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MAIN ASPECTS OF VERIFICATION OF THE ACTIVITY OF THE NATIONAL GUARD OF UKRAINE

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SUMMARY

The article reveals the main aspects of the verification of such military unit, authorized to carry out the law enforcement function, as the National Guard of Ukraine. The author examines the content of the concepts of “control” and “supervision”, deals with the entities aimed to control and supervise the activity of the National Guard of Ukraine, and also explores the meaning of the term “control and supervision of the National Guard of Ukraine”. Special attention is paid to the importance of implementing the institution of public control.

Key words: National Guard of Ukraine, verification, control and supervision, entities.

ОСНОВНІ АСПЕКТИ КОНТРОЛЮ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ГВАРДІЇ УКРАЇНИ

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АНОТАЦІЯ

У статті висвітлено основні аспекти контролю за такою військовою частиною, що уповноважена виконувати правоохоронні функції, як Національна гвардія України. Автор вивчає зміст концепцій «контроль» та «нагляд», розглядає суб'єкти, призначені для контролю та нагляду за діяльністю Національної гвардії України, а також досліджує значення терміна «контроль та нагляд за Національною гвардією України». Особлива увага приділяється важливості впровадження інституту громадського контролю.

Ключові слова: Національна гвардія України, перевірка, контроль та нагляд, суб'єкти.

REZUMAT

Articolul evidențiază principalele aspecte ale controlului asupra unei astfel de unități militare, care este autorizată să îndeplinească funcțiile de aplicare a legii, cum ar fi Garda Națională a Ucrainei. Autorul analizează conținutul conceptelor de „control” și „supraveghere”, având în vedere subiectele destinate controlului și supravegherii activităților Gărzii Naționale a Ucrainei, și, de asemenea, explorează semnificația termenului „controlul și supravegherea Gărzii Naționale a Ucrainei.” O atenție deosebită este acordată importanței introducerii instituției de control public.

Cuvinte cheie: Garda Națională a Ucrainei, verificare, control și supraveghere, subiecte.

Introduction of the problem and its setting. The formation of means of supervision and control of the activity of the state authorities, aimed to provide the territorial and national security and caused by the continuous military-political processes that constantly take place on the territory of Ukraine.

The urgency of the research is confirmed by the insufficient completion of the such problem as control and supervision of the activity of the National Guard of Ukraine, including its external entity, namely, the public.

Degree of completion of the problem. The academic papers of such scientists as Averyanov, Andriyko, Bytiak, Bakhrakh, Vasyliiev, Harashchuk, Kolpakov, Muzychuk, Studenikina, Cherkes and others point out that much attention is paid to the problem of control and supervision in the legal literature. However, the challenge of monitoring and supervising of the activities of the National Guard of Ukraine remains insufficiently explored, and its univocal solution has not yet been found so far.

So, the purpose of the article is to reveal the characteristic features inherent to the control and supervision of the activity of the military formation with law enforcement functions mentioned above.

Presentation of the Basic Material. Studying such mutually complementary categories as “control” and “supervision”, it is advisable first to consider a detailed interpretation of each of them.

In the broadest interpretation, the concept of “control” is: 1) verification of the compliance of the entities authorized to control with the requirements; 2) verification and accounting of the activity of someone or something, supervision of someone or something; 3) an institution or organization that supervises and checks someone or something [1, p. 569].

It should be noted that the search for the most accurate definition of this category still causes the ongoing discussions among the scientists. Some of them interpret the concept of control from the point of view of the activities of specially authorized bodies and individuals, while others regard this category as a certain legal process.

Thus, Averyanov emphasizes that under the control one should understand the peculiar legal process used to verify the conformity of the activities of the participants of the social relations with the established principles within the framework of their activity [2, p. 349].

Studenikina asserts that the essence of control is to observe the conformity of the activity of the entity under control with

the requirements derived from the entity, that is, bodies and officials [3, p. 96-97].

In his turn, Muzychuk believes that control in public administration is a combination of measures to verify the compliance of the entities under control with the established requirements, during which the entity of control has the right to interfere with the professional activity of the entity under jurisdiction by its substitution, interruption or temporary removal from its official duties, cancellation or termination of its decision, bringing the latter to liability [4, p. 86].

Such a scientific approach has the right to exist, taking into consideration that it is the application of the control activities by the specially authorized persons and bodies that enables to fulfil the functional duties of the entities under control in accordance with the current legislation. Consequently, the main element of a complex legal process, aimed to achieve the effective public administration, represents such a kind of activity.

Making the clear distinction between such terms as “control” and “supervision”, one cannot but note the opinion of Andriyko, who emphasizes that the concept of control is wider than supervision. The scientist points out that during the process of control there is an examination of not only the decision-making and the systematic execution of the regulations, but also the right of the entities authorized to control to interfere with the operational activities of the entities under control by giving the instructions obligatory for execution according to the guidelines provided by the peculiarities of the control of the functions of public administration. Moreover, the function of supervision consists of preventing and detecting violations, checking the activities of the entities under control for compliance with the clearly defined rules. The special supervisory authorities are not empowered to change the acts of state governing bodies or interfere with the operational activities. Thus, in comparison with control, supervision is much more narrow form of activity [5, p. 213].

A similar approach can be observed in the academic papers of Cherkes and Vasyliiev, who make the assumption of “the ability of the supervisory authority only to pay attention of the entities under control to the violations, which are corrected either by the entity itself or by its supreme body” [6, p.3].

Harashchuk stresses that supervision is the legal analysis of the observance of the law and discipline in the society, which is carried out by the prosecutor's office, with the observance of the corresponding forms provided by the law, but without unrestrained interference with the operational and other activities of a legal or official person and citizen [7, c. 54].

It should be emphasized that the majority of scientists have a common opinion that it is hardly possible to evaluate the activity of the entity under control, to provide motivated remarks regarding detected shortcomings on the results of the evaluation and to prevent such offenses in the future successfully without interfering with its work. Consequently, endowed with the advisory nature, the essence of the supervision is to fulfil a preventive function. With regard to control, in contrast to supervision, it allows to take measures of legal influence and pressure and directly affects the activities of the entities under control. Thus, we can conclude that the concepts of “control” and “supervision” are not identical.

The control and supervision for the activities of the National Guard of Ukraine in the military-law-enforcement sphere remains a key and uncertain legal category. Analyzing the provision of the Law of Ukraine “On the National Guard of Ukraine”, the problem of the definition of entities, that are authorized to control and supervised ones, arises.

According to Article 24 of the Law of Ukraine “On the National Guard of Ukraine” both control over the activities of the National Guard of Ukraine and democratic civilian control are carried out in accordance with the law. Supervision over the observance of laws in the activities of the National Guard of

Ukraine is carried out by the procurator through the power to supervise the observance of laws when executing judicial decisions in criminal cases, as well as in the application of other measures of a mandatory nature related to the limited the personal freedoms of citizens [8].

It should be noted that it is the prosecutor who has the authority to supervise the activities of the National Guard of Ukraine. The prosecutor fulfils his duties by obtaining the information on potential violations of the law from appeals, complaints or any other sources, carrying out the regular checks and applying acts of prosecutorial response.

It is necessary to stress that from a legislative point of view, the number of possible entities of control of the activities of the National Guard of Ukraine is unclear. The law states that control of the activities of the National Guard of Ukraine is carried out in accordance with the law. Such a legislative provision gives an opportunity for a very broad circle of potential entities to carry out the control activities.

According to Article 6 of the Constitution of Ukraine, the state power in Ukraine is divided into legislative, executive and judicial [9]. The principle of division of the state power, mentioned in the Constitution of Ukraine, is ensured by the mutual control and supervision of all its branches. Such control and supervision give a good opportunity to form an opinion on the types and entities of control of the National Guard of Ukraine. Thus, the types of control of the activities of the National Guard of Ukraine should be divided into state, public, media control and internal control.

It should be added that the state control of the activity of the National Guard of Ukraine consists of four types, namely: parliamentary, executive, judicial and presidential.

According to Article 8 of the Law of Ukraine “On Democratic Civilian Control over the Military Organization and Law Enforcement Bodies of the State”, the parliamentary control is carried out due to the legislative and institutional functions of the Verkhovna Rada of Ukraine by: provision of the principles of the internal and foreign policy; definition of the bases of the national security, formation of the Armed Forces of Ukraine and provision of public law and order; approval of the general structure, numeracy, definition of the functions of the Armed Forces of Ukraine, the Security Service of Ukraine, other military units set in accordance with the laws of Ukraine, the Ministry of Internal Affairs of Ukraine, etc. [10].

The executive control involves the implementation of the constitutional powers of the Cabinet of Ministers of Ukraine, central bodies of the executive power, local self-government bodies and local state administrations in the military and law-enforcement sphere.

The Cabinet of Ministers of Ukraine is responsible for implementing the internal and external policy of the state, ensuring its sovereignty, defense and national security, public order, and fighting offenses in accordance with the Constitution, the laws of Ukraine and acts of the President of Ukraine [10].

Within the framework of their powers, the ministries and other central executive authorities, subordinated to military units, have the right to: organize and enforce the laws of Ukraine, other regulations concerning national security, defense and law enforcement activities; create the necessary conditions for other entities of democratic civil control to carry out their functions authorized by the law, etc. [10].

The local authorities and local state administrations control the measures of preservice military training; assist the units of the Armed Forces of Ukraine, other military units and law enforcement agencies, located on their territory, to carry out the tasks; develop operational plans and ensure the interaction of the local authorities, local state administrations and relevant structures of military management in the accomplishment of the tasks of territorial defense [10].

The consideration of statements of claim and complaints concerning the violations, committed by the personnel and the management of the National Guard of Ukraine, is under the jurisdiction of the judicial control of the activity of this military unit. According to Article 55 of the Constitution of Ukraine, everyone is guaranteed the right to appeal in court for decisions, actions or inactions of state and local authorities, officials and officers [9]. According to Article 1 of the Law of Ukraine "On the System of Judiciary and Status of Judges", the judicial process is carried out by the Constitutional Court of Ukraine and courts of the general jurisdiction [11], which act as entities of the judicial control. Kolpakov states that the judicial implementation of a legal assessment of the actions and decisions of the executive authorities and their staff is represented by the judicial control. In the case of violations of law, the judicial authority takes the appropriate measures until they are eliminated, and in some cases, brings the perpetrators to justice [12, p. 669-770].

In accordance with the Decree of the President of Ukraine "On Strengthening the Control over the Activities of the Armed Forces of Ukraine and Other Military Units", the President of Ukraine controls the Main Department of the National Guard of Ukraine, operative and territorial units, military units and subunits, training military units (centers), bases, establishments and institutions that are not included in the number of territorial units of the National Guard of Ukraine. It can be done in order to determine if the authorities are ready to fulfil their tasks in accordance with the Constitution of Ukraine, the laws of Ukraine, Acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and decisions of the National Security and Defense Council of Ukraine [13].

The public control and media control are another types of the control of the activities of the National Guard of Ukraine. Andriyko stresses that, by creating a strong, capable state, one should not forget about its main purpose, namely, to protect human interests and rights. So, it is necessary to set the appropriate mechanism aimed to create the conditions and means of protecting these rights and contribute to their further implementation. Thus, control is one of the guarantees of the interests of a person in the field of management [14, p. 131].

We fully support the point of view, that the lack of a reliable mechanism for public control in Ukraine is one of the main problems nowadays. According to recent practical experience, the control powers of the representatives of the public are restricted and incapable to cause any legal consequences for the entity under control.

Citizens of Ukraine, being the members of public organizations, are also eligible to participate in carrying out the civilian control either by involving the deputies of the representative authorities or personally by referring either to Authorized Representative of the Verkhovna Rada of Ukraine on Human Rights or to his official in protection of the rights of the military staff, or to another state body. The media control is aimed not only to highlight problems of the national security and defense, combat crime on the basis of the true information concerning service and life of the military staff, the events that take place in the life of soldiers and officers, but also to shape the public opinion, promoting the prestige of the service of the defenders of the Motherland, strengthening the society's faith to the Armed Forces of Ukraine, other units of the Military Organization of the state, and law-enforcement bodies [10].

Currently, the development of Ukraine is targeted to the democratic transformation, consolidation of public society and forms of cooperation of its institutions with the state authorities. The interaction of the state and the public society in democratic conditions implies the availability of the effective means and mechanisms aimed to support the activities of the public society associations and the significant social projects that are implemented.

The effective cooperation between the authorities and the public can be successfully implemented by means of the following principles, namely, partnership and equality, sociability and responsibility, rationality and balance, coherence of interests and prevention of corruption, competence, political independence, by the participants of this interaction (first of all by the state).

The interaction of the executive authorities with non-governmental organizations is carried out in various forms. The most commonly used practices in Ukraine include public hearings, public advisory boards and committees, public expertise.

Nowadays, the active public society of Ukraine pays special attention to the processes of democratization of the society and the improvement of the quality of public services. The forms of its cooperation with the authorities are characterized by the diversity. The problem is observed from the point of view of the effectiveness and legal regulation.

Thus, the expediency of introducing the institution of public control and its consolidation in the form of the social activity of public associations at the legislative level, aimed to supervise both the observance of state discipline and the activities of the bodies of the state power, local authorities and their officials with the Constitution of Ukraine, the laws of Ukraine and other regulations, is considered. Therefore, it allows us to solve a number of tasks, namely:

- assistance in preventing or initiating the removal of previously committed violations of the Constitution of Ukraine, laws of Ukraine, other regulations, state discipline by the state authorities, local authorities and their officials (the objects of public control);

- ensuring the compliance of the rights of individuals and legal entities with the objects of public control;

- formation of a public assessment of the activities of the objects of public control;

- permanent public examination of the decisions of the executive bodies and local authorities;

- improvement of the effectiveness of the objects of public control.

- At the same time, public control should be carried out according to the following principles, namely:

- independence of subjects of public control of other public associations, political parties, state bodies, local authorities and their officials;

- justice, objectivity and ineligibility of public control;

- completeness and comprehensiveness of the study of the subject of public control;

- inadmissibility of abuse of the right to carry out public control;

- sufficiency and establishment of the results of public control;

- transparency, sociability and publicity of the process of public supervision.

Among the public supervision measures, the following ones should be implemented, namely:

- analytical and monitoring research of the objects of public control;

- public examination;

- inspection.

At the same time, in order to ensure professionalism and efficiency of work, public control subjects should include public experts appropriately trained and / or well experienced. Besides, they must be empowered to issue the notes of response to both violations of legislation and state discipline committed by the objects of such a control (for example, the results of the public examination and the act of verification).

Therefore, it is necessary to consolidate the duty of the objects of public control to consider the note of response, to eliminate the identified shortcomings and violations and report on the results of their consideration.

These steps allow us:

- to achieve transparency, sociability and publicity in the activities of both state and local authorities;
- to increase both the level of creditability and the effectiveness of their activities;
- to reduce cases of violations of the Constitution of Ukraine, laws of Ukraine and other regulations by public bodies, local authorities and their officials;
- to improve the protection of the legal rights, freedoms and interests of individuals and legal entities;
- to ensure the implementation of public examination of decisions, activity (inactivity) of both the executive bodies and local authorities.

As for the internal control, it should be noted that it is the activity of bodies, offices and units created to control and supervise the military subordination, discipline and other requirements that are essential for military service. According to Part 4 of the Decree of the President of Ukraine “On the Principal Control Military Authority the National Guard of Ukraine”, one of the main tasks of the main body of the military management is to control the activity of the regional departments, units, military units, higher educational establishments, training military units (centers), bases, institutions and establishments of the National Guard of Ukraine. Besides, the regulatory monitoring activity of the Military Commander of the National Guard of Ukraine, who is empowered to direct and control the activity aimed to keep the constant combat and mobilization readiness of the National Guard of Ukraine, recruitment of personnel, public acceptance Ukraine on military service to the National Guard of Ukraine, determination of needs and resources necessary for implementation of the pledges to the National Guard of Ukraine; arranges for ensuring the implementation and control over observance of the legislation on the passage by citizens of service in the military reserve of the National Guard of Ukraine; Issues orders, directives, dispositions and orders, organizes and controls their implementation [15].

Conclusions. Summarizing the consideration of such legal categories as “control” and “supervision” of the activities of the National Guard of Ukraine, one can define them as the activities of the specially authorized officials and entities in the military-law-enforcement sphere aimed not only to detect, document and remove the offenses and bring the perpetrators to responsibility, but also to take the precautionary measures to avoid such cases in the future activity of the entity. It should be stressed that to ensure the proper pro-European control, it is necessary to adopt a separate law that could regulate the relations in public control that represents the way of cooperation of public society with the state authorities.

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