



KAPITEL 10 / CHAPTER 10¹⁰ FEATURES AND CHARACTERISTICS OF INTERNAL AFFAIRS BODIES IN UKRAINE

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Introduction.

The beginning of the 21st century turned into a series of serious disasters for Ukraine, which include the crisis of the 2000s, which caused the fall of the economy and the increase of internal and external debts, the annexation of Crimea and the eastern regions, the SARS-CoV-2 pandemic, and finally the Russian-Ukrainian war. Taken together, the listed factors entering into a synergistic relationship create an incredible level of disturbance, which appears to us as a real threat to the national security of Ukraine.

State power, represented by public authorities, forms a special mechanism for ensuring the country's national security in all its spheres. The key element of this system can rightly be considered the system of internal affairs bodies. The foundation of existence, which determines the effectiveness of the mentioned system, is the regulatory and legal basis of its organization. In accordance with this, a significant place in the category of modern challenges facing the national security of Ukraine is occupied by the urgent problem of legal support for the activities of the system of internal affairs. It is necessary to state that the current special legislation of Ukraine in its specific provisions does not meet or even contradicts generally recognized European standards. As of today, we can observe an obvious differentiation between the Ukrainian and European legislative bases for the regulation of intrastate relations. Such a state of affairs determines the urgent need to reform the national legislation, in particular, to improve the tools of the system of state-legal regulation of the activities of the internal affairs bodies in the field of ensuring national security.

Presenting main material.

The system of state bodies in Ukraine has a complex branched system consisting of relatively autonomous power subsystems and directly the bodies that are part of them. At the same time, the theoretical selection of another type of system, for example, a system of management bodies or any other, does not deny the presence of common subjects in different systems. This is explained by the fact that, at the theoretical level, it is not rational to single out such a variable as the subject's

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affiliation to the state administration system among state authorities, such as the executive ones, because the latter is a general category in the context of systems of executive authorities and therefore does not need to be designated as a separate specific trait. Thus, the system of law enforcement bodies, in particular, contains common elements with the system of state administration bodies, and the system of internal affairs bodies (hereinafter referred to as the IAB) – with all of the above mentioned, because the state administration system includes the law enforcement system, which, in turn, includes the IAB system.

In the academic community, it is indicated that such a systematic approach to the definition of the concept of “legal status” led to the emergence of an approach in the scientific literature, according to which the complete structure of legal status is divided into several levels: general and special. Thus, S. Shestakov points out that the general legal status determines the legal properties and qualities that are characteristic of all other statuses. Sectoral legal statuses specify the content of the general status with regard to specific types of legal relations that exist in society [1, p. 13–14]. V. Vasylenko quite interestingly classifies the legal status, which, together with the general legal status, distinguishes sectoral, inter-sectoral and special. According to the definition of the scientist, they are related to the general legal status as general and special [2, p. 38]. Thus, according to this approach, the general legal status of a state authority characterizes its position in the system of other state bodies, its purpose in the state mechanism. Branch legal status determines its position in a specific type (branch) of legal relations. Special – intended for identification of the relevant state authority as the subject of a specific legal relationship in a specified period of time with a specific subject (the other party). However, based on the fact that the principle of systematicity implies a regular and stable hierarchy, the most accurate is the selection of signs relative to the position of the body in the hierarchical model of systems. In this regard, M. Martynov rightly emphasizes that the subsystem of the internal affairs bodies is one of the components of the state administration system, it has all the general characteristics of the executive authorities [3, p. 9]. Thus, we can build a logical chain from different systems that will determine the characteristics of the organ.

For our research, the IAB system is of key interest. Accordingly, the study and theoretical description of the essence of this system presupposes, first of all, the determination of its place in the general system of state authorities, its affiliation to a specific system of authorities, and, in accordance with this, the identification of



specific features as a separate subject of state administration, as well as the definition of system characteristics inherent in a specific system of state bodies, as well as the analysis of their legal nature. However, before defining the specific systemic features of the IAB, it is necessary to define the general features of the system as a separate phenomenon. In this regard, we partially share with specific additions the opinion of A. Klochko [4], who include the following as features of the system: – integrity, the fundamental impossibility of identifying the qualities of the system with the sum of the qualities of the elements that make it up, the impossibility of deriving the qualities of the whole from the latter [5, p. 62–63]. In our opinion, this feature is key one, because it allows us to rationalize the bivalent systemic approach by the method of demarcation of purely systemic and individual characteristics of the subject; – the dependence of each element, quality and relations of the system on its place, functions within the whole [5, p. 62–63]. This feature is very important, because the element's compliance with a specific system can partially or even completely determine its characteristics; – the presence of specific relationships between the initial components of the system [5, p. 62–63]. In the field of public administration, this feature determines the internal relationships between elements (subjects) of the system. Moreover, such interaction is quite relative and depends on the level of the system from the point of view of which the elements are considered. Thus, the interrelationships of internal affairs bodies are considered within the framework of the IAB system, and the relationships with other bodies are at a higher level, for example, in the context of the law enforcement system [6]; – structurality, that is, the possibility of describing the system through the establishment of its structure or a complex of connections and relations of the system, the conditioning of the system's behaviour not so much by the behaviour of its individual elements, but by its structure [5, p. 62–63]; – system and environment interdependence. The system forms and reveals its qualities in the process of interaction with the environment [5, p. 62–63]; – hierarchy. Each component of the system, in turn, can be considered as a system, and the system studied in this case is one of the components of a wider system. In this regard, we fully share the opinion of O. Klochko, who in his work defines the system of public security as an integral complex of separate, interconnected and interacting services and units that form a special unity with society and the state and are at the same time an element of a higher order system [5, p. 62–63]; – imperativeness. The form of the relationship between an element of one system and an element of a higher system involves the subordination of one element



to another [7]; – contradictory nature of the system. On the one hand, due to the abstractness of its definition as not an empty collection of elements, its use in specific scientific research is complicated. On the other hand, it is precisely the abstract and universal nature of this concept that allows it to be applied to an exceptionally wide class of phenomena and objects regardless of their nature and specificity [5, p. 62–63]; – self-determination of a set of properties of the system, which is included in the regularity [5, p. 62–63].

In accordance with this, we can determine that system characteristics are those common characteristics that are common to all subjects of a specific system and indicate their belonging to it. That is, these features are directly conditioned by the subject's belonging to this system and make it possible to logically identify the subject among other systems. Accordingly, in order to determine the features of a specific organ or system of organs, it is first necessary to determine which systems they belong to and to highlight their specific system features.

Therefore, we should start with the fact that Article 6 of the Constitution of Ukraine dated June 28, 1996 No. 254k/96-VR establishes the fundamental division of state power in Ukraine into legislative, executive and judicial [8]. As mentioned earlier, each of these branches of government has its own specific characteristics, which allow us to theoretically identify them in the mechanism of state administration. We agree with the opinion of I. Protsyuk, who points out that in the implementation of state power there are functional, institutional and subject manifestations of the principle of separation of state power [9, p. 36]. All of them presuppose the presence of special identifying characteristics (signs) that allow logical determination of the organ's affiliation to a specific branch. Since the IAB system, according to the Law of Ukraine “On the General Structure and Staffing of the Ministry of Internal Affairs of Ukraine” dated January 10, 2002 No. 2925-III, is thoroughly represented by the Ministry of Internal Affairs of Ukraine, and only then by all subordinate bodies, institutions, services or other structural elements, according to the Regulation on the Ministry of Internal Affairs of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28.10.2015 No. 878, the entire system of the IAB primarily belongs to the bodies of the executive power.

The essence of the executive power as a separate theoretical and legal category is most successfully outlined by S. Stetsenko, arguing that the executive power in Ukraine is designed to exercise control powers, state property management, antimonopoly activity and a number of other activities. As the author notes, the actual



implementation of laws is not the dominant purpose of the executive power. It is more a means than a goal, rather than a destination in its traditional sense [10, c. 67–72]. In turn, it is impossible not to note the position of O. Khomenko, that under the executive power he understands the totality of state powers for the implementation of laws, the development and implementation of state policy, which are implemented by an extensive hierarchical specialized set of state bodies based on the principles of efficiency, administrative subordination, legality, accountability before representative bodies and a combination of dynamism and stability [11, p. 9].

According to their functional purpose, among the bodies of executive power, law enforcement agencies are distinguished. At the same time, as S. Denysiuk emphasizes, some legal scholars consider law enforcement agencies exclusively from the standpoint of their classification as executive authorities [12, p. 119]. According to T. Pikul', law enforcement agencies are also included in the system of executive authorities and, in this way, differ from the court and the prosecutor's office [13, p. 71]. However, we emphasize that everything depends on the categorical apparatus, and in our case – on the definition of the essence of the category of law enforcement activity and, accordingly, the circle of its subjects. Thus, according to the interpretation of the definition of “law enforcement activity” contained in the Legal Encyclopaedia edited by Yu. Shemshuchenko, forms of law enforcement activity also include the cancellation of illegal legal acts, recognition of laws and bylaws by the Constitutional Court as unconstitutional, etc. [14]. Therefore, the author defines the subjects of law enforcement activities as the bodies that are part of the judicial branch of government, and this, in turn, gives grounds to assert that the key feature of law enforcement agencies is their functional purpose – to perform law enforcement activities. According to the provisions of this logical system, the subject of law enforcement activity, that is, a law enforcement body, is any state authority that directly or indirectly in its activity embodies such a functional task as the protection of rights, which is a very controversial statement. On this occasion, V. Tatsii rightly emphasizes that as a result of a broad interpretation of the law enforcement function, law enforcement agencies include almost all bodies of the executive power, which to one degree or another are engaged in the performance of law enforcement functions, i.e., indirectly also law enforcement activities. At the same time, by their legal nature and the tasks assigned to them, they have nothing to do with law enforcement agencies [15, p. 234]. Moreover, according to this position, the system of law enforcement bodies is higher than the system of branches of power defined in the



Constitution, which is an alogism.

We believe that a more authentic definitional apparatus of law enforcement activity can be stimulated by demarcating the generic concept of “law enforcement activity” into a more specialized dimension, that is, defining the definition through the prism of legal practice. That is, to determine affiliation to law enforcement agencies by direct functional purpose. In support of our position, we cite provisions of the current legislation of Ukraine relating to this area: in the Resolution of the Central Election Commission of Ukraine “On appeals to law enforcement agencies regarding the prevention and cessation of violations of the legislation of Ukraine during the preparation and holding of the midterm elections of the People’s Deputy of Ukraine on July 26, 2015 in single-mandate electoral district No. 205 (Chernihiv Region)” dated July 20, 2015 No. 139, the internal affairs bodies of Ukraine, the Security Service of Ukraine, and the prosecutor’s office of Ukraine are classified as law enforcement agencies [16]. At the same time, in another normative and legal act, the legislator narrows the circle of law enforcement agencies: the Instruction on the interaction of law enforcement agencies in the field of combating organized crime, approved by the order of the Ministry of Internal Affairs of Ukraine and the Security Service of Ukraine dated 10.06.2011 No. 317/235, covers only internal affairs bodies and the Service security of Ukraine [17]. Therefore, law enforcement agencies are recognized by the legislator in a narrower sense as purely executive authorities.

Conclusions

According to the analysis of the views available in the academic literature, the following are recognized most often among the features of law enforcement agencies, and therefore of the IAB system: 1) functional assignment – a defined direction of professional law enforcement activity, tasks, competence and possession of special powers for the purpose of protecting law and order [18, p. 99; 20, p. 69]; 2) performance of at least one or, as a rule, several main law enforcement functions is decisive in the activity [19, p. 12]; 3) endowed with state-authority powers and, accordingly, the right to use state coercive measures and means (physical force, special means of active defence and attack, firearms) [20, p. 12]; 4) as a rule, in order to ensure the proper level of official discipline, law enforcement officers are assigned special ranks, uniforms, weapons and other means of self-defence are issued; issues of their disciplinary responsibility are regulated by special statutes on discipline [21, p. 19; 17]; 5) decisions legally adopted by such bodies are binding for officials and



citizens [22, p. 147–148]; 6) performance of functions requires specific organizational, legal, personnel, logistical, military and rear (in particular, provision of weapons, ammunition, special means, forensic and special equipment, material and other types of property), financial, informational, scientific and other support [23, p. 50].