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A MODERN VIEW ON THE ISSUE OF ADMINISTRATIVE RESPONSIBILITY FOR STATE SECURITY

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Abstract. In the article the author analyzes the shortcomings of the existing system of administrative responsibility in the sphere of state security of Ukraine. Ukraine's internal affairs bodies face a number of constraints in ensuring national security, including a lack of resources and capacity, which hinders their ability to effectively perform their direct functions. Another limitation is the lack of a clear legal framework and guiding principles for their activities, which may lead to inconsistencies in the implementation of the relevant competencies. In addition, internal affairs bodies may be vulnerable to political interference and influence, which may compromise their independence and effectiveness. Within the framework of increasing the level of public security, the author highlighted the following proposals: improvement of the current legislative framework specifically in the legal regulation of security, organization of supervision over the implementation of targeted programs for ensuring national security in Ukraine; improvement of the mechanism of ensuring national security of Ukraine. The author focuses on measures to prevent socially dangerous acts and administrative offenses as the most important condition for national security in Ukraine. Having defined the issues and problems related to administrative responsibility, this article is intended to give recommendations to practitioners who seek to improve the effectiveness of administrative and legal regulation in this area.

Key words: security, national security, administrative and legal regime, system of administrative and legal regulation, administrative and legal regime.

Introduction. The current socio-economic and political situation in Ukraine is characterized by the aggravation of national security problems, since since 2014 the country has been in a military conflict with Russia, which initially annexed Crimea and directly supported separatist movements in the east of Ukraine, which led to a full-scale invasion of the entire territory of the country. This has led to a number of security problems, including hybrid warfare (Kurylo, 2017: 7). The objective regularities of the complication of relations in the sphere of national security determine special requirements for their normative and legal regulation, designed to compare and order the social processes that take place in this sphere, in proportion to the emerging threats.

The concept of national security in the modern era includes a set of measures aimed at protecting the territorial integrity, sovereignty and interests of the state from internal and external threats. It is important to note that modern countries should pay priority attention not only to the protection of their borders and socio-economic stability, but also to such new phenomena as cyber security. Therefore, a comprehensive definition of national security must include measures related to new and evolving threats.

In this context, it is important that a reliable system of administrative responsibility should operate in Ukraine. This applies not only to military personnel and intelligence agencies, but also to government officials who are responsible for law enforcement, border control and other critical areas. Effective administrative accountability in the field of national security can contribute to strengthening public trust and confidence in the government's ability to protect the country's security interests. It will also help prevent mistakes or wrongdoing by officials responsible for national security and promote a culture of accountability and professionalism in the relevant institutions.

Main part. It should be noted that in Ukraine, in the field of regulatory and legal regulation and ensuring security, according to the Law of Ukraine «On the National Security of Ukraine», a system of special concepts and categories is in effect, which are equally understood by the legislator, law enforcement bodies and legal scholars (the Law of Ukraine, 2469-VIII).

In particular, many researchers devoted their works to the analysis of this issue, identifying various aspects of administrative responsibility and its impact on national security. One of the most significant studies is the work of Ya. Kolesnyk «Administrative responsibility for violations of national security legislation in Ukraine» (Kolesnyk, 2018). It is impossible not to agree with the author, who considers the legal aspects of administrative responsibility in the field of national security, describes the criteria and grounds for prosecution, and also evaluates the effectiveness of this system.

At present, the list of encroachments on public safety, objectified in the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses, is constantly expanding in connection with the appearance of new socially dangerous acts and the growth in the new criminogenic environment of public danger in the current composition of criminal crimes and administrative offenses. In this connection the importance of improving the measures of administrative responsibility for committing encroachments on the state of national security is increasing. It follows from this that the practice of ensuring national security requires the development of the theory of administrative tort as a real threat to security, which would clearly explain the content and essence of national security as an object of administrative and legal regulation.

The system of political, socio-economic, legal and other measures is designed to ensure public safety. Thus, in modern Ukraine, when solving tasks aimed at ensuring national security, the social responsibility of security and civic education bodies increases, as well as the importance of the interaction of forces that ensure public security together with civil society institutions, as well as citizens of Ukraine. Nevertheless, the main role continues to be played by the internal affairs bodies, which are the main force for ensuring public security. These bodies are responsible for the development and implementation of policies and programs that contribute to the achievement of national security goals, such as the protection of the country's territorial integrity, the fight against terrorism and organized crime, and the protection of critical infrastructure and information systems. In addition, the internal affairs bodies of Ukraine are responsible for monitoring and assessing threats to national security and for coordinating the efforts of interested parties to eliminate these threats.

Despite the importance the internal affairs bodies of Ukraine face a number of limitations in ensuring national security. One of the key constraints is the lack of resources and capacity, which can hinder their ability to effectively perform their direct functions. Another limitation is the lack of a clear legal framework and guiding principles for their activities, which may lead to inconsistencies in the implementation of the relevant competencies. In addition, internal affairs bodies may be vulnerable to political interference and influence, which may compromise their independence and effectiveness. The legal principles of administrative responsibility in Ukraine are enshrined in the Constitution of Ukraine and other relevant legal acts. Thus, the Constitution outlines the principles of rule of law, separation of powers, protection of human rights and freedoms, which are the basis for administrative responsibility. Other laws and regulations contain specific provisions and procedures for administrative responsibility in various areas of national security, such as law enforcement, intelligence, and cyber security. In addition, Ukraine is a party to several international treaties and agreements that establish norms and standards of administrative responsibility in the spheres of transnational security, such as terrorism, organized crime and the proliferation of nuclear weapons (Constitution, No. 254к/96-BP).

Despite the positive dynamics, the state of national security in our country today can be characterized as unstable. Because of this, we can talk about a number of modern challenges for administrative responsibility in this area, which can be conditionally divided into constitutional and political.

Thus, administrative responsibility for national security in Ukraine raises several constitutional issues, in particular:

- Human rights. Administrative responsibility for violations of national security must also be balanced with the protection of human rights and civil liberties, which are enshrined in the Constitution of Ukraine and international conventions. Any measures taken to ensure national security must be proportionate and indispensable in special cases.

- Oversight and accountability. Authorities responsible for national security must have effective oversight and accountability mechanisms to ensure the legality of their actions and protect human rights and civil liberties. This includes the use of judicial review mechanisms, parliamentary oversight and independent oversight bodies.

- International obligations. Ukraine participates in several international treaties and agreements that establish norms and standards of administrative responsibility in the fields of transnational security, such as terrorism (Convention, International document, 995_518), (Convention, International document, 995_374) organized crime (Convention, International document, 995_78) and the proliferation of nuclear weapons (Treaty, International document, 995_098). Therefore, all administrative responsibility measures taken by Ukraine must comply with its international obligations.

Several political problems related to administrative responsibility for violations of national security in Ukraine should also be taken into account:

- Political interference. Law enforcement and intelligence agencies are concerned about the issue of national security. Such interference may adversely affect the independence and effectiveness of these bodies and jeopardize their ability to fulfill their mandate.

- Polarization and factionalism. These are two factors that have a negative impact on the system of administrative responsibility in Ukraine. Competition between different political groups and parliamentary factions can create conflicts of interest and disagreements between individual departments, which will lead to difficulties in coordination and cooperation. This, in turn, can weaken the system of administrative responsibility and lead to possible gaps in its functioning.

- Corruption. Such a phenomenon as corruption can threaten the integrity of law enforcement and intelligence agencies and undermine their ability to fulfill their powers (Drago Kos, 2022:155).

- Public trust and legitimacy. In Ukraine, there is concern about the lack of accountability in administrative decision-making. Therefore, ensuring transparency and openness in determining administrative responsibility for national security is urgent to maintain public trust and legitimacy.

To solve these political problems, it is necessary to adhere to the general principles of legal regulation, as well as to respect the independence and integrity of administrative bodies responsible for national security.

The current state of administrative responsibility in Ukraine has a significant impact on national security issues. Some of these influences are:

- The effectiveness of law enforcement and intelligence agencies is critical to ensuring national security. However, the state of administrative accountability, such as the level of corruption, political interference and accountability, can significantly affect the ability of these agencies to carry out their mandate effectively. If administrative responsibility is breached, it can hinder law enforcement and intelligence agencies from combating threats to national security, such as terrorism, cybercrime or organized crime.

- The state of administrative responsibility has a direct impact on the trust and legitimacy of law enforcement and intelligence agencies on the part of the public. If administrative accountability is violated, such agencies may be perceived as inefficient and/or corrupt, which will undermine trust and legitimacy. This attitude on the part of the public can make it difficult for these agencies to work effectively in preventing and combating threats to national security.

– International cooperation plays an important role in ensuring national security. Violations of administrative responsibility may raise doubts in other countries about the efficiency and integrity of Ukrainian agencies responsible for national security. This may hinder cooperation with Ukraine on national security issues and negatively affect Ukraine's ability to prevent and combat threats.

– Issues of constitutional order and human rights are of key importance in the context of administrative responsibility for national security. If this responsibility is not fulfilled in accordance with constitutional principles and human rights, it can undermine the rule of law and violate human rights, which in turn will negatively affect national security.

The state of administrative responsibility in Ukraine significantly affects national security. Solving each of the above problems related to administrative responsibility plays a crucial role in ensuring the effective work of law enforcement and intelligence agencies, maintaining public trust and legitimacy, developing international cooperation, and protecting constitutional and human rights.

The experience of foreign countries should be taken into account in order to improve the legal regulation of administrative responsibility for national security in Ukraine. Thus, norms aimed at ensuring national security are contained in the constitutions of many foreign states, in particular the United States. The US national security system, created in 1947 on the basis of the National Security Act, was not, in its essence, a system that ensures the security of the country in general, but acted mainly as a tool for defending American interests in the world. After the events of 1991, with the collapse of the Soviet Union, the world changed, the widely represented «Soviet threat» was replaced by cross-border threats (international terrorism, organized crime, drug trafficking, illegal migration). The change in the system and structure of external threats led to necessary changes in the US national security strategy. In December 2000, the report International Crime Threat described real and potential threats to the security of the United States from international organized crime groups and syndicates, including Russian ones, and the activities of Russian organized crime were discussed three times at hearings in the US Congress.

In contrast to France, Italy, Spain and other countries of the main type of centralized model of ensuring the internal security of the state, where political responsibility for the state of law and order in the country is borne by the Minister of the Interior, the United States does not have and never had a single ministry responsible for ensuring internal security in the country. All the activities of law enforcement structures in the system of executive authorities of the USA at the federal level are diversified and carried out mainly by the forces of five ministries: internal security, justice, defense, and finance.

The conducted analysis of foreign legislation in the field of security shows that the conceptual and categorical apparatus of national security developed abroad, as well as the established security models, can be used in the development of the national security system in Ukraine as well.

In developed countries, a key element contributing to the strengthening of administrative responsibility for national security is the presence of separate branches of government. On the contrary, in Ukraine we often observe cases of cooperation between the judicial, legislative and executive branches of government, which leads to a lack of impartiality and balance. In order to achieve greater efficiency in the field of national security, it is necessary that these branches of government act independently of each other. Only in this case will we be able to provide the necessary checks and balances to maintain administrative responsibility for national security.

Based on the experience of developed countries such as the USA, it is clear that there are certain provisions that should be included in the Law of Ukraine «On National Security of Ukraine» to reflect the current state of the law. In particular, it is necessary to consider the following proposals.

In light of the growing prevalence of cybercrime, it is necessary to strengthen the mechanisms to prevent such activities and to build specialized agencies that will exclusively take care of this area. The Internet and computer technology are critical components of national security, and therefore any

national security law must include comprehensive provisions for cybersecurity measures and long-term planning. However, the existing provisions in this area are often incomplete and insufficient, as evidenced by the frequent cases of data leakage from both private and public enterprises. To address these shortcomings, the government must create a robust regulatory framework to prevent similar incidents in the future and develop effective methods to hold those responsible accountable for their actions. This may include measures such as the imposition of fines or legal sanctions against individuals found to have compromised sensitive user data. By taking these measures, Ukraine will be able to strengthen its cybersecurity infrastructure and better protect its citizens from the ever-growing threat of cybercrime.

In order to improve the coordination and efficiency of the work of the national security bodies of Ukraine, it is necessary to create a single body at the legal and factual levels. This organization will serve as a central point for coordinating the work of such agencies as the Security Service of Ukraine and the Main Intelligence Directorate of the Ministry of Defense of Ukraine, which suffer from a lack of coordination that leads to catastrophic consequences. By creating a single body to oversee the activities of these agencies, Ukraine will be able to prevent past mistakes that were caused by incomplete or inaccurate information due to the absence or incompleteness of information.

It is necessary to strengthen measures to protect the rights and freedoms of citizens, including the protection of personal data and privacy. Although this is similar to the first point of our proposals, it is still completely different. In practice, personal data are often violated without proper grounds under the guise of ensuring national security. Specific grounds for checking the confidential data of individuals should be included in the draft law, as well as provide for measures to ensure their preservation and prevent further information leakage. On the territory of the United States, information confidentiality is one of the main areas, which should be taken into account in Ukraine as well.

Conclusions. Summarizing all of the above, it would be appropriate to emphasize that social relations that arise in connection with the administrative-legal regulation of national security are an integral part of the general subject of administrative law and represent an independent object of legal regulation that is complex in nature.

Legal regulation of public safety in Ukraine is ensured by the Constitution of Ukraine, laws of Ukraine, international normative acts and other normative acts.

As part of increasing the level of public safety, the following proposals can be highlighted:

1) improvement of the current legislative framework, which carries out legal regulation of security. Administrative law has a huge potential, within the framework of the implementation of the protection of national values, which is related to the scale of administrative and legal influence, which refers to the activities of subjects of national security. Recently, the nature of dangers and threats has changed significantly, there has been a change in relations with foreign countries, which has led to a change in the essence and goals of security activities and has been reflected in the current legislation in the field of expansion and detailing of goals and tasks, as well as security powers.

2) organization of supervision over the implementation of targeted programs for ensuring national security in Ukraine;

3) improvement of the mechanism for ensuring the national security of Ukraine. Special attention should be paid to measures to prevent socially dangerous acts and administrative offenses as the most important condition of national security in Ukraine.

Despite the special nature of most of the mentioned recommendations, they are based on a reasonable combination of restrictions and incentives, which are decisive in terms of administrative and legal regulation of public safety relations.

If these recommendations are followed, Ukraine will be able to strengthen administrative responsibility for national security and ensure its more effective, transparent and human rights-respecting implementation.

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