent problems of law enforcement activities, to adopt agreed decisions on the implementation of state crime prevention programs against officials, implementation of legal acts on unlawful encroachments on officials; development and implementation of joint plans, programs for combating unlawful attacks on officials; publication of joint departmental regulations regulating the order of interaction; creation of joint working groups of representatives of law enforcement agencies for studying specific problems of combating unlawful attacks on officials and developing proposals for their solution, etc. [10].

2. In prevention of crimes against officials and other offenses: development and submission to the projects of state programs for combating unlawful encroachment on officials of agreed proposals on the prevention of crimes and other offenses, including general and individual prevention, prevention of the most common

types of offenses; informing law enforcement bodies of each other about the reasons and conditions that have been revealed by them in the course of their functions, which facilitate crimes and other offenses directly controlled by another law enforcement body; the definition of a list of information, the operational exchange and use of which may contribute to the timely implementation of measures to prevent the unlawful encroachment on officials. Regulatory consolidation in case of necessity, the order of exchange of such information between law enforcement and other bodies; studying the problems of preventing illegal encroachments on officials and developing proposals and measures for their solution; preparation and submission to joint bodies, ministries and departments of joint proposals to eliminate the causes and conditions conducive to the commission of unlawful encroachments.

3. In revealing, stopping, disclosures and illegal encroachments against officials: the definition of common regulatory acts of the order of interaction of operational and investigative units in the disclosure and investigation of illegal encroachments against officials with detailed regulation of the actions of these units.

4. In the direction of improving the legal framework for combating unlawful encroachments on officials, the following forms are distinguished: joint study of the practice of applying legislation on combating unlawful attacks on officials with the aim of

developing unified recommendations for its implementation, identifying deficiencies and gaps and preparing agreed proposals for their elimination; exchange of information on the practice of implementing legal acts on law enforcement issues and the problems that arise therewith, proposals and recommendations for their solution; creation of working groups on the initiative of law enforcement agencies to prepare new bills, proposals for amendments and additions to legislation; joint discussion of the bills by the heads of law-enforcement bodies concerning the issues of combating unlawful attacks on officials and the development of agreed solutions. conducting coordination meetings of the heads of law-enforcement bodies; exchange of information on combating unlawful attacks on officials; publication of joint orders, instructions, preparation of information letters and other organizational and administrative documents; mutual use of the possibilities of law enforcement agencies for the improvement of the skills of employees, conducting joint seminars, conferences; development and approval of coordinated coordination plans and other forms of practice. The choice of forms of coordination activities to determine in each case, based on the situation and the nature of the issue that needs to be addressed. Such coordination should be carried out within the limits of the powers determined by the legislation, without interference with the organizational and regulatory activities of other law enforcement agencies [10].

Conclusions

As a result of the study of peculiarities in interaction of the DSG with other subjects of national security, we state that the current state of interaction requires the following measures: 1) harmonization of the legal framework, elimination of the conflict of laws and improvement of the current legislation; 2) development of criteria for assessing the effectiveness of interaction adequate to the realities of the present; 3) establishment of interaction with the public in the context of democratization, implementation of educational and preventive work aimed at increasing the responsibility of public associations and citizens for the security situation; 4) development of an effective communication system for timely and prompt implementation of the interaction of the MSG of Ukraine with other actors of ensuring national security; 5) introduction of a system of continuous monitoring and mutual information and exchange of information between actors in the sphere of security, formation of common information and telecommunication bases; 6) compulsory discussion of the results of the interaction of security agents not only at the departmental level, but also with representatives of other law enforcement agencies, and, if necessary, with representatives of the public, etc.

Taking into account the necessity to specify and clarify the provisions of the current legislation, it is expedient to consolidate the duty of state bodies of Ukraine, local self-government, enterprises, institutions and organizations to promote the activity of the DSG of Ukraine, which, in turn, should coordinate (with the exception of local self-government bodies) activities on state security issues. The assignment of coordination powers to the DSG of Ukraine in general is consistent with the practice of organizing the activities of other law enforcement agencies. For example, according to art. 9 of the Law of Ukraine “On the Security Service of Ukraine”, the Anti-Terrorism Center operates under the auspices of the Security Service of Ukraine for the organization and conduct of anti-terrorist operations and the coordination of activities of actors that are combating terrorism or involved in counter-terrorist operations [7]. Accordingly, it is expedient to legislatively establish the powers of the DSG of Ukraine regarding coordination of the security and defense sector bodies in matters of state protection of state authorities and officials. To resolve this issue, it is necessary to create and approve interagency normative-legal act on issues of interaction of law enforcement bodies and on its basis – creation of a permanent coordination headquarters. The created coordination headquarters will allow to increase the level of effectiveness of interaction of law enforcement bodies in the system of providing state protection [10].

In addition, the urgent need of the present is to ensure compliance with the Law of Ukraine “On State Protection of State Authorities of Ukraine and Officials” to the level of existing and potential threats to national security, aligning it with the provisions of the Law of Ukraine “On National Security of Ukraine”. It should also be taken into account that the activity of the DSG of Ukraine, in fact, in its content is not limited only to security measures, but involves the implementation of a set of preventive measures aimed at implementing the tasks entrusted to them by law [12, p. 120–124]. With this in mind, the DSG of Ukraine developed and forwarded to the President of Ukraine a bill on amendments to the Law of Ukraine “On state protection of state authorities of Ukraine and officials”, according to which the security agency will change the name, and the directions of its activities and functions will be coordinated with the most effective the standards of work of European security services.

Taking into account the experience of European security services that provide security for officials and the functioning of state authorities, the Office of State Protection of Ukraine is transformed into the State Guard Service of Ukraine [13]. The existence of a practical need to change the name of the DSG of Ukraine was also emphasized in domestic scientific sources [3].

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