

УДК 342

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THE PRESIDENT OF UKRAINE IN THE SPHERE OF ENSURING NATIONAL SECURITY AND DEFENSE CAPABILITIES OF THE STATE

Introduction

The powers of the president in a mixed republic correspond primarily to his status as head of state and, unlike those of other authorities with a fundamentally narrower functional specialization, are related to the implementation of all internal and external functions of the state in general. Since ensuring the national security and defense capabilities of the state is a fundamental condition of its existence, the analysis of the constitutional status of the President of Ukraine is inseparable from the analysis of his role in ensuring national security and defense capabilities of Ukraine. In this area, the President of Ukraine exercises political leadership over the bodies that ensure Ukraine's national security and defense capabilities.

Article 17 of the Constitution (Basic Law) of Ukraine states that “protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, the deed of the entire Ukrainian people” [1]. These functions should be performed by a

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whole system of public authorities within its competence. The national security of the state, its sovereignty and territorial integrity depend crucially on the effectiveness of the relevant state authorities in the field of national security and defense of Ukraine and their clear interaction. In the field of ensuring these constitutional values, a special role belongs to the President of Ukraine, who, in accordance with Article 104 of the Constitution of Ukraine, taking the oath, promises “all his deeds to defend the sovereignty and independence of Ukraine” [1].

According to Article 102 of the Constitution of Ukraine, the President of Ukraine is the guarantor of state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, human and civil rights and freedoms, guarantor of the strategic course of the state to become a full member of Ukraine in the European Union and the North Atlantic Treaty Organization. This shows that the President of Ukraine is closely connected with all aspects of national security and all manifestations of threats to this security [2, p. 154].

The complex and multifaceted task of ensuring the national security and defense capabilities of the state requires coordination of the actions of relevant bodies within a single state policy. The coordinating role of the President of Ukraine in the field of national security and defense of Ukraine corresponds to the universal nature of his competence, which covers all spheres of state power. The President of Ukraine, as the Head of State and Supreme Commander-in-Chief of the Armed Forces of Ukraine, the guarantor of state sovereignty and territorial integrity of Ukraine, coordinates the activities of public authorities designed to ensure national security and defense capabilities. The President of Ukraine influences the process of ensuring Ukraine's national security and defense capabilities primarily through the activities of the Cabinet of Ministers of Ukraine. It is the Government that has the necessary resources and ensures

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the implementation of laws and other regulations governing relations in the field of national security and defense of Ukraine [2, p. 156].

The President guarantees the country's independence, security and territorial integrity, in particular, through the leadership of the country's Armed Forces. Even in a parliamentary republic, the leadership of the country's armed forces is usually the responsibility of the president. Powers related to the leadership of the Armed Forces of Ukraine, the status of their Supreme Commander-in-Chief – a fundamental point that characterizes the direct participation of the President of Ukraine in ensuring national security and defense capabilities of the state. The leadership of the Armed Forces of Ukraine is the most important instrument of the President of Ukraine for guaranteeing the state sovereignty and territorial integrity.

Powers of the President of Ukraine in the field of national security and defense of Ukraine

In Article 106 of the Constitution of Ukraine, which establishes the majority of the powers of the President of Ukraine, generalizes his powers in the field of national security and defense of Ukraine. Given the adopted mixed republican form of government, the constitutional powers of the President of Ukraine in the field of national security and defense of Ukraine are related to the respective powers of the Cabinet of Ministers of Ukraine.

The powers of the President of Ukraine in the field of national security and defense of Ukraine are specified and fully set out in Article 13 of the Law of Ukraine “On National Security of Ukraine” of June 21, 2018. According to the Law, the leadership of the President of Ukraine in the field of national security and defense of Ukraine is that he ensures state independence and national security; is the Supreme Commander-in-Chief of the Armed Forces of Ukraine

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and in this status issues orders and directives on defense issues; heads the National Security and Defense Council of Ukraine, puts its decisions into effect in accordance with the established procedure; issues decrees and orders on national security and defense, which are binding on the territory of Ukraine (namely, decrees of the President of Ukraine approve doctrines, concepts that identify current threats to national security of Ukraine, the main directions and objectives of state policy in national security and defense of Ukraine, development of the security and defense sector); addresses with messages to the people and with annual and extraordinary messages to the Verkhovna Rada of Ukraine on the internal and external situation of Ukraine; implements the right of legislative initiative in the Verkhovna Rada of Ukraine on legislative settlement of national security and defense issues; submits to the Verkhovna Rada of Ukraine proposals on the appointment of the Minister of Defense of Ukraine and the Minister of Internal Affairs of Ukraine; submits to the Verkhovna Rada of Ukraine a petition for the appointment and dismissal of the Head of the Security Service of Ukraine; appoints and dismisses the Secretary of the National Security and Defense Council of Ukraine and his deputies; appoints and dismisses the higher command of the Armed Forces of Ukraine on the proposal of the Minister of Defense of Ukraine, as well as the higher command of other military formations on the proposal of the heads of executive bodies to which the relevant military formations are subordinated; carries out the general management of intelligence bodies of Ukraine; submits to the Verkhovna Rada of Ukraine a motion to declare a state of war and, in the event of armed aggression against Ukraine, decides on the use of the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine; decides in accordance with the law on general or partial mobilization and imposition of martial law in Ukraine or in certain localities in case of threat of

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attack, danger of state independence of Ukraine; adopts, if necessary, decisions on the introduction of a state of emergency in Ukraine or in some of its localities, and also declares, if necessary, certain areas of Ukraine as zones of ecological emergency with subsequent approval of these decisions by the Verkhovna Rada of Ukraine; assigns higher military ranks and other higher special ranks and class ranks; exercises other powers defined by the Constitution of Ukraine [3].

The President of Ukraine heads the National Security and Defense Council of Ukraine and in this status forms its composition, directs the activities and carries out the general management of the work of the National Security and Defense Council of Ukraine; approves long-term and current work plans of the National Security and Defense Council of Ukraine, time and procedure of its sittings; personally chairs the sittings of the National Security and Defense Council of Ukraine; gives instructions to the members of the National Security and Defense Council of Ukraine related to the performance of its functions; hears the Secretary of the National Security and Defense Council of Ukraine on the implementation of its decisions, if necessary, raises the issue of the status of implementation of the decisions of the National Security and Defense Council of Ukraine at its sittings; approves the Regulations on the staff of the National Security and Defense Council of Ukraine, its structure; by its decrees enacts the decisions of the National Security and Defense Council of Ukraine, exercises other powers provided by the Law “On the National Security and Defense Council of Ukraine” of March 5, 1998 [5].

The President of Ukraine may establish temporary interdepartmental commissions, working and advisory bodies to study and comprehensively solve cross-sectoral problems, provide scientific-analytical and forecast support for

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the activities of the National Security and Defense Council of Ukraine within the funds provided by the State Budget of Ukraine.

The National Security and Defense Council of Ukraine in the mechanism of providing the President of Ukraine with national security and defense capabilities of the state

Among the bodies that ensure the national security and defense capabilities of Ukraine, an important place is occupied by the National Security and Defense Council of Ukraine, the legal status of which is defined directly in the Constitution of Ukraine. The constitutional consolidation of the status of the National Security and Defense Council of Ukraine testifies to its role in the state mechanism and is a legal guarantee of the stability of the existence and functional purpose of this body.

According to Article 107 of the Constitution of Ukraine, the National Security and Defense Council of Ukraine is a coordinating body on national security and defense, which was established under the President of Ukraine and directly subordinate to him. The constitutional status of this body and its competence derive from the powers of the Head of State. Decisions of the National Security and Defense Council of Ukraine shall be implemented by decrees of the President of Ukraine. The National Security and Defense Council of Ukraine, like the President of Ukraine, does not belong to any branch of state power. The functions of the National Security and Defense Council of Ukraine are coordination and control over the activities of executive bodies in the field of national security and defense of Ukraine.

The National Security and Defense Council of Ukraine is an integrative body by nature that ensures the unity of state power. Therefore, the President of Ukraine cannot use the National Security and Defense Council of Ukraine to

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apply checks and balances to the executive bodies controlled by the Council [4, p. 30-33]. The integrative nature of the National Security and Defense Council of Ukraine is evidenced by its composition. The National Security and Defense Council of Ukraine consists of the Prime Minister of Ukraine, the Minister of Defense of Ukraine, the Minister of Internal Affairs of Ukraine, the Minister of Foreign Affairs of Ukraine, and the Head of the Security Service of Ukraine. The Chairman of the Verkhovna Rada of Ukraine may take part in the sittings of the National Security and Defense Council of Ukraine.

Although the President of Ukraine can purposefully influence the activities of various higher state bodies in the field of national security and defense of Ukraine through the Council as a whole and through its individual members, it is obvious that the existence of the National Security and Defense Council of Ukraine and the President's presidency combining the functions of the Head of State primarily with the executive branch. Through the National Security and Defense Council of Ukraine, the President of Ukraine directs government activities in the field of national security and defense of Ukraine. That is why in Article 107 of the Constitution of Ukraine states that “the National Security and Defense Council of Ukraine coordinates and controls the activities of executive bodies in the field of national security and defense” [1]. In essence, the National Security and Defense Council of Ukraine ensures the implementation of the relevant powers of the President of Ukraine through a system of executive bodies. The official position of the President of Ukraine, expressed in the form of decisions of the National Security and Defense Council of Ukraine on specific issues of the Government, is imperative for the latter. In accordance with Part 4 of Article 10 of the Law of Ukraine “On the National Security and Defense Council of Ukraine” of March 5, 1998, the decisions of the National

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Security and Defense Council of Ukraine, enacted by decrees of the President of Ukraine, are binding on the executive [5].

An important feature of the constitutional and legal status of the National Security and Defense Council of Ukraine is the inclusion of the Prime Minister of Ukraine, the Minister of Defense of Ukraine, the Minister of Internal Affairs of Ukraine, and the Minister of Foreign Affairs of Ukraine. Despite the fact that according to the Constitution of Ukraine, direct subordination of these members of the Cabinet of Ministers of Ukraine to the President of Ukraine without the participation of the Government is impossible [6, p. 42], their inclusion in the National Security and Defense Council of Ukraine shows direct influence on them by the President of Ukraine.

In Article 107 of the Constitution of Ukraine, which summarizes the legal status of the National Security and Defense Council of Ukraine, it is called the “coordinating body for national security and defense under the President of Ukraine”. This status of the National Security and Defense Council of Ukraine proves that the Council is not an advisory or consultative body under the President of Ukraine. It is about such bodies as the bodies that the President of Ukraine “creates ... for the exercise of his powers”, referred to in paragraph 28 of Part 1 of Article 106 of the Constitution of Ukraine. The National Security and Defense Council of Ukraine is a body that “coordinates and controls the activities of executive bodies in the field of national security and defense” (Part 2 of Article 107 of the Constitution of Ukraine) and its competence goes beyond advising and making recommendations to the President of Ukraine.

The powers of the National Security and Defense Council of Ukraine enshrined in the Law of Ukraine “On the National Security and Defense Council of Ukraine” of March 5, 1998 at the same time, they point to the Council's exercise of broader functions than the control and coordination of executive

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bodies in the field of national security and defense of Ukraine and testify to the incorrectness of the constitutional formula defining the National Security and Defense Council of Ukraine as a “coordinating body”. In fact, the main principles on which the competence of the National Security and Defense Council of Ukraine is based are coordination, control, planning and forecasting. The National Security and Defense Council of Ukraine is the developer and exponent of important political decisions, which it makes in the form of relevant proposals to the President of Ukraine on the implementation of domestic and foreign policy in the field of national security and defense of Ukraine. In particular, the National Security and Defense Council of Ukraine is called to identify and assess threats to national security of Ukraine and through collegial discussion to prepare draft decisions of the President of Ukraine to prevent or eliminate these threats [7, p. 98].

The nature of the National Security and Defense Council of Ukraine as an independent body of state power is also reflected in the procedure for forming its composition. The Article 107 of the Constitution of Ukraine defines the range of persons who are members of the National Security and Defense Council of Ukraine *ex officio* (i.e. those of its members who are not appointed by the Head of State). These are the Prime Minister of Ukraine, the Minister of Defense of Ukraine, the Minister of Internal Affairs of Ukraine, the Minister of Foreign Affairs of Ukraine, the Head of the Security Service of Ukraine. The Chairman of the Verkhovna Rada of Ukraine may take part in the sittings of the National Security and Defense Council of Ukraine. Only the remaining members of the National Security and Defense Council of Ukraine are appointed by the President of Ukraine (therefore its composition is not stable).

At the same time, the National Security and Defense Council of Ukraine is not authorized to adopt its own acts – the implementation of decisions adopted

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by the National Security and Defense Council of Ukraine is ensured by decrees of the President of Ukraine. The very competence of the National Security and Defense Council of Ukraine, according to Article 4 of the Law of Ukraine “On the National Security and Defense Council of Ukraine” of March 5, 1998, aimed at ensuring the implementation of the President of Ukraine's function of guaranteeing state sovereignty, territorial integrity and national security of Ukraine [5].

The Cabinet of Ministers of Ukraine in the mechanism of providing the President of Ukraine with national security and state defense capabilities

The current version of the Constitution of Ukraine enshrines a mixed republican form of government, the distinctive legal feature of which is the dualistic organization of the executive branch. The dualism of the executive presupposes the existence of its two leading centers – the government and the president, connected not structurally but functionally. The relationship of these entities with the executive is not the same: if the government is its highest governing body, the president is linked with the executive by means of his executive powers [8, p. 109]. Such powers, although belonging to the president, are executive in nature (legal in nature) [9, p. 109].

The common approach for the mixed republics to the division of powers between the president and the prime minister in the executive branch is that although the respective powers of these entities are “intertwined”, the powers of the president are crucial. The head of state, the president, is primarily responsible for resolving strategic issues, overseeing areas of government such as foreign policy and defense, and the prime minister is responsible for tactical tasks and operational, day-to-day management. That is why according to Part 3 of Article 113 of the Constitution of Ukraine, “The Cabinet of Ministers of

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Ukraine in its activities is guided by the decrees of the President of Ukraine”, and in accordance with paragraph 1 of Article 116 of the Basic Law, the Government “ensures the implementation of acts of the President of Ukraine”. These constitutional provisions directly indicate the supremacy of normative decisions of the President of Ukraine in the system of bylaws [10, p. 71]. Therefore, by means of his respective decrees, the Head of State directs the activities of the Government.

The Basic Law of Ukraine institutionalizes the dualism of executive power in a number of provisions of Chapters Five and Six, which enshrine the executive powers of the President of Ukraine and the Cabinet of Ministers of Ukraine. According to the Constitution of Ukraine, “the Cabinet of Ministers of Ukraine is the highest body in the system of executive bodies” (Article 113), which “directs and coordinates the work of ministries and other executive bodies” (Article 116, paragraph 9). However, the Government is not authorized to exhaustively implement public policy [11, p. 110]. The Constitution of Ukraine establishes the relevant powers of the President of Ukraine in relation to the executive branch. The Head of State directs government activities in such areas as foreign policy, guaranteeing state sovereignty, ensuring human and civil rights, constitutional legality, national security and defense capabilities of Ukraine.

Coordination of the activities of executive bodies in the field of national security and defense of Ukraine, carried out by the President of Ukraine by means of the National Security and Defense Council of Ukraine, does not limit the competence of the Cabinet of Ministers of Ukraine. According to paragraph 7 of Article 116 of the Constitution of Ukraine, the implementation of measures to ensure national security and defense capabilities of Ukraine is the authority of the Cabinet of Ministers of Ukraine. In fact, ensuring the national security and

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defense capabilities of the state is one of the areas of joint competence of the President of Ukraine and the Cabinet of Ministers of Ukraine. Therefore, the implementation of the function of the President of Ukraine to ensure national security and defense capabilities of Ukraine is directly related to the activities of the Cabinet of Ministers of Ukraine in this area.

According to Article 102 of the Constitution of Ukraine, “The President of Ukraine is the guarantor of state sovereignty”, and in accordance with paragraphs 1 and 3 of Part 1 of Article 106 of the Constitution of Ukraine, the President “ensures state independence, national security and succession of the state”, “represents the state in international relations, manages the foreign policy of the state, negotiates and concludes international treaties of Ukraine” [1]. These constitutional provisions indicate that in such areas as the guarantee of state sovereignty, foreign policy of the state, its national security and defense, the President of Ukraine has not only a key and leading role. In these spheres of state power he is a real subject of executive power, authorized to make important decisions [12, p. 74]. On the other hand, paragraphs 1 and 7 of Article 116 of the Constitution of Ukraine stipulate that “the Cabinet of Ministers of Ukraine ensures state sovereignty and economic independence of Ukraine, implementation of domestic and foreign policy, implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine”, “takes measures to ensure defense capabilities and national security of Ukraine” [1].

According to Article 102 of the Constitution of Ukraine, the President of Ukraine is the guarantor of “observance of the Constitution of Ukraine, human and civil rights and freedoms”, “implementation of the strategic course of the state to gain full membership in Ukraine in the European Union and the North Atlantic Treaty Organization” [1]. At the same time, in accordance with paragraphs 1, 1-1 and 2 of Article 116 of the Constitution of Ukraine, the

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Cabinet of Ministers of Ukraine ensures the implementation of the Constitution of Ukraine, “Implementation of the strategic course of the state for full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization”, “akes measures to ensure the rights and freedoms of man and citizen” [1].

These powers of the Head of State and the Government outline the areas of their joint competence. In these areas, they must coordinate their positions and cooperate in order to implement a unified and systematic public policy.

Thus, the Cabinet of Ministers of Ukraine and the system of executive bodies headed by it, given their competence, are key actors in ensuring the national security and defense capabilities of Ukraine. The Cabinet of Ministers of Ukraine is the leading link in the system of executive bodies, which manages the activities of these bodies in the field of national security and defense of Ukraine. At the same time, in accordance with the Constitution of Ukraine, the President of Ukraine coordinates the activities of the Cabinet of Ministers of Ukraine in certain areas, in particular, the sphere of national security and defense of Ukraine and in the field of foreign policy. The leading role of the President of Ukraine in the activities of the Cabinet of Ministers of Ukraine in these areas is evidenced by the already cited provisions of Part 3 of Article 113 of the Constitution of Ukraine that “the Cabinet of Ministers of Ukraine in its activities is guided by the decrees of the President of Ukraine” and paragraph 1 of Article 116 of the Basic Law that the Government “ensures the implementation of acts of the President of Ukraine”.

Such division of competences of the President of Ukraine and the Cabinet of Ministers of Ukraine requires the creation of an effective constitutional mechanism for cooperation between these entities, in particular, in the field of national security and defense of Ukraine and in the foreign policy sphere. A

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constructive means of coordinating the activities of the President of Ukraine and the Cabinet of Ministers of Ukraine in the field of national security and defense of Ukraine and in the foreign policy sphere may be the constitutional requirement to adopt acts of the President of Ukraine, the implementation of Ukraine's strategic course towards full membership in the European Union and the North Atlantic Treaty Organization, the head of foreign policy. Convening and determining the agenda of such sittings of the Government should be the prerogative of the Head of State. The acts adopted at these sittings must be signed by the President of Ukraine, the Prime Minister of Ukraine and the relevant Minister. The countersignature of the relevant governmental acts by the President of Ukraine will correspond to his status as a guarantor of the mentioned constitutional values, head of the state's foreign policy.

Conclusions

The President of Ukraine occupies a key place in the system of bodies that ensure the national security and defense capabilities of the state. As Head of State and Supreme Commander-in-Chief of the Armed Forces of Ukraine, Guarantor of State Sovereignty and Territorial Integrity of Ukraine, the President of Ukraine coordinates the activities of public authorities designed to ensure national security and defense capabilities of the state. The leading role of the President of Ukraine in the field of national security and defense of Ukraine is reflected in his powers. The powers of the President of Ukraine in the field of national security and defense of Ukraine are closely related to the respective powers of the Cabinet of Ministers of Ukraine and are conditioned by the adopted mixed republican form of government. This form of government provides for the implementation by the President of Ukraine of strategic leadership of the system of executive bodies, which are responsible for ensuring

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national security and defense capabilities of the state. It is through the activities of the Cabinet of Ministers of Ukraine and the system of executive bodies subordinated to it that the President of Ukraine guarantees constitutionally established components of national security – state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, human and civil rights and freedoms. European Union and the North Atlantic Treaty Organization. Exercising their joint powers, the President of Ukraine and the Cabinet of Ministers of Ukraine must coordinate their positions and cooperate in order to implement a unified and systematic state policy. At the same time, such a task requires the creation of an effective constitutional mechanism for cooperation between the President of Ukraine and the Cabinet of Ministers of Ukraine in the areas of their joint competence. One of such spheres is the sphere of national security and defense of Ukraine.

Coordination and control over the activities of executive bodies in the field of national security and defense of Ukraine by the President of Ukraine is provided by the National Security and Defense Council of Ukraine. The National Security and Defense Council of Ukraine is a key element of the mechanism of interaction between the President of Ukraine and the system of executive bodies in the field of national security and defense of Ukraine.

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Мартинюк Р. С., Дацюк О. О.

Президент України у сфері забезпечення національної безпеки та обороноздатності держави

У науковій статті досліджено місце і роль Президента України в системі органів, що забезпечують національну безпеку й обороноздатність України. Встановлено роль Кабінету Міністрів України в механізмі забезпечення Президентом України національної безпеки й обороноздатності України. Визначено роль Ради національної безпеки і оборони України як ключового елемента механізму взаємодії Президента України із системою органів виконавчої влади у сфері національної безпеки й оборони України.

Ключові слова: Президент України, Кабінет Міністрів України, Рада національної безпеки і оборони України, національна безпека, обороноздатність держави.

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*The President of Ukraine In the Sphere of Ensuring National Security
And Defense Capabilities of the State*

The scientific article examines the place and role of the President of Ukraine in the system of bodies that ensure the national security and defense capabilities of Ukraine. The role of the Cabinet of Ministers of Ukraine in the mechanism of providing the President of Ukraine with national security and defense capabilities of Ukraine has been established. The role of the National Security and Defense Council of Ukraine as a key element of the mechanism of interaction of the President of Ukraine with the system of executive bodies in the field of national security and defense of Ukraine is determined.

Key words: President of Ukraine, Cabinet of Ministers of Ukraine, National Security and Defense Council of Ukraine, national security, state defense capabilities.

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- Martyniuk, R. S., Datsiuk, O. O. (2021) The President of Ukraine In the Sphere of Ensuring National Security And Defense Capabilities of the State. *Часопис Національного університету «Острозька академія». Серія «Право» 1(23)* : [Електронний ресурс]. – Режим доступу : <http://lj.oa.edu.ua/articles/2021/n1/21mrsots.pdf>.