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INTELLIGENCE SUPPORT FOR UNITS OF THE NATIONAL GUARD OF UKRAINE: ISSUES OF LEGAL REGULATION

On the basis of the conducted analysis, a conclusion is made about the proper normalization of the activities of the intelligence units of the National Guard of Ukraine in a special period (including during the period of martial law). During this period, units of the National Guard of Ukraine may be involved by the Main Intelligence Directorate of the Ministry of Defense of Ukraine to perform military intelligence tasks and functions. In this case, the intelligence agency is the initiator of the intelligence activities, and units of the National Guard of Ukraine can conduct military intelligence at the tactical level on their own initiative. Giving the National Guard of Ukraine the powers of an intelligence agency in peacetime seems impractical, and the key to effective intelligence support during this period is to improve interaction with intelligence agencies and ways to exchange intelligence information.

Keywords: *intelligence support, intelligence, intelligence information, legal regulation.*

Statement of the problem. The invasion of the Russian Federation into the territory of Ukraine necessitated the involvement of units of the National Guard of Ukraine (hereinafter referred to as the NGU) in repelling armed aggression against Ukraine through military (combat) operations, which in turn entailed the need for changes in their structure and support, including reconnaissance units.

As the researchers observe, the special-purpose reconnaissance companies were created and began to be staffed in operational military units of the NGU, whose personnel were trained according to the instructions of the Armed Forces of Ukraine (hereinafter referred to as the AFU) to ensure mutual compatibility when performing tasks in a unified system of defense forces back in 2014. In the same 2014, a squadron of unmanned aircraft systems was created to provide reconnaissance support to units carrying out combat missions and the work on creating an aerial reconnaissance system using unmanned aircraft was started. However, in the researcher's opinion, the issue of the existence of reconnaissance units of military command bodies and military units of the National Guard of Ukraine, which, within the limits of the powers determined by law, carry out activities for the purpose of intelligence support for the use of the

NGU, still has not been properly regulated by law [1, p. 129].

Analysis of recent studies and publications. Issues of reconnaissance support for NGU units in general and legal regulation of such activities in particular were considered in the works of K. V. Vlasov, R. O. Honchar, V. P. Hrynyak, O. Ye. Zabula, V. L. Ignatenko, Sh. P. Klibanskiy, O. V. Kryvenko and other researchers. However, the intensity of combat operations, the introduction of martial law on the territory of Ukraine and changes in legislation necessitate further research in this area.

The purpose of the article is to analyze the problems of legal regulation of reconnaissance support for the NGU.

Summary of the main material. In accordance with the provisions of Article 1 of the Law of Ukraine "On the National Guard of Ukraine", the NGU is a military formation with law enforcement functions, which is part of the system of the Ministry of Internal Affairs of Ukraine and is intended to carry out tasks to protect the lives, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other unlawful attacks, protecting public safety and order and ensuring public safety, as well as in cooperation with law enforcement agencies – to ensure state security and protection of the state border,

stopping terrorist activities, the activities of illegal paramilitary or armed formations (groups), terrorist organizations, organized groups and criminal organizations. It also participates in interaction with the Armed Forces of Ukraine in repelling armed aggression against Ukraine and eliminating the armed conflict by conducting military (combat) operations, as well as performing territorial defense tasks [2].

At the same time, according to the provisions of Article 18 of the Law of Ukraine "On National Security of Ukraine", the NGU has a dual status: in peacetime, it is part of the security forces and performs law enforcement functions, and also develops the capabilities necessary to perform tasks as part of the defense forces; with the introduction of martial law, the NGU is prepared to perform tasks as intended under the legal regime of martial law, is included in the defense forces, carries out tasks and is subordinated in accordance with the provisions of the Law of Ukraine "On the Legal Regime of Martial Law" and the Law of Ukraine "On the National Guard of Ukraine" [3].

The successful conduct of combat operations and ensuring the preservation of the combat effectiveness of the defense forces is achieved by implementing a set of protection measures, organized and implemented in full, regardless of the conditions of the situation.

The provision of defense forces during their use is based on timely created and properly secured and prepared systems for comprehensive support of the components of the defense forces (combat, moral-psychological, material and technical (logistics), medical).

One of the types of combat support is reconnaissance support, the planning of which is carried out by the relevant military command and control bodies.

Consequently, the reconnaissance support system of the National Guard of Ukraine should be an integral part of the comprehensive support of its forces when used as a component force of state defense in order to timely provide the reconnaissance information necessary for the high-quality and effective performance of tasks as intended [1, p. 131].

At the same time, according to the Law of Ukraine "On Intelligence," the list of intelligence agencies authorized to carry out intelligence activities is exhaustive. These include:

- 1) Foreign Intelligence Service of Ukraine;
- 2) An intelligence agency of the Ministry of Defense of Ukraine;

3) An intelligence agency of the central executive body that implements state policy in the field of protecting the state border.

The implementation of intelligence activities by other state bodies, military formations, enterprises and institutions, organizations of any form of ownership or individuals is prohibited except for the conduct of intelligence activities and special reconnaissance by other entities of the intelligence community in cases provided for by law [4].

Does this mean that the NGU does not have the right to conduct reconnaissance, and the reconnaissance units it created are engaged in illegal activities? To answer this question, it is necessary to analyze in detail the provisions of the Law of Ukraine "On Intelligence". According to the provisions of Article 1 of this law, the following terms are used in it in the following meaning:

– intelligence – an organizational and functional combination of intelligence bodies defined by law and the activities that they carry out independently or in interaction with each other and with other entities of the intelligence community in order to ensure the national security and defense of Ukraine;

– intelligence activities – a system of intelligence activities carried out by the intelligence agencies of Ukraine to fulfill the tasks assigned to these agencies and perform the functions defined by this Law;

– intelligence event – a set of actions and decisions of an intelligence agency and/or in cases specified by law, another entity of the intelligence community using intelligence methods, forces and means;

– reconnaissance information – oral, recorded on tangible media (including in samples of products and substances) or reflected in electronic form, information or data that is not publicly available or that cannot be obtained officially, about the intentions, plans and actions of foreign states, organizations and individuals or about their potential capabilities to implement such intentions and plans, as well as about processes, events, circumstances, technologies, knowledge in the interests of national security and defense of Ukraine;

– Intelligence agencies of Ukraine – state bodies authorized by this Law to carry out intelligence activities to protect the national interests of Ukraine from external threats [4].

Thus, intelligence activities in the understanding of this law are primarily activities aimed at obtaining reconnaissance information about external threats to the national security and defense of Ukraine. It does not include information that can

be obtained from open sources, official means, and serves to meet the needs of intelligence agencies in areas within their competence.

In the field of military intelligence, intelligence activities are carried out by the intelligence agency of the Ministry of Defense of Ukraine, which carries out the specified activities in the military sphere, defense, military development, military-technical and cyber security. It is the Main Intelligence Directorate of the Ministry of Defense of Ukraine.

In accordance with the provisions of Article 9 of the Law of Ukraine "On Intelligence", the subjects of the military intelligence system, in addition to the specified Main Directorate of the Ministry of Defense of Ukraine, are: military intelligence departments and military intelligence units of the Armed Forces of Ukraine, which, within the limits of the powers determined by law, carry out activities for the purpose of intelligence support for the use of the Armed Forces of Ukraine; Special Operations Forces (hereinafter referred to as SOF) of the Armed Forces of Ukraine, which, within the limits of the powers specified by law, carry out special reconnaissance in the interests of preparing and conducting operations of defense troops (forces) and special operations.

At the same time, the Main Directorate of the Ministry of Defense of Ukraine is the main management body in the military intelligence system and, within the limits of authority and in the manner prescribed by law, coordinates the activities of military intelligence entities and attracts other entities of the military intelligence system, and in a special period – other components of the defense forces to carry out the tasks assigned to such an intelligence agency and carry out the functions specified by the Law of Ukraine "On Intelligence" [4].

Thus, legally, during a period of martial law, NGU units can be involved by the Main Intelligence Directorate of the Ministry of Defense to carry out the tasks and functions of military intelligence. This approach looks logical, because NGU units are involved in military operations during a special period (including during martial law), and therefore, the legal basis for conducting reconnaissance is laid precisely during this period.

However, the phrase "involves other entities" means that the initiative to carry out reconnaissance activities in this case belongs to the Main Intelligence Directorate of the Ministry of Defense, so that NGU units cannot carry out relevant activities on their own initiative? We believe that the answer to this question is not obvious.

Based on the scale of activity and the nature of the tasks facing it, military intelligence is usually divided into the following levels:

- Strategic;
- Operational;
- Tactical.

Strategic intelligence (strategic level) – intelligence activities aimed at obtaining information about the strategic potential and strategic intentions of an intelligence state, organization or other social community that influences strategy development.

It is the highest form of intelligence activity, on the effectiveness of which depends the viability of the state or organization carrying it out; carries out the setting of intelligence goals and strategic level tasks, searches, extracts and processes the information received, omitting the unimportant and identifying its most important or strategic components, and gives the result to the highest political and military leadership of the state or organization.

Types of strategic intelligence: diplomatic intelligence; foreign intelligence; military operational and strategic intelligence; business strategic intelligence; non-state strategic intelligence.

Operational reconnaissance (operational) is conducted with the aim of obtaining intelligence data in the interests of preparing and conducting operations.

It is organized by the commanders and headquarters of formations, carried out by their intelligence agencies and subordinate forces and intelligence assets.

Tactical reconnaissance provides subunits, units and formations with intelligence data about the enemy and the terrain during their preparation and conduct of combat. It is organized by commanders and headquarters of formations, units and subunits, heads of military branches (forces), special troops and services of formations and units of all types of armed forces [5, p. 6, 7].

Thus, if the strategic and operational level is the exclusive prerogative of the relevant intelligence agencies, and reconnaissance at this level is possible only on their initiative, then at the tactical level, in order to ensure their own activities, NGU units can (and, in our deep conviction, should) carry out reconnaissance independently. However, for unambiguous understanding and application, this provision must be enshrined in legislation.

According to R. O. Honchar, one of the problems with the functioning of the intelligence system at the NGU is the organization of interaction

with the intelligence agencies of the security and defense sector components. The time order for the intelligence information obtaining necessary for the management bodies of the NGU is not detailed [6, p. 15]. In such conditions, it is difficult to talk about the effectiveness of the units' management. As rightly noted in scientific literature, in modern conditions the factor of timely obtaining the intelligence information is no less important than defeat and maneuver. For effective operation on the battlefield, reconnaissance and destruction means are concentrated at the right time, in the right place, in the required quantity, which allows one to achieve an advantage over the enemy and, conversely, underutilization of information technology makes it impossible to maximize the forces of operations and contributes to the loss of initiative and the chance of success [7, p. 114].

The scientific literature suggests the following stages in the formation of a promising intelligence system at the NGU.

The first stage is the formation of intelligence agencies depending on the scope of tasks. At this stage, a list of territorial defense tasks is attached to the service and combat missions performed by NGU units as usual. The distribution of service and combat missions is carried out between the forces of the created NGU grouping and the departments of the NGU operational-territorial associations in a specific operational zone. The order, timing, and methods of their implementation are determined, and the forces and means of the NGU are calculated. At the same time, issues of reconnaissance support for service and combat missions are being resolved, the required composition (number) and distribution of intelligence agencies of the NGU are determined depending on the number and nature of service and combat missions.

The second stage is the formation of the required number of reconnaissance means (sets), depending on the volume of tasks. Depending on certain tasks, the number and composition of the NGU intelligence agencies, the required number of reconnaissance assets is planned and calculated. When listing the reconnaissance assets involved, it is necessary to take into account: the nature of the reconnaissance task(s); method of execution; deadline; tactical and technical characteristics of reconnaissance equipment; physical and climatic conditions for completing the task; degree of autonomy in the use of funds; interchangeability and unification of the NGU reconnaissance means with similar reconnaissance means of interacting intelligence agencies (for example, the Armed

Forces of Ukraine, the State Border Guard Service of Ukraine, the Security Service of Ukraine).

The third stage is the formation of the grouping reconnaissance system, the distribution of forces and reconnaissance assets. At this stage, all forces and means of NGU reconnaissance allocated to carry out the service and combat missions of the NGU grouping in a certain operational zone must be structured into a specific intelligence system operating according to a single plan and a clear distribution of functions, observing a certain hierarchy of presentation and distribution of intelligence information.

A specific NGU intelligence system will be a subsystem of a higher order system – military intelligence of the group (operational command) in the operational zone.

The fourth stage is the formation of channels for obtaining intelligence information and exchanging it. At this stage, channels for receiving, obtaining, and transmitting intelligence information are formed between elements of the NGU intelligence system and intelligence agencies of interacting security forces. Methods for transmitting intelligence information and communication channels (main, backup) are determined. Measures are being developed to protect transmitted intelligence information. An operational game is planned to spread disinformation, demonstrative actions and concealment of NGU actions in a certain operational zone [6, p. 18].

As for peacetime, during this period the feasibility of the existence of intelligence units in the NGU is significantly reduced. In such conditions, intelligence support for NGU units is quite possible due to intelligence information coming from the state intelligence agencies. Of course, timely obtaining of intelligence information can significantly increase the efficiency of performing the functions assigned to NGU units in peacetime, in particular, protecting the constitutional system of Ukraine and the integrity of its territory from attempts to change them by force; protection of public safety and order; ensuring the protection and protection of life, health, rights, freedoms and legitimate interests of citizens; protection of important government facilities, etc. However, in our opinion, expanding the circle of intelligence agencies can lead to excessive competition in this area, irrational use of state resources, imbalance between different law enforcement agencies, and complicate control over the activities of intelligence agencies.

We should agree with the authors who note that one of the methods of organizing and conducting intelligence activities is the method of specialization of intelligence agencies. The content of this method consists in a clear delineation of the powers of intelligence agencies to carry out certain types of intelligence activities. Such a distinction will help increase the efficiency of intelligence activities and increase the professionalism of intelligence agencies [8, p. 109].

In such conditions, the priority remains the need to improve interaction between the NGU and the intelligence agencies of the state, to ensure the timely receipt by NGU units of the intelligence information necessary to carry out their functions.

Conclusions

The analysis of the current legislation allows us to highlight the following main difficulties in the legal regulation of intelligence support for the NGU.

1. Lack of legal authority for NGU units to carry out independent intelligence activities during a special period. NGU units have the right to carry out intelligence activities during a special period in the field of military intelligence only on behalf of the Main Intelligence Directorate of the Ministry of Defense of Ukraine, and independently to meet their own needs – only at the tactical level (the latter authority is proposed to be stipulated at the legislative level).

2. Lack of legal authority in peacetime to carry out intelligence activities by NGU units. This situation is due to the principle of specialization of intelligence agencies.

3. Lack of legislative regulation of the procedure for the exchange (including time limits) of intelligence information between intelligence agencies and NGU units.

The materials of the article can be used in the process of forming intelligence units of the NGU.

The prospect for further development of this area is the research into intelligence support for NGU units.

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**РОЗВІДУВАЛЬНЕ ЗАБЕЗПЕЧЕННЯ ПІДРОЗДІЛІВ НАЦІОНАЛЬНОЇ ГВАРДІЇ УКРАЇНИ:
ПРОБЛЕМИ НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ**

На основі аналізу нормативно-правових актів зроблено висновок про належне унормування діяльності розвідувальних підрозділів Національної гвардії України в особливий період (зокрема у період воєнного стану). Специфіка Національної гвардії України полягає у тому, що вона має подвійний статус: у мирний час входить до складу сил безпеки та виконує правоохоронні функції, а також розвиває спроможності, необхідні для виконання завдань у складі сил оборони; із уведенням воєнного стану – приводиться у готовність до виконання завдань за призначенням в умовах правового режиму воєнного стану і входить до складу сил оборони, виконує завдання та підпорядковується командуванню Збройних Сил України.

Установлено, що ініціатором розвідувальних заходів у цьому разі є розвідувальний орган, а підрозділи Національної гвардії України з власної ініціативи можуть здійснювати військову розвідку на тактичному рівні.

Обґрунтовано, що наділення Національної гвардії України повноваженнями розвідувального органу у мирний час недоцільне, а запорукою ефективного розвідувального забезпечення у цей період є удосконалення взаємодії з розвідувальними органами та шляхів обміну розвідувальною інформацією.

У процесі дослідження використовувалися як загальнонаукові (аналіз, синтез, прогноз), так і спеціальні (порівняльно-правовий, системно-структурний, логіко-правовий, догматичний) методи.

Ключові слова: *розвідувальне забезпечення, розвідка, розвідувальна інформація, правове регулювання.*

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