

CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE INSTITUTIONALIZATION OF UKRAINE'S SECURITY AND DEFENSE SECTOR

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Annotation. The article focuses on the examination of the constitutional and legal framework that underpins the institutionalization of Ukraine's security and defense sector. The relevance of this issue stems from the close connection between the security and defense sector of Ukraine and the safeguarding of the country's constitutional order. Consequently, there is a need to elucidate the constitutional and legal basis for the organization and functioning of this sector. Additionally, the author emphasizes that the Constitution of Ukraine does not explicitly reference this sector, and its thorough legal institutionalization was accomplished relatively recently, particularly with the enactment of the comprehensive Law of Ukraine "On National Security of Ukraine" in 2018.

Before the enactment of this Law, various legislative acts were in place, each contributing to the formation of differing approaches. Notably, these acts facilitated the institutionalization of the Military Organization of the State, a complex entity that consolidated the responsibilities of state structures and, by its legal nature, closely aligned with the contemporary concept of Ukraine's security and defense sector.

To thoroughly understand the key aspects of the institutionalization of Ukraine's security and defense sector, it becomes necessary to compare the legal constructs of the "Military Organization of the State" and the "security and defense sector of Ukraine". This comparative approach aims to offer a clearer understanding of the logic behind state-building in the context of Ukraine's national security and defense, highlighting the continuity in this domain and the corresponding constitutional and legal regulations.

Applying a systemic analysis to the above two terms, we can distinguish the basic and key components of the latter. The first component is institutional, which is what entities are grouped under these terms. From the institutional point of view, the security and defense sector covers a wider range of actors. The second component (legalization) is related to the legal basis for their activities. In both cases, it means that the activities of the respective entities are carried out in accordance with the Constitution and laws of Ukraine. At the same time, only the definition of the concept of the Military Organization of the State also stipulates that the entities not only act on the basis of the Constitution and laws of Ukraine, but are also created. The third component (functional) is that the definition of these two concepts indicates what tasks the Military Organization of the State was directly facing, as well as the tasks currently facing the units of the security and defense sector of Ukraine. And finally, the fourth component (guarantee) is related to guaranteeing compliance with the requirements of the Constitution and laws of Ukraine within the organization and activities of the above-mentioned entities.

Key words: Constitution of Ukraine, Ukraine's security and defense sector, constitutional principles of organization of Ukraine's security and defense sector, constitutional order of Ukraine, protection of the constitutional order of Ukraine, Armed Forces of Ukraine, other military formations.

1. Problem statement.

To thoroughly examine the issues related to the protection of Ukraine's constitutional order by units of the security and defense sector, it is essential to understand its legal nature and the constitutional foundation for its organization and functioning. The clear legal institutionalization of Ukraine's security and defense sector occurred relatively recently, primarily through the adoption of the Law of Ukraine "On National Security of Ukraine" in 2018 [1]. This assertion is substantiated by paragraph 3 of Section VI, "Final and Transitional Provisions", of this Law, which stipulates that certain laws of Ukraine, including the Law of Ukraine "On Democratic Civilian Control over the Military Organization and Law Enforcement Agencies of the State", are deemed invalid [2].

2. Current state of the problem elaboration.

Within the framework of the modern legal doctrine, the issues of organization and functioning of the security and defense sector of Ukraine have been studied by such scholars as V.M. Aleksandrov, Yu.P. Bytyak, V.V. Bohutskyi, P.P. Bohutskyi, Ye.I. Hryhorenko, S.M. Melnyk, M.M. Tyshchenko, etc. Simultaneously, the issue of the institutionalization of Ukraine's security and defense sector, as well as the constitutional and legal framework governing its organization and functioning, remains insufficiently explored.

3. The aim of the study.

The aim of the study is to analyze the constitutional and legal framework for the institutionalization of the security and defense sector of Ukraine.

4. Main material presentation.

The Law of Ukraine "On Democratic Civilian Control over the Military Organization and Law Enforcement Agencies of the State" remained in force until June 21, 2018. This Law did not employ the term "security and defense sector of Ukraine", instead using the term "Military Organization of the State" [3, p. 42]. According to part three of Article 1 of this now-defunct Law, the "Military Organization of the State" was understood as a set of state authorities and military formations established in accordance with the Constitution and laws of Ukraine, whose activities were subject to democratic control by society and were directly focused on addressing tasks related to protecting the state's interests from external and internal threats. Given that the current Law of Ukraine "On National Security of Ukraine" has abandoned this category in favor of the "security and defense sector", it becomes necessary to determine whether these terms are interchangeable. To do so, it is essential to establish whether they are equivalent in scope.

In particular, paragraph 16 of part one of Article 1 of the Law of Ukraine "On National Security of Ukraine" defines the security and defense sector. Applying a systemic analysis to the terms "Military Organization of the State" and "Security and Defense Sector of Ukraine", one should distinguish the basic and key components of the latter. The first component is institutional, which is what kind of entities are united under these terms. The military organization of the state united a set of state authorities and military formations. The definition of the concept of "security and defense sector of Ukraine" from the institutional point of view is presented in more detail. Thus, it already refers to the system of state authorities, the Armed Forces of Ukraine, other military formations formed in accordance with the laws of Ukraine, law enforcement and intelligence agencies, state special purpose bodies with law enforcement functions, civil defense forces, and the military-industrial complex of Ukraine.

As can be observed, the latter definition describes in more detail the entities included in the security and defense sector. At the same time, all of these entities can be covered by the term public authorities

and military formations, except for the military-industrial complex. In addition, the definition of the security and defense sector of Ukraine also mentions citizens and public associations that voluntarily participate in ensuring the national security of Ukraine. Their inclusion in the security and defense sector of Ukraine significantly changes the legal status of the security and defense sector of Ukraine and expands it against the background of the status of the Military Organization of the State.

Hence, from an institutional perspective, the security and defense sector encompasses a broader array of entities, including those that are inherently part of the state apparatus (public authorities [4, p. 41]) and those within the auxiliary apparatus (state-owned defense industry enterprises), as well as civil society (citizens and public associations that voluntarily participate in ensuring Ukraine's national security). It is also noteworthy that while the Military Organization of the State is described as a "set of entities", the security and defense sector of Ukraine is described as a "system" of entities. Moreover, the definition of the Military Organization of the State emphasizes that this set of entities is "covered by a single leadership", highlighting the systemic, centralized principles that govern its organization and functioning.

In analyzing and comparing these two categories, it is important to consider a second component, which can be referred to as "legalization", pertaining to the legal foundation of their activities. In both cases, this indicates that the activities of the respective entities are conducted in accordance with the Constitution and laws of Ukraine. Specifically, the Military Organization of the State is described as a collection of entities that operate in compliance with the Constitution and laws of Ukraine. Similarly, the definition of the security and defense sector of Ukraine includes a provision that the activities of the listed entities are carried out in accordance with the Constitution and laws of Ukraine and are directed towards fulfilling clearly defined tasks.

Additionally, the definition of the Military Organization of the State uniquely specifies that the subjects not only operate under the Constitution and laws of Ukraine but are also established by them. Specifically, it describes the Military Organization of the State as a set of state authorities and military formations under unified leadership, created in accordance with the Constitution and laws of Ukraine, and directly focused on addressing tasks related to protecting the state's interests from external and internal threats. This textual detail, while seemingly adding complexity to the legal construct of the Military Organization of the State, is not superfluous from the perspective of the legalization component. However, this approach is inapplicable to the security and defense sector of Ukraine, particularly because it includes citizens, for whom such a directive on legal creation would be entirely inappropriate.

A third component to consider in the analysis of these concepts is the functional component. This involves examining the specific tasks assigned to the Military Organization of the State and those currently assigned to the entities within the security and defense sector of Ukraine. According to the now-defunct Law of Ukraine "On Democratic Civilian Control over the Military Organization of the State and Law Enforcement Agencies", the activities of state authorities and military formations were explicitly aimed at solving the tasks of protecting the state's interests from external and internal threats [5, p. 71]. This delineation of tasks is essential for understanding the functional differences between the two constructs.

In the context of understanding the functional orientation of the Military Organization of the State, one should take into account the provisions of the Law of Ukraine "On the Fundamentals of National Security of Ukraine" of June 19, 2003, which, in accordance with paragraph 17 of part one of Article 92 of the Constitution of Ukraine, defined the basic principles of state policy aimed at protecting national interests and ensuring the security of individuals, society and the state in Ukraine from external and internal threats in all spheres of life.

Thus, in accordance with the second paragraph of Article 1 of this Law, the legislator understood national security as the protection of the vital interests of a person and citizen, society and the state, which ensures sustainable development of society, timely detection, prevention and neutralization of real and potential threats to national interests in various spheres. Based on this approach, it is worth noting that the functional purpose of the Military Organization of the State was primarily aimed at ensuring the national security of Ukraine.

With regard to the security and defense sector of Ukraine, the entities that make up its structure organize their activities in such a way that, in accordance with the Constitution and laws of Ukraine, they are functionally aimed at protecting the national interests of Ukraine from threats [6, p. 91]. In this context, it should also be taken into account that according to paragraph nine of part one of Article 1 of the Law of Ukraine “On National Security of Ukraine”, national security of Ukraine is the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats.

Therefore, the functional component of the security and defense sector of Ukraine indicates that the structural units that make up the sector focus their efforts on ensuring the national security of Ukraine. In addition, the definition of the security and defense sector of Ukraine also refers to civil society institutions and indicates that its structure also includes citizens and public associations that voluntarily participate in ensuring the national security of Ukraine. As can be seen, this part of the definition already directly refers to national security.

From a legal technique perspective, significant differences exist between the approaches employed in the Law of Ukraine “On Democratic Civilian Control over the Military Organization of the State and Law Enforcement Agencies” and the Law of Ukraine “On National Security of Ukraine”, indicating that the latter was crafted using a more sophisticated legislative methodology. Accordingly, the Military Organization of the State and its constituent entities, in accordance with the Constitution and laws of Ukraine, engage directly in activities aimed at addressing the tasks of safeguarding the State’s interests against both external and internal threats.

It is essential to note that the Law of Ukraine “On the Fundamentals of National Security of Ukraine”, in effect at the time, defined national security as the protection of vital interests encompassing individuals, citizens, society, and the state (Article 1, paragraph two). In contrast, the Law of Ukraine “On Democratic Civilian Control over the Military Organization of the State and Law Enforcement Agencies”, in delineating the Military Organization of the State, focused solely on protecting the state’s interests, disregarding societal, individual, and citizen interests. Against this backdrop, the Law of Ukraine “On National Security of Ukraine” appears more comprehensive, as it addresses the protection of national interests when defining Ukraine’s security and defense sector. This approach aligns the activities of all components of Ukraine’s security and defense sector more closely with those aimed at safeguarding Ukraine’s constitutional order. Otherwise, the focus would remain exclusively on safeguarding the state system, as indicated by the superseded understanding of the Military Organization of the State in previous legislation, which centered on protecting the state and its institutional framework. Indeed, as discussed earlier, safeguarding Ukraine’s constitutional order encompasses not only protecting the constitutionally established aspects of state functioning but also safeguarding society in all its legitimate manifestations.

The fourth component, which is relevant both to the definition of the concept of “Military Organization of the State” and to the construction of the concept of the “security and defense sector of Ukraine”, pertains to ensuring adherence to the requirements of the Constitution and laws of Ukraine within the framework of their organization and operations. Specifically, the Constitution of Ukraine mandates that the Armed Forces of Ukraine and other military formations must not be utilized to restrict citizens’ rights and freedoms, undermine the constitutional order, remove authorities, or obstruct their activities (Part Four of Article 17). This provision underscores the imperative that these entities operate in strict compliance with constitutional principles and legal norms, reinforcing their role in protecting rather than infringing upon democratic governance and individual liberties.

5. Conclusions.

In summary, applying systemic analysis to the Military Organization of the State and its current successor, the security and defense sector of Ukraine, we should distinguish the basic and key components of the latter. The first component is institutional, which is what kind of entities are united under these terms. From an institutional point of view, the security and defense sector covers a wider range of actors. The second component (legalization) is related to the legislative basis for

their activities. In both cases, it is stated that the activities of the respective entities are carried out in accordance with the Constitution and laws of Ukraine. At the same time, only the definition of the concept of the Military Organization of the State also stipulates that the entities not only act on the basis of the Constitution and laws of Ukraine, but are also created. The third component (functional) is that the definitions of these two concepts indicate what tasks the Military Organization of the State was directly facing, as well as the tasks that are currently facing the units of the security and defense sector of Ukraine. And finally, the fourth component (guarantee) is related to guaranteeing compliance with the requirements of the Constitution and laws of Ukraine within the organization and activities of the above-mentioned entities.

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