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V. Yemanov



O. Batiuk



S. Bielai

## THEORETICAL FOUNDATIONS FOR REGULATING THE STATUS OF SECURITY AND DEFENSE FORCES PERSONNEL (SERVICE MEMBER, EMPLOYEE, STAFF MEMBER)

*A study on the status of security and defense forces personnel was conducted. The etymological meanings of the terms "service member," "employee," and "staff member" were analyzed, as well as the perspectives of leading scholars on these terms. Based on this analysis, the author formulated proposals for regulating the status of security and defense forces personnel. Through the analysis of Ukraine's regulatory framework, the norms defining the legal status of service members, employees, and staff members were summarized. Further research directions were identified, aimed at examining the relationship between the statuses of personnel in the security and defense sectors of Ukraine, including "service member," "civil servant," and "employee."*

**Keywords:** security forces, defense forces, serviceman, employee, staff member, status, service.

**Statement of the problem.** The relevance of the topic is due to the fact that with the annexation of the territory of the Autonomous Republic of Crimea and the Donetsk and Luhansk regions of Ukraine by the Russian Federation in 2014, the issue of regulating the legal status and the terms "security forces" and "defense forces" became acute. According to a number of regulatory acts, including the Law of Ukraine "On the Defense of Ukraine" (as amended on December 6, 1991, No. 1932-XII) and the Law of Ukraine "On the Fundamentals of National Security of Ukraine" (as amended on June 19, 2003, No. 964-IV), such definitions as "security forces" and "defense forces" were not provided. Only in the Law of Ukraine "On National Security of Ukraine" No. 2469-VIII, adopted on June 21, 2018, were the definitions of security forces and defense forces first introduced. "Security forces" are understood to mean: "security forces are law enforcement and intelligence agencies, state bodies of special purpose with law enforcement functions, civil protection forces, and other bodies tasked with ensuring national security of Ukraine by the Constitution and laws of Ukraine" (Article 1); "defense forces" are the Armed Forces of Ukraine, as well as other military formations established in accordance with the laws of Ukraine, law enforcement and intelligence agencies, special purpose bodies with law enforcement functions, tasked with ensuring the defense of the state by the Constitution and laws of Ukraine" (Article 1) [1].

### Analysis of recent research and publications.

An analysis of the scientific literature shows that the issue of regulating the legal status of security and defense forces personnel has been highlighted in a limited number of scholarly studies. Specifically, V. Pokaychuk studied the essence and correlation of the concepts of "security forces" and "law enforcement forces" [2]; I. Bronevyska focused on defining the term "law enforcement officer" [3]; I. Borodin and S. Pasika investigated the legal status of military personnel in Ukraine [4]; O. Kryvenko examined issues of regulatory and legal regulation of the legal status of military personnel [5]. However, comprehensive research on defining the legal status of Ukraine's security and defense forces has rarely been conducted in scientific works.

**The purpose of the article** is to analyze the provisions of current Ukrainian legislation, that regulate the legal status of security and defense forces personnel – military personnel, employees, and staff members.

**Summary of the main material.** When considering the feasibility of regulating the status of security and defense forces personnel (military personnel, employees, staff members), it is essential to first analyze the distinction between the terms "security forces" and "defense forces".

Security forces include law enforcement and intelligence agencies, state bodies of special purpose with law enforcement functions, civil protection forces, and other bodies tasked with

ensuring the national security of Ukraine by the Constitution and laws of Ukraine. Therefore, depending on their functional purpose, the security forces may include the Ministry of Internal Affairs of Ukraine [which coordinates the activities of the National Police of Ukraine, the National Guard of Ukraine (in peacetime, the National Guard of Ukraine is part of the security forces and performs law enforcement functions, as well as develops capabilities necessary for performing tasks as part of the defense forces), the State Border Guard Service of Ukraine, the State Emergency Service of Ukraine, the State Migration Service of Ukraine], the Security Service of Ukraine, the State Guard Department of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, intelligence agencies of Ukraine, and others.

Defense forces include the Armed Forces of Ukraine, as well as other military formations established in accordance with the laws of Ukraine, law enforcement and intelligence agencies, special purpose bodies with law enforcement functions, tasked with ensuring the defense of the state by the Constitution and laws of Ukraine [1]. Therefore, the defense forces primarily include the Armed Forces of Ukraine, the State Special Transport Service of Ukraine, the National Guard of Ukraine (with the introduction of martial law, the National Guard of Ukraine is prepared to perform tasks under the legal regime of martial law and becomes part of the defense forces), and other military formations, law enforcement and intelligence agencies, special purpose bodies with law enforcement functions that perform state defense tasks established in accordance with the laws of Ukraine.

Therefore, it can be stated that the legislator does not clearly delineate military formations, law enforcement and intelligence agencies, and special purpose bodies with law enforcement functions (except for the Armed Forces of Ukraine) as belonging to either security forces or defense forces (only the National Guard of Ukraine is defined as having dual affiliation). This situation is due to the fact that during the implementation of the legal regime of martial law, all components of the security and defense sector perform tasks related to repelling armed aggression according to their powers.

After distinguishing between the terms "security forces" and "defense forces", it is appropriate to study the etymological definitions of the terms "service member", "employee", and "staff member".

The term "service member" originates from the words "servant" and "service." The Great

Explanatory Dictionary of Modern Ukrainian Language explains that "service" refers to usefulness, agreement, activity, life for others, service, useful work, while the word "to serve" means to be of use, to be useful, to be needed, to be an instrument, a means for a certain purpose [6].

The term "employee" derives from the word "work". The Great Explanatory Dictionary of Modern Ukrainian Language explains "employee" as "a working person, laborer. The same as a worker. A member of a production collective, a person involved in a certain labor process, working in a certain profession" [6].

The word "staff member" derives from the word "worker". The Great Explanatory Dictionary of Modern Ukrainian Language states that a staff member is one who works together with someone, assisting them in some matter [6]. The word "employee" comes from the word "worker". In the Great Explanatory Dictionary of the Modern Ukrainian Language, it is stated that an employee is someone who works with someone, helps him in some business [6].

The current Labor Code of Ukraine does not provide a definition for the term "employee", however, this concept is regulated in a number of other legislative acts. For example, Article 1 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" considers an employee as a natural person who works based on an employment contract at an enterprise, institution, organization, or for a natural person who uses hired labor [7]. A similar definition of the term "employee" can also be found in Article 1 of the Law of Ukraine "On Professional Development of Employees": "an employee is a natural person who works under an employment contract (contract) at an enterprise, institution, or organization, regardless of the form of ownership and type of activity, or for a natural person who, in accordance with the law, uses hired labor" [8].

In Article 10 (paragraph 4 of part two) of the Law of Ukraine "On National Security of Ukraine," the terms "military personnel" and "employees" are used as an example: "...participate in public discussions and open parliamentary hearings on the activities and development of the security and defense sector, issues of legal and social protection of military personnel and employees of intelligence and law enforcement agencies, including those discharged to reserve or retired, participants in hostilities, and their family members" [1].

The Law of Ukraine "On Military Duty and Military Service," in part nine of Article 1, defines military personnel as persons serving in the military [9].

Article 5 of the Law of Ukraine "On Social and Legal Protection of Military Personnel and Their Family Members" defines military personnel as citizens of Ukraine who serve on the territory of Ukraine, participate in national and local referendums, and can be elected and can vote for respective local councils and other elected state bodies in accordance with the Constitution of Ukraine [10].

Next, we will analyze the regulatory legal acts that define the status of military personnel and employees in the security and defense forces of Ukraine.

The Law of Ukraine "On the Armed Forces of Ukraine" defines the Armed Forces of Ukraine as a military formation entrusted, in accordance with the Constitution of Ukraine, with the defense of Ukraine, protection of its sovereignty, territorial integrity, and inviolability. This law uses the terms "military personnel" and "employees" in such norms as: Article 5 (Formation of the Armed Forces of Ukraine), Part one – The personnel of the Armed Forces of Ukraine consists of military personnel and employees of the Armed Forces of Ukraine, Part two – Separate positions of employees of the Armed Forces of Ukraine can be filled by citizens who perform alternative (non-military) service in the manner prescribed by law, Part four – Labor relations of employees of the Armed Forces of Ukraine are regulated by labor legislation; Article 16 (Social and Legal Protection of Military Personnel, Reservists, Military Enlistees Called up for Training, their Family Members, and Employees of the Armed Forces of Ukraine), and so on [11].

The Law of Ukraine "On the National Guard of Ukraine" states that the National Guard of Ukraine is a military formation with law enforcement functions, which is part of the system of the Ministry of Internal Affairs of Ukraine and is designed to perform tasks to protect and protect the life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other illegal encroachments, protect public safety and order, and ensure public safety. as well as in cooperation with law enforcement agencies – to ensure state security and protection of the state border, suppression of terrorist activities, activities of illegal paramilitary or armed formations (groups), terrorist organizations, organized groups and criminal organizations. This Law uses the terms "military personnel" and "employees" in Article 9 (Personnel of the National Guard of Ukraine) in separate units, namely: in part one, it is defined that the personnel of the National Guard of Ukraine consist of military personnel and employees, and the National Guard of Ukraine is staffed by military

personnel serving under contract and conscription. The Main Department of Military Command of the National Guard of Ukraine and the operational-territorial units of the National Guard of Ukraine may be staffed by civil servants; in part six, it is regulated that the labor relations of the employees of the National Guard of Ukraine are governed by labor legislation, civil service legislation, and employment contracts (contracts) [12].

As stated in the Law of Ukraine "On the State Border Guard Service of Ukraine", the State Border Guard Service of Ukraine is a special-purpose law enforcement agency entrusted with the task of ensuring the inviolability of the state border and protecting the sovereign rights of Ukraine in its contiguous zone and exclusive (maritime) economic zone. This Law also uses the terms "military personnel" and "employees" in such norms as: Article 14 (Personnel of the State Border Guard Service of Ukraine), which in part one determines that the personnel of the State Border Guard Service of Ukraine include military personnel and employees of the State Border Guard Service of Ukraine; Article 16 (Financial support of military personnel and remuneration of employees of the State Border Guard Service of Ukraine), etc. [13].

According to the Law of Ukraine "On the Security Service of Ukraine", the Security Service of Ukraine is a state body of special purpose with law enforcement functions, which ensures the state security of Ukraine. In addition to the terms "military personnel" and "employee", this Law uses the term "serviceman". Article 19 stipulates that the personnel of the Security Service of Ukraine consist of: military personnel, employees who have concluded an employment contract with the Security Service of Ukraine, as well as conscripts. The procedure for registration of personnel of the Security Service of Ukraine is approved by the Head of the Security Service of Ukraine [14].

In the Law of Ukraine "On State Protection of State Bodies of Ukraine and Officials", it is indicated that State Protection is carried out by the State Protection Department of Ukraine – a state law enforcement agency of special purpose, subordinated to the President of Ukraine and under the control of the Verkhovna Rada of Ukraine. In Article 16 (Staffing of the State Protection Department of Ukraine), it is stated that the personnel of the State Protection Department of Ukraine consist of military personnel who are enlisted in the military service in the State Protection Department of Ukraine under contract, conscripted military personnel, as well as

employees who have entered into an employment contract (contract) with the State Protection Department of Ukraine [15]. In other words, two terms are used: "serviceman" and "employees".

"According to the Law of Ukraine "On the State Special Transport Service", the State Special Transport Service is a specialized military formation that is part of the system of the Ministry of Defense of Ukraine, designed to ensure the sustainable functioning of transport in peacetime and in a special period. This Law uses the terms "military personnel" and "employees" in Article 5 (Manning of the State Special Transport Service), namely in part one it is stated that the personnel of the State Special Transport Service include military personnel, civil servants and employees [16].

The Law of Ukraine "On the State Service of Special Communications and Information Protection of Ukraine" establishes that the State Service of Special Communications and Information Protection of Ukraine is a state agency designed to ensure the functioning and development of the state system of government communications, the National System of Confidential Communication, the formation and implementation of state policy in the areas of cryptographic and technical protection of information, cybersecurity, special-purpose postal communication, government courier communication, active counteraction to aggression in cyberspace, as well as other tasks in accordance with the law [17]. Article 11 (Personnel of the State Service of Special Communications and Information Protection of Ukraine) in part 1 stipulates that the personnel of the State Service of Special Communications and Information Protection of Ukraine include military personnel, civil servants and other employees [17].

According to the Law of Ukraine "On the Foreign Intelligence Service of Ukraine", the Foreign Intelligence Service of Ukraine is an intelligence agency of Ukraine, which functions as a separate state body, does not belong to the system of executive authorities and operates under the general leadership of the President of Ukraine and democratic civilian control in accordance with the Law of Ukraine "On Intelligence". Part 1 of Article 4 (Total Strength of the Foreign Intelligence Service of Ukraine) states that the total number of employees of the Foreign Intelligence Service of Ukraine is approved in the amount of 4,350 employees, including up to 4,010 servicemen, and in a special period – in accordance with the Mobilization Plan of Ukraine [18]. Therefore, it is possible to conclude that the terms "serviceman" and "employee" are also used.

In the Law of Ukraine "On the National Police of Ukraine", it is established that the National Police of Ukraine is a central executive authority serving the society by ensuring the protection of human rights and freedoms, combating crime, maintaining public safety and order. The term "employees" is used in Part 2 of Article 3 (Legal basis of police activity), which states that the Law of Ukraine "On Prevention of Corruption" applies to police employees (police officers and civil servants). At the same time, paragraph 9 of Part 1 of Article 22 (Main powers of the police chief) provides that the head of the police, within the scope of his powers, issues orders mandatory for execution by the police officers, civil servants, and employees of the police. Therefore, we have three categories: police officers, civil servants, and police employees. Article 59 (Service in the police) specifies in Part 1 that service in the police is a special type of civil service, which is the professional activity of police officers in performing the tasks entrusted to the police, and in Part 2, it states that the time spent in the police service is counted towards insurance experience, work experience in the specialty, as well as experience in public service, etc. Also, in Article 64 (Oath of the police officer), Part 1 defines that a person entering the police service takes an oath of allegiance to the Ukrainian people [19]. It can be concluded that the term "police employee" refers primarily to "unattested police employees" and is generally applicable to police officers and civil servants.

According to the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Provision on the State Emergency Service of Ukraine," the State Emergency Service of Ukraine is a central executive authority whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs and which implements the state policy in the field of civil protection, protection of the population and territories from emergencies and prevention of their occurrence, elimination of the consequences of emergencies, rescue work, firefighting, fire and technological safety, activities of emergency rescue services, as well as hydrometeorological activities. Paragraph 14 specifies that the maximum number of personnel of the rank and file and managerial staff of the civil protection service, civil servants, and employees is approved by the Cabinet of Ministers of Ukraine [20]. Therefore, it can be concluded that the civil protection service uses such categories: rank and file and managerial staff, civil servants, and employees.

In the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Provision on the State Migration Service of Ukraine", it is stated that the



State Migration Service of Ukraine is a central executive authority whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs and which implements the state policy in the field of migration (immigration and emigration), including combating illegal migration, citizenship, registration of individuals, refugees, and other categories of migrants defined by law. Paragraph 15 specifies that the maximum number of civil servants and employees is approved by the Cabinet of Ministers of Ukraine [21]. As we can see, there is a division of personnel into two categories: civil servants and employees.

The conclusion can be made that in the components of Ukraine's security and defense sector, personnel with the status of servicemen are referred to using the terms "servicemen" and "employees". Employees include "civil citizens" (who are not servicemen). The status of an employee is also held by citizens of Ukraine who serve and work in central executive bodies and have been awarded a special rank. Alongside servicemen and employees, another category of personnel is state officials. Thus, three main terms classifying personnel categories can be identified: "servicemen", "state officials", and "employees". It is also worth noting that in intelligence (counterintelligence) agencies, the term "employee" is still used, which encompasses the terms "serviceman" and "employee".

### Conclusions

After analyzing the views of scholars and the provisions of regulatory documents defining the legal status of personnel in the components of Ukraine's security and defense sector, the authors have reached the following conclusions:

1. With the annexation of the territory of the Autonomous Republic of Crimea, Donetsk, and Luhansk regions of Ukraine by the Russian Federation in 2014, the acute problem of regulating the legal status and terms "security force" and "defense force" arose. The analysis of scientific literature indicates that the issue of regulating the legal status of subjects of security and defense forces is currently addressed in a small number of studies and has been scarcely explored in scientific works.

2. The analysis of the legal status of the personnel of the security and defense forces of Ukraine showed that the components of the security and defense sector, the personnel of which include military personnel, have the legal status of "military formation", "military formation with law

enforcement functions", "specialized military formation", "state special purpose body with law enforcement functions", "state law enforcement agency of special purpose", "state body", "intelligence agency". Thus, the legal status is based on the terms "military formation" and "state body". At the same time, the legal status of the subjects of the security and defense forces of Ukraine, whose personnel have been awarded special ranks, has the legal status of "central executive body".

3. The status of a serviceman is granted to citizens of Ukraine, foreigners and stateless persons who perform military service in the Armed Forces of Ukraine and other military formations and state bodies, perform military service within and outside Ukraine, have uniform military ranks and insignia for the Armed Forces of Ukraine, defined by the Law of Ukraine "On Military Duty and Military Service". The status of an employee is granted to citizens of Ukraine who serve in the central executive authorities and have been awarded a special rank, as well as personnel from among the "civilian citizens" of Ukraine, foreigners and stateless persons. Along with military personnel and employees, there is another category – civil servants. Thus, it is possible to distinguish three main terms that classify the category of "personnel": "military personnel", "civil servants", "employees". It can also be concluded that intelligence (counterintelligence) agencies use the term "employee", which covers the terms "serviceman" and "employee".

Further scientific research will be aimed at studying the issues of correlation between the status of personnel of the components of the security and defense sector of Ukraine "serviceman", "state official", "employee".

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**В. В. Єманов, О. В. Батюк, С. В. Білай**

### **ТЕОРЕТИЧНІ ОСНОВИ ВПОРЯДКУВАННЯ ПИТАННЯ СТАТУСУ СУБ'ЄКТІВ СИЛ БЕЗПЕКИ ТА ОБОРОНИ (ВІЙСЬКОВОСЛУЖБОВЕЦЬ, ПРАЦІВНИК, СПІВРОБІТНИК)**

*Проведено дослідження статусу суб'єктів сил безпеки та сил оборони. Проаналізовано етимологічне значення термінів «військовослужбовець», «працівник», «співробітник», а також погляди провідних науковців стосовно наведених термінів, і на цьому підґрунті сформульовано авторські пропозиції щодо впорядкування питання статусу суб'єктів сил безпеки та оборони шляхом удосконалення (внесення змін і доповнень) чинного законодавства України.*

*Аналіз правового статусу персоналу сил безпеки та оборони України засвідчив, що складові сектору безпеки і оборони, до персоналу яких входять військовослужбовці, мають правовий статус «військове формування», «військове формування з правоохоронними функціями», «спеціалізоване військове формування», «державний орган спеціального призначення з правоохоронними функціями», «державний правоохоронний орган спеціального призначення», «державний орган», «розвідувальний орган». Отже, в основі правового статусу закладені терміни «військове формування» та «державний орган». Водночас правовий статус суб'єктів сил безпеки та оборони України, персоналу яких присвоєно спеціальні звання, мають правовий статус «центрального органу виконавчої влади».*

*Статус військовослужбовця надається громадянам України, іноземцям та особам без громадянства, які проходять військову службу у Збройних Силах України й інших військових формуваннях та державних органах, виконують військовий обов'язок на території та за межами України, мають єдині для Збройних Сил України військові звання і знаки розрізнення, визначені Законом України «Про військовий обов'язок і військову службу». Статус працівника мають громадяни України, які проходять службу у центральних органах виконавчої влади та їм присвоєно спеціальне звання, а також персонал з числа «цивільних громадян» України, іноземців та осіб без громадянства. До категорії персоналу поряд із військовослужбовцями та працівниками належить ще одна категорія – державні службовці. Отже, можна виокремити три основні терміни, що класифікують категорію «персонал»: «військовослужбовці», «державні службовці», «працівники». Також можна зробити висновок, що у розвідувальних (контррозвідувальних) органах використовується термін «співробітник», який охоплює терміни «військовослужбовець» та «працівник».*

*Подальші наукові розвідки будуть спрямовані на вивчення питань співвідношення статусу персоналу складових сектору безпеки і оборони України «військовослужбовець», «державний службовець», «працівник».*

**Ключові слова:** *сили безпеки, сили оборони, військовослужбовець, працівник, співробітник, статус, служба.*

**Yemanov Vladyslav** – Doctor of Sciences in Public Administration, Senior Research Officer, First Deputy Head of the National Academy of the National Guard of Ukraine for Educational and Methodological Work  
<https://orcid.org/0000-0001-5055-8852>

**Batiuk Oleh** – Doctor of Law, Professor, Professor at the Department of National Security, Lesya Ukrainka Volyn National University  
<https://orcid.org/0000-0002-2291-4247>

**Bielai Serhii** – Doctor of Sciences in Public Administration, Professor, Deputy Head of the Educational and Research Center for the Organization of the Educational Process – Head of the Scientific and Methodological Department of the National Academy of the National Guard of Ukraine  
<https://orcid.org/0000-0002-0841-9522>