

ADMINISTRATIVE AND LEGAL REGULATION OF DEPARTMENT OF STATE GUARD OF UKRAINE ACTIVITY IN THE COURSE OF STATE PROTECTION PERFORMANCE

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Problema asigurării securității funcționarilor și protecției organelor de stat este foarte importantă și relevantă astăzi. Având în vedere acest lucru, actualitatea problemei de aprovizionare a înalților funcționari nu este îndoieală și necesită o îmbunătățire ulterioară a activităților Departamentului Gărzii de Stat din Ucraina.

Cuvinte cheie: protecția organelor de stat, protecția statului, securitatea obiectelor statului, interacțiunea.

The issue of ensuring senior officials security and protection of public authorities is very important and relevant nowadays. Planning a protective venue during the state guard provision has an agreed and regulated procedure aimed at achieving a single result. Taking it into consideration, the urgency of the issue of ensuring senior officials security is beyond doubt and requires further improvement in the activities of the Department of State Guard of Ukraine.

Key words: protection of public authorities, state guard provision, security of state facilities, interaction.

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Problem statement. At the present stage of society's development, everyday life continues to conceal threats for state officials as well. The issue of ensuring the senior officials security and the protection of state authorities is very important and relevant at the moment. Planning a protective venue during the state guard provision has an agreed and regulated procedure aimed at achieving a single result. Taking this consideration into account, the urgency of the issue of ensuring senior officials security is beyond doubt and requires further improvement in the activities of the Department

of State Guard of Ukraine (hereinafter referred to as the DSGU).

Analyzing the state of planning and its implementation stages, as well as the normative and legal regulations that regulate this activity, it becomes clear that this direction in the system of providing state protection is at insufficient level.

The need to increase the effectiveness of law enforcement bodies functioning involved in ensuring security to the state guarded facilities is obvious. This is due to the role played by the state top officials in working out and implementation of the strategy for the development of society, defending

the interests of the state in the international arena, etc. This is also triggered by significant shortcomings observed in the organizational and legal framework of the law enforcement agencies. Thus, the issue of normative legal acts investigation regulating security of state facilities, which is being carried out by the state guard in the context of planning a security venue, is of particular relevance.

Scientific and theoretical basis is based on the principles of objectivity and concreteness and is oriented primarily on the priority of human rights and freedoms. It should be noted that certain planning issues during providing security of senior officials and the protection of state authorities were the subject of attention of Ukrainian and foreign scientists, such as G. Dagaiev, V. Poliakov, T. Kornev, S. Liapustin, O. Starchenko, I. Khort, S. Khrystenko etc. However, the problem of planning a protective venue to ensure the security of state facility which is subject to state guard is still insufficiently explored.

Purpose and objectives. The purpose of the study is to determine the main components of the activity of law enforcement agencies of Ukraine, to carry out a current state analysis of protective venues planning at the national and international levels, to study trends in the development of the laws of Ukraine in this area and to develop recommendations for improving organization of a protective venue while ensuring state guard.

Achievement of the purpose involves solving the following tasks:

- to analyze the current legislation of Ukraine that regulates the issues of ensuring security of state guarded facilities as well as the interaction of the units of the DSGU with other law enforcement and state bodies;
- to carry out the analysis of international legal acts concerning the problem of ensuring security of state guarded facilities;
- to define the aspects of organization and planning of a protective venue within ensuring security of state guarded facilities;
- to develop and put forward recommendations for improving interaction of DSGU divisions with other law enforcement and state bodies in order to ensure the maximum safety of persons and facilities under protection.

The object of the investigation is the legal relations that arise in the process of law enforcement

activities during planning a protective venue to ensure the security of persons subject to state guard.

The subject of the study is the administrative and legal regulation of the activity of the DSGU during the implementation of state protection.

Research methods. The methodological basis of the study is a dialectical method of cognition of the legal, political and socio-economic processes and phenomena that allows them to be seen in development, interconnection and interaction, and helps to analyze the effectiveness of legal norms governing the activities of national and international institutions designed to ensure the safety of state guarded individuals and facilities.

General scientific and special methods have been used to obtain the results. Thus, the analysis of the components of the organization and planning of a protective venue has been carried out by means of the structural and logical method. By the historical and legal method we have analyzed the processes of formation of a regulatory and legal framework that regulates the tasks and requirements during the planning of a protective venue while ensuring security of facilities, which are subject to state security; moreover, the method of comparative legal analysis of legal norms and practices of their application was used in the analysis of legal principles of planning a preventive venue.

The normative basis of the study consists of international legal acts on human rights, the Constitution of Ukraine, laws of Ukraine, decrees of the President, resolutions of the Cabinet of Ministers of Ukraine, as well as legal acts of ministries and departments of Ukraine, which determine the activity of law enforcement bodies in the sphere of security of persons and facilities under the state guard. The empirical basis for the study has been formed with the statistical data of the law enforcement agencies on the problem.

Any system or subsystem represents a set of defined elements with functional relations between. Elements of entity management system engaged in special conditions of law enforcement activity are in different functional relationships including interaction relationship by all means. They imply a cooperation of various bodies, institutions, units, services, military units and associations, public organizations and the population to fulfill tasks as an objective necessity arising in emergencies.

Presenting main material. The DSGU is a highly specialized law enforcement agency aimed at broadly diverse security and ordinary functioning of protected public authorities and officials. Effectiveness of its law enforcement activity in particular depends on the proper organization and efficiency of the Department of State Guard of Ukraine interaction with law enforcement and other state bodies, enterprises, institutions and organizations.

Interaction is carried out:

a) at state level between central apparatuses of the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Department of State Guard of Ukraine, the Ministry of Justice of Ukraine, the State Customs Committee of Ukraine, the State Committee for the Protection of the State Border of Ukraine, the National Guard of Ukraine, the Ministry of Defence of Ukraine;

b) at regional level between central administrative boards, departments of the Ministry of Internal Affairs of Ukraine, regions, Kyiv city, transport, the Head Department of the Security Service of Ukraine, regional and Kyiv departments of the Security Service of Ukraine;

c) at city and district levels between divisions of head departments; regions; Kyiv city; transport; city, district and inter-district divisions of the Security Service of Ukraine; the Customs Office and customs posts; subdivision of the Border guard; the National Guard of Ukraine and the Armed Forces of Ukraine. An important aspect of DSGU cooperation with the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the Foreign Intelligence Service of Ukraine is their equal status as independent law enforcement agencies and a common goal of ensuring the safety of officials and objects that are subject to state security.

In order to carry out the assigned tasks the DSGU is authorized to:

- to give consent to the admission of citizens to objects, which are subject to state protection;
- to receive the information necessary for the implementation of state security in accordance with the established procedure from the heads of bodies of state power of Ukraine, bodies of local self-government, enterprises, institutions, organizations regardless of forms of their ownership upon the written request of the Head of the DSGU or his deputies;

- to use the dress code and documents that encrypt the identity or departmental affiliation of servicemen and vehicles of the DSGU;

- to conduct, in accordance with the procedure established by the Law of Ukraine "On Operative Investigative Activity" (2135-12), open and secret operative measures aimed at preventing an attack on officials and their family members and objects that are subject to state security; detection and termination of such encroachments;

- to conduct cinema, photography, audio and video at the objects that are subject to state security;

- to engage servicemen and workers, technical and other means by agreement with the leaders of law enforcement and other state bodies;

- to carry out fire protection, sanitary-hygienic, ecological, radiation and anti-epidemic control and state monitoring of technical protection of information, to take measures to eliminate the revealed violations, to find out the reasons that led to their commitment at the objects which are subject to state security;

- to allocate the servicemen of the DSGU for carrying out state security to state authorities, enterprises, institutions and organizations determined by the President of Ukraine in accordance with the established procedure;

- to carry out training, retraining, professional development of servicemen and workers of the DSGU in accordance with the Law of Ukraine "On Education" [17];

- to create administrative and economic self-supporting units in accordance with the legislation.

Moreover, the administrative and legal regulation of the principles, grounds and order of cooperation of DSGU is still rather fragmentary and incomplete that greatly slows down and complicates the practice of interaction nowadays. And hence, the actual issues of DSGU are suggested in improving its tasks and powers implementation for cooperation with public authorities. It should be noted that certain issues of cooperation of state law enforcement agencies have already been considered in the works of such scholars as A. Vasylieva, E. Streltsova, O. Zakharova, V. Kovalskyi, I. Zozulia, O. Kluiiev, O. Yakubovskiy, T. Butyrskaya, O. Yarmak, I. Korzh etc. Furthermore, such studies reveal only the general principles of coordination and organi-

zation of joint activities of law-enforcement bodies without directly characterizing the specifics of modern interaction with various law enforcement and other state bodies, enterprises, institutions and organizations. First of all, it should be noted that the basic principle of DSGU cooperation with the state power bodies of Ukraine, enterprises, institutions, organizations and officials is the provision of the latest implementation of tasks entrusted to the DSGU under the Part 1 of Article 14 of the special Law of Ukraine dated 04.03.1998 No. 160/98-VR [22]. By the way, this regulation does not sufficiently determine its obligation or voluntariness, which may negatively affect the performance of relations with various bodies and organizations, merely stating the assistance of the abovementioned subjects to the DSGU. In addition, "promotion" by its very nature is an extremely abstract category that does not contain any legal limits or the scope of involving the relevant authorities and organizations in the execution of tasks.

As another disadvantage should be mentioned the incompleteness of the legally established agents of cooperation that are logically the local governments. Such ambiguity also manifests itself in relation to the principles of the Security Service of Ukraine cooperation with state bodies, enterprises, institutions, organizations and officials that according to part 1, Article 8 of the Law of Ukraine dated March 25, 1992, No. 2229-XII [21], as well as the DSGU should „contribute” to the fulfillment of the tasks of the Security Service of Ukraine. The National Police in the course of its activities interacts with law enforcement and other public authorities, as well as local self-government bodies in accordance with Part 1 of Art. 5 of the Law of Ukraine dated 07.07.2015, No. 580-VIII [7], and other normative-legal acts as well.

Probably taking over the practice, the bill dated September 20, 2013, registered No. 3309 [23] suggests to consolidate unambiguously the duty of state bodies of Ukraine, local self-government, enterprises, institutions and organizations to promote the DSGU activity, which, in turn, should coordinate them (with the exception of local self-government bodies) with state protection issues. It can be assumed that the voluntary or compulsory promotion of activities should be established taking into account the status, purpose and capabilities of the

relevant agents of coordination. The public authorities in Ukraine are formed on a professional basis, endowed with the authorities and the possibility of coercion authorized to provide national and municipal interests and functioning in accordance with Part 2 of Article 19 of the Constitution of Ukraine [34] on the basis within the limits of authority and in the manner provided by the legislation of Ukraine. Unity, interaction and common activity are one of the starting points of the organization of the entire state apparatus. Accordingly, it is considered acceptable and expedient to establish the obligatory nature of the interaction of the public authorities and law enforcement agencies of Ukraine with the DSGU intended to ensure the security and normal functioning of the highest bodies of state power and officials. Promotion of enterprises, institutions and organizations, regardless of the forms of ownership should differ from the similar promotion of public authorities and not affect their economic activity. First of all, it is a question of the limited ability of active participation of enterprises, institutions and organizations (which do not directly belong to the law-enforcement system of the state) in fulfilling the tasks of the DSGU. Therefore, it is more correct to mention about such subjects' voluntary or obligatory cooperation with the DSGU, its limits and compliance with the real needs of state security and the interests of the interacting parties. In my opinion, under the bill 09/22/2013 the register. No. 3309 [23] the envisaged consolidation of the coordination powers of state authorities, enterprises, institutions and organizations on issues of state security are largely in line with the interests of effectively ensuring the state protection of the relevant state authorities and officials, which should be carried out centrally under the guidance of a specially authorized and responsible state body in the field of state protection. It should be clarified that the existing subordinated relations within such coordination between the interacting agents are primarily not organizational but functional and are limited solely to the issues of state security implementation.

The DSGU assignment of coordination powers to bodies of state power, enterprises, institutions and organizations on the issues of state security corresponds to the practice of organizing activity of other law enforcement agencies. For example,

the Antiterrorist Center under the Security Service of Ukraine coordinates activities of the subjects of the fight against terrorism (Part 7 of Article 4, Part 1, Article 5, Clause 1 of Article 7 of the Law of Ukraine dated March 20, 2003 No. 638-IV [24]. Therefore, it is considered that the DSGU should coordinate activities on state security issues, first and foremost, with other law enforcement agencies unlike general „state authorities” or even more „enterprises, institutions and organizations”. Today, according to Part 2 of Article 10 of the Law of Ukraine from 04.03.1998, No. 160/98-BP [22], the DSGU participation in the implementation of state security in cooperation with the Ministry of Internal Affairs of Ukraine, the specially authorized central body executive power in matters of protection of the state border of Ukraine, other central executive authorities of Ukraine and the Security Service of Ukraine have been stated.

Such a legislative definition of state security subjects is generally positive, since it directly emphasizes the status of the Department of State Guard of Ukraine as the main subject of state protection and defines the main directions of its professional interaction within the state protection implementation. Besides, the abovementioned list of state security subjects is incomplete, for example, the National Guard of Ukraine, the Foreign Intelligence Service of Ukraine and other law enforcement agencies that within their competence may also participate in state security, operational and investigative, anti-terrorist, security, defense and other law enforcement activities. We should agree with the envisaged bill from 20.09.2013, the register. No. 3309 [23] that a separate assignment of DSGU suggests not only the state security subjects’ participation but the organizational and coordinating role of the DSGU in such cooperation.

One of the key competencies of the DSGU in terms of cooperation is its authority to engage servicemen and workers, technical and other means in compliance with the leaders of law enforcement and other state bodies (Article 13 of the Law of Ukraine dated 04.03.1998 No. 160/98-VR [22]). As stated earlier, it is mainly due to an extremely wide range of probable threats to protected objects, timely and effective prevention, detection and termination of which often requires the involvement of specialists in various fields, special equipment, etc. The main

feature of such interaction is that despite from the determined law enforcement and other state bodies (within their competence) are involved in state security activities, but their individual employees and facilities should be used already within DSGU competence. A necessary component of this interaction is the mechanism of agreement between the heads of the relevant bodies to involve their employees and the means to the activity of the DSGU in a way that it does not adversely affect the functioning of such bodies. Furthermore, the provision of a similar opportunity to involve employees and other bodies of public authority, enterprises, institutions and organizations for the sake of state protection may be urgent in certain cases. Widespread interactions between DSGU and other law enforcement agencies take place within the framework of operational and investigative, counter-intelligence, anti-terrorist and other law-enforcement activities. In particular, according to the Clause 5, Part 1 of Article 7 of the Law of Ukraine from 18.02.1992, No. 2135-XII [8], the interaction is defined as one of the immediate responsibilities of units of law enforcement agencies that carry out operational and investigative activities and should be directed for prompt and complete prevention, detection and suppression of crimes. Besides that, the division of powers with the competence of the DSGU to protect important state objects (Article 9 of the Law of Ukraine dated 04.03.1998, No. 160/98-BP [22],) is likely to be actualized, but also the elaboration of legal mechanisms of their joint coordinated activity, information exchange, employees’ involvement in the security measures, technical and other means have to be stipulated. Some aspects of interaction are provided by the rights of servicemen, in particular, the detention of certain persons and their transfer to “other law enforcement agencies”, in conjunction with the relevant units of the National Police of Ukraine, the temporary restriction or prohibition of the movement of vehicles and pedestrians, etc. in accordance with Article 18 of the Law of Ukraine dated 04.03.1998, No. 160/98-VR [22], p.19 of the Procedure for Security Provision for Protected Officials dated May 27, 2011. Although such areas of cooperation are defined by the rights of servicemen, their actual implementation is the subject of the DSGU, and not its individual employees. Therefore, it is necessary to agree

with the transformation of the designated rights of servicemen and powers within the proposed bill of 20.09.2013, the register. No. 3309 [23]. A constructive measure of their proper implementation has been the approval of a joint Instruction on interaction as the basis for the concerted activity of their employees by the Department of State Guard of Ukraine and the Ministry of Internal Affairs of Ukraine. It should be noted that the information support as a direction of DSGU cooperation concerns not only the provision of necessary for the state security information to be provided to certain bodies and organizations, but also reverse informing by the other state bodies.

Thus, according to Clause 4, Part 1, Article 7 of the Law of Ukraine dated February 18, 1992, No. 2135-XII [8], the DSGU should inform the relevant state authorities about facts and data indicating a threat to the security of society and state, as well as violations of the legislation related to the official activities of officials. And according to Part 2 of Article 7 of the Law of Ukraine, in case of detecting signs of a crime, the operational unit must send the collected materials to the appropriate body of pre-trial investigation. We consider that such competent state (law enforcement) bodies informing should also be carried out in all other cases by obtaining units (not necessarily operational ones only) with the information about prepared or committed offenses (and not only crimes), even if they do not directly concern protected objects.

It is obvious that the proper implementation of the listed types of control for the sake of the protected objects security requires the involvement both the DSGU and corresponding specially authorized subjects of such control. Therefore, it would be advisable to establish a unified model of relations and a coordinating role of the DSGU in the implementation of this control by competent state authorities legislatively. A rather representative format of relations with public authorities, enterprises, institutions and organizations is the authority to send proposals for elimination of identified causes and conditions that create a threat to the security of protected officials and objects in accordance with paragraph 21 of the Order of ensuring the security of the protected officials from May 27, 2011.

Moreover, according to the bill dated September 20, 2013, the register. No. 3309 [23], it is pro-

posed to replace the above "proposals" with "requirements that are mandatory for consideration and implementation. First of all, it should be noted that the elimination of determinants of offenses is an important part of their effective prevention, but in this case it concerns eliminating the causes and terms of certain abstract "threats". Therefore, the obligation to comply with the requirements of the DSGU regarding the elimination of such "threats" to ensure the security of protected officials and objects will mean expansion of its influence on the relevant public authorities, enterprises, institutions and organizations. To our mind, the mandatory nature of such regulations can be accepted if the subject matter is clarified and clear legal definition of the boundaries, as well as the possibility of challenging the regulations, which will promote not only effective state security but also the protection of the interests of all subjects of these relations.

So, having analyzed all of the abovementioned, one can conclude that the DSGU coordination with other law-enforcement bodies is very important for ensuring security for state authorities and officials. Since the operational information that DSGU receives from other law enforcement agencies of Ukraine, it allows to respond and implement a series of measures to enhance security for the protection of objects and officials adequately.

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