

АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС



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PECULIARITIES OF THE CIVIL SERVICE IN THE NATIONAL DEFENSE SECTOR

Considering the development of civil society as the driving force of the reform of the civil (public) service as a personalized basis for ensuring public administration in various spheres of social and political activity, in this study, the civil service is characterized by the prism of its implementation in the national defense sector. Analyzing the current domestic and foreign legislation, the following features of the civil service were distinguished: the two levels – the internal (staffing of the service) and the external (tasks and functions in the national defense sector); connection with militarized service; a supporting role in the

implementation of the main tasks by specially authorized actors (their officials), etc. The legal regulation of the civil service in the national defense sector of Ukraine is characterized by dualism, which consists in regulating the issues of its passage in two directions: the general (Law of Ukraine «On Civil Service») and the special (for example, the Law of Ukraine «On Prosecutor's Office»). Particular attention during the study is given to foreign experience in this field, based on comparison of such service in Ukraine and Lithuania. Such dualism is inherent in the legal regulation of civil service in the system of national defense of Lithuania. In addition, both in Ukraine and in Lithuania, it plays a very important role for the implementation of an effective defense policy of the state. With radical comparative analysis of regulatory and legal bases, the imperfect legal regulation of relations that arise in this area in Ukraine has become apparent. National legislation on civil service in the national defense sector needs improvement by supplementing the Law of Ukraine «On Defense of Ukraine» with the provisions on civil service in the field of defense and, in connection with this change, other normative and legal acts in this area require the bringing in of conformity. Proper legal consolidation in Ukraine also requires the administrative and legal status of civil servants of the defense industry and the status of citizens and public associations that voluntarily participate in the provision of national security and defense. Establishing in Ukraine at the legislative level of a clearly defined notion of «civil service in the field of national defense» will, to a certain extent, help to regulate relations in the course of such service and avoid problems in law enforcement practice.

Keywords: civil service; the national defense sector; public professional activity; national security.

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Особливості цивільної служби у секторі національної оборони

Дане дослідження охарактеризовує цивільну службу крізь призму її здійснення у секторі національної оборони, виокремлюючи наступні її особливості з огляду на специфіку відповідної сфери та на основі аналізу вітчизняного та зарубіжного законодавства: цивільна служба у секторі національної оборони як публічна професійна діяльність поєднує два рівні: внутрішній (організаційний) – кадрові питання проходження служби; зовнішній (правозастосовний) – виконання завдань і функцій у секторі національної оборони; вона нерозривно пов'язана з мілітаризованою службою та часто покликана виконувати забезпечувальну роль щодо втілення основних завдань спеціально уповноваженими суб'єктами (їх посадовими особами). Слід враховувати також те, що правове регулювання цивільної служби у секторі національної оборони України характеризується дуалізмом, що полягає у регулюванні питань її проходження у двох напрямках: загальному (Закон України «Про державну службу») та спеціальному (наприклад, Закон України «Про прокуратуру»). Особливу увагу приділено закордонному досвіду в цій сфері (Литва). Як в Україні, так і в Литві цивільна служба відіграє досить важливу роль для здійснення ефективної оборонної політики держави. При докорінному порівняльному аналізі нормативно-правових баз очевидним стало недосконале правове регулювання відносин, що виникають у цій сфері в Україні. Доведено потребу удосконалити вітчизняне законодавство у сфері цивільної служби у секторі національної оборони шляхом доповнення Закону України «Про оборону України» положеннями щодо цивільної служби у сфері оборони і привести у відповідність інші нормативно-правові акти в цій царині. Належного правового закріплення в Україні вимагають і адміністративно-правовий статус державних службовців сфери оборонно-промислового комплексу, статус громадян і громадських об'єднань,

що добровільно беруть участь у забезпеченні національної безпеки та оборони. Закріплення в Україні на законодавчому рівні чітко визначеного поняття «цивільна служба у сфері національної оборони» певною мірою допоможе урегулювати відносини при проходженні такої служби та уникнути проблем у правозастосовній практиці.

Ключові слова: цивільна служба; сектор національної оборони; публічна професійна діяльність; національна безпека.

Introduction. The objective circumstances and events that have taken place and are still taking place in the life of the Ukrainian community, as it has never happened before, actualize the need to overcome the threats to national security in the field of defense of the country. In turn, the development of the civil society has become the main driving force of the reform of civil service as a personalized basis for ensuring public administration in various spheres of social and political activity, in particular in the national defense sector. Thus, the need to confront armed conflict in the eastern regions of Ukraine was a prerequisite for amending the Laws of Ukraine «On the Defense of Ukraine» [1] (amendments from February 3, 2015, February 12, 2015, December 23, 2015, June 16, 2014, July 7, 2016), «On the Armed Forces of Ukraine» [2] (as from 05.06.2014, 06.10.2015, 16.06.2016, 07.07.2016), «On Mobilization Preparation and Mobilization» [3] (amended from 05.20.2014, 07.03.2014, 25.07.2014, 18.03.2015, 19.03.2015, 07.04.2015, 21.04.2015, 14.05.2015, 01.07.2015, 31.05.2016); adoption of the new Law of Ukraine «On the Legal Regime of Martial Law» [4] and the Military Doctrine of Ukraine [5]. It is important that, along with the significant legislative work on national defense issues, a fundamentally new Law of Ukraine «On Civil Service» [6] was adopted, etc.

Analysis of recent literary studies. The field of civil service through the prism of its implementation in the national defense sector of Ukraine is not studied enough. Some aspects were studied by such national scholars as Horbulin V. (problematic issues of defense reform), Rusnak I. (defense reform prospects), Melnyk O., Frolov V., Saganyuk F. (defense reform), Shapoval R., Solntseva K. (civil defense service) as well as international ones – Dertouzou J. (army recruiting), Moskos Ch. (military organization, armed forces, society), Novikovas A., Novikovienė L. (civil defense service) etc.

Purpose of the study. The purpose of the study is to explore and highlight the main features of the civil service, taking into account the specifics of the sphere of national defense sector, to analyze domestic and foreign legislation (in particular, the Republic of Lithuania) connected with the civil service. In this case, special attention during the study is paid to foreign experience in this field, and the comparative characteristics of such service in Ukraine and Lithuania are described.

The main body of the article. Despite the fact that the current legislation provides for the definition of the term «defense of Ukraine» as a system of political, economic, social, military, scientific, scientific, technical, information, legal, organizational, other measures of the state regarding the preparation for armed defense and its protection in the event of armed Aggression or armed conflict (Article 1 of the Law of Ukraine «On the Defense of Ukraine»), within the limits

of a number of its provisions, the category «national defense» is often used (for example, part 6 of Article 2 of the Law of Ukraine «On the Defense of Ukraine»). As a result, we consider it to be entirely justified to use these terms as identical.

Ukraine's defense is based on the willingness and ability of state authorities, all units of the military organization of Ukraine, local self-government bodies, a unified civil defense system, the national economy to transfer, if necessary, from peaceful to military status and repression of armed aggression, the elimination of armed conflict, and also readiness of the population and territory of the state for defense [1].

National defense as one of the spheres of protection of vital interests of a man and citizen, society and the state, in which sustainable development of society is ensured, timely detection, prevention and neutralization of real and potential threats to national interests as a component of national security is regulated by the Law of Ukraine «On National Security of Ukraine» [7].

In particular, the Law of Ukraine «On National Security of Ukraine» defines fundamental national interests of Ukraine: state sovereignty and territorial integrity, democratic constitutional order, and prevention of interference in the internal affairs of Ukraine; sustainable development of the national economy, civil society and the state in order to ensure the growth of the level and quality of life of the population; integration of Ukraine into European political, economic, security, legal space, membership of the European Union and the North Atlantic Treaty Organization, development of equal, mutually beneficial relations with other states.

Speaking about Lithuanian national defense, the Law «On the system of national defense and organization of military service» is defined as a part of the system of national security of the Republic of Lithuania, consisting of the integrity of state institutions which purpose is to protect state sovereignty, fulfillment of obligations in the international defense and military cooperation of Lithuania and other functions related to national defense, a set of military personnel and workers for other infrastructure, for enterprises and institutions created for the purpose of the national defense [8].

It should also be noted that one of the most important strategic documents of Lithuania in this area, namely *Lietuvos gynybos politikos Baltoji knyga* (the Lithuanian Defense Policy White Paper) stipulates that the priority of Lithuanian defense policy is not to change, namely to ensure Lithuania's reliable independence, territorial integrity and constitutional order. As a member of NATO and the EU, Lithuania, together with its allies, is committed to ensuring the security of the Euro-Atlantic area and the stability of its development. Taking into account the current long-term security problems of Lithuania and international obligations, four main directions of the state defense policy are distinguished: 1) strengthening of national defense capabilities; 2) strengthening of the collective defense and consolidation of NATO; 3) increasing state preparedness and response to armed threats; 4) the development of regional and international security [9].

Both in Ukraine and in Lithuania are the relevant laws that define the list and scope of competence of specific actors for the provision of national defense. In turn,

the definition of the sphere of civil service in the national defense sector lies in the assessment of the relevant subjects through the prism of the content of the category «civil service».

By the way, the special legislation of Lithuania establishes the notion of the civil service of national defense, where the latter is defined as a civil service performed voluntarily by a citizen of the Republic of Lithuania in the system of national defense with the consent and on conditions and in accordance with the procedure established by normative and legal acts [8]. By contrast, the Ukrainian legislation does not clearly define the notion of civil service in the national defense sector, although, as a result of the analysis of the legal framework and practice, it has been proved that such a type of civil service in Ukraine still exists and to some extent governed by current domestic legislation.

According to one of the most widespread views on the classification of the public service, the civil service along with the militarized service is one of the components of the public service. So the definition of the limits of content and belonging to the civil service lies in the plane of the ratio of civilian and militarized service. The militarized service is characterized by special tasks and purpose, a special order of formation and service, special requirements for vocational training. The special characteristics of the militarized service are: the implementation of the security function, which is to protect and defend the rule of law and order, the territorial integrity and defense of the state, the protection of the life and health of citizens; the possibility of coercion; the existence of a clear system of subordination, mandatory orders. In addition, employees of the militarized service have special external attributes (uniforms, external honors), they are given special titles. Civil service is a service of the professional staff of officials, that is, persons providing the functioning of state authorities and local self-government bodies. In Europe, this kind of service is usually called a civilian service, which also allows distinguishing it from the militarized service and fulfilling the main duty of these officials – to serve the community [10, p. 121].

In turn, in accordance with the provisions of the Law of Ukraine «On Civil Service», the public service is a public, professional, politically impartial activity on the practical fulfillment of the tasks and functions of the state, in particular: 1) analysis of the state policy at the national, sectoral and regional levels and preparation of proposals concerning its formation, including the development and conducting of expertise of draft programs, concepts, strategies, draft laws and other legal acts, draft international treaties; 2) ensuring the implementation of the state policy, the implementation of national, sectoral and regional programs, the implementation of laws and other regulatory legal acts; 3) provision of affordable and high-quality administrative services; 4) state supervision and control over observance of the legislation; 5) management of state financial resources, property and control over their use; 6) personnel management of state bodies; 7) realization of other powers of the state body, determined by the legislation.

The Law of Ukraine «On Civil Service» applies to civil servants: 1) the Secretariat of the Cabinet of Ministers of Ukraine; 2) ministries and other central

executive bodies; 3) local state administrations; 4) the organs of the prosecutor's office; 5) military authorities; 6) foreign diplomatic institutions of Ukraine; 7) state bodies, peculiarities of civil service passing which are determined by Article 91 of mentioned Law; 8) other state bodies. At the same time, the Law of Ukraine « On Civil Service» does not apply in particular to: the President of Ukraine; Members of the Cabinet of Ministers of Ukraine, First Deputy and deputy ministers; Secretary of the National Security and Defense Council of Ukraine and its deputies; People's deputies of Ukraine; Judges; Prosecutors; Servicemen of the Armed Forces of Ukraine and other military formations formed in accordance with the law; Persons of ordinary and commanding members of law-enforcement bodies and employees of other bodies assigned special ranks.

The service in local self-government bodies is a professional, on a permanent basis, activity of Ukrainian citizens who hold positions in local self-government bodies, which is focused to implement the right of local self-government to the territorial community and the separate powers of executive power bodies provided by the law [11].

In turn, the main legal documents of Lithuania, where the provisions regulating the civil service in this area are the Constitution of the Republic of Lithuania, the Labor Code of the Republic of Lithuania, the Laws of Lithuania «On the Civil Service of the Republic of Lithuania», «On the Organization of the National Defence System and Military Service», the Statute of the Civil Defence Service of the Republic of Lithuania, etc.

Article 2 of the Lithuanian Law «On the Civil Service of the Republic of Lithuania» stipulates that the civil service is a legal relationship that arises in connection with the acquisition of the status of a civil servant, as well as a result of the administrative activity of a civil servant in a state or municipal institution or establishment in the implementation of policies of a certain sphere of government or coordination of their implementation, distribution of financial resources and control over their use, audit, adoption and application of legislation, execution of decisions of state and municipal bodies in the field of public administration, preparation and approval of drafts of normative acts and provision of conclusions on personnel management [12]. At the same time, Article 4 of this Law states that its scope extends to all civil servants, but other laws and regulatory documents regulating labor relations and social guarantees may be applied to civil servants to the extent that the given law does not regulate their status or social guarantees. We emphasize that in Ukraine, in accordance with Article 3 of the Law «On Civil Service», its action extends to civil servants of ministries, namely, the Ministry of Defense of Ukraine and officials of military administration. At the same time, the peculiarities of passing the civil service in the national defense sector of Ukraine are still regulated by special legal acts.

Summing up the above, based on the special legislation regulating the issue of civil service, the representatives of the civil service in the national defense sector should include:

1. State officials of the Cabinet of Ministers of Ukraine – the powers of the Cabinet of Ministers of Ukraine in the national defense sector are defined by Article 9 of the Law of Ukraine «On the Defense of Ukraine». Secretariat of the Cabinet of Ministers of Ukraine does not have its own powers (tasks, functions) in the national defense sector. However, based on the fact that the main tasks of the Secretariat are organizational, expert-analytical, legal, informational, logistical support for the activities of the Cabinet of Ministers of Ukraine, government committees [13], the first one performs organizational (provisioning) activities in relation to the implementation of specific powers in the national defense sector which is endowed by the Cabinet of Ministers of Ukraine.

2. State officials of the Ministry of Defense of Ukraine – the powers in the national defense sector are defined by Article 10 of the Law of Ukraine «On the Defense of Ukraine».

The Ministry of Defense of Ukraine, in accordance with the Law of Ukraine «On Central Executive Bodies» [14], is the central executive body that ensures the formation and implementation of state policy in one or more of the areas specified by the Cabinet of Ministers of Ukraine, which are entrusted to the Cabinet of Ministers of Ukraine by the Constitution and laws of Ukraine. In turn, the Ministry of Defense of Ukraine defines the provisions of the Law of Ukraine «On Defense of Ukraine», in particular, as the central body of military management under the jurisdiction of the Armed Forces of Ukraine. At the same time, the personnel of the Armed Forces of Ukraine consists of servicemen and employees of the Armed Forces of Ukraine (Article 5 of the Law of Ukraine «On the Armed Forces of Ukraine»).

In such a state of affairs, the Ministry of Defense of Ukraine, without being a separate component of the Armed Forces of Ukraine, is the central executive body (demilitarized structure), to which the above armed forces are subordinated (Article 3 of the Law of Ukraine «On the Armed Forces of Ukraine»), that is, the first one plays the leading organizational and managerial role in the national defense sector. In this case, the personnel of the apparatus of the Ministry of Defense of Ukraine is civil servants [15].

3. Civilians occupying military positions in peacetime (on terms of a fixed-term employment contract).

Article 6 of the Law of Ukraine «On Military Duty and Military Service» [16] stipulates that military positions (staff positions to be replaced by servicemen) and their respective military titles shall be envisaged in states (staffed drawings) of military units, ships, military units management, institutions, organizations, higher military educational institutions and military training units of higher educational institutions. In turn, individual military positions in peacetime may be replaced by civilians in accordance with the procedure established by the Ministry of Defense of Ukraine or by reservists in accordance with the procedure established by the General Staff of the Armed Forces of Ukraine (under terms of a fixed-term employment contract). In particular, the Provisional list of military positions of the Armed Forces of Ukraine, which in peacetime may be replaced by civilians (on terms of a

fixed-term employment contract) to positions which, in peacetime, may be replaced (by the terms of a fixed-term employment contract) by civilians, for example: on-board aircraft technician, on-board engineer, instructor, geodesist, chief engineer, energy engineer, engineer-inspector, inspector, cartographer, helicopter commander, ship commander, ship commander-pilot instructor, pilot, Chief of Officers' House, officer-political scientist, officer-psychologist, assistant flight officer, assistant ship commander, assistant leading engineer, leading engineer, leading test engineer, senior aviation instructor, senior aircraft technician, senior aircraft technician-instructor, senior flight engineer, senior in-flight engineer-instructor, senior technician, deputy head of the commission, doctor, chief of the cabinet, intern, leading surgeon, leading therapist, senior doctor, engineer, chief engineer, chief engineer - deputy chief of unit, deputy chief of the hospital, chief of medical service, head of the faculty, aircraft specialist (total 601 names of military posts) [17].

A fixed-term employment contract, with the help of which the replacement of certain military positions is carried out, is made between the employee and the commander (chief) of military units, institutions, establishments and organizations, which includes posts that may be substituting. In case of necessity to appoint an employee to a military post, which according to the nomenclature of positions for appointment of servicemen is assigned to the authority of another official, replacement of this post is carried out only after obtaining written permission of such official.

In this case, if the corresponding position is subject to replacement on the basis of the conducted competition, the latter shall be announced only after obtaining a written permit of an official, to the nomenclature of positions for the appointment of servicemen which assigned such a post.

The term of a fixed-term employment contract with employees who replace vacant military positions is determined prior to appointment to this position of a serviceman. In the case of the acceptance of employees for positions, staffed by female servicemen, for the period of their pregnancy and childbirth, as well as for posts, staffed by servicemen for the period of their child-care leave, the term of the fixed-term employment contract is determined until the return of servicemen, who hold these positions, from pregnancy and childbirth or childcare leave.

The statement indicates that civilians may substitute military positions and, accordingly, perform the functional duties of servicemen (in the national defense sector), mainly as an exception, and only in peacetime, in accordance with the List of Professional Names of Workers of the Armed Forces of Ukraine [18] developed on the basis of the Classifier Professionals of DK 003:2010, approved by the order of the State Consumer Standard of Ukraine dated 28.07.2010 № 327 [19].

However, according to the general rule, the work, which may be provided by specialists, including civilian professions, in the Armed Forces of Ukraine should carry out by servicemen.

4. State officials of the State Service for Special Communications – major powers in the sphere of national defense are defined by Article 12 of the Law of

Ukraine «On the Defense of Ukraine»; duties – paragraphs 32, 33 Article 14 of the Law of Ukraine «On the State Service for Special Communications and Information Protection» [20].

5. State officials of the Main Management Authority of the National Guard of Ukraine and the military management bodies of the strategically territorial associations of the National Guard of Ukraine – the main powers in the national defense sector are defined *ibid.* One of the functions of the National Guard of Ukraine is to participate in the tasks of territorial defense (paragraph 17, part 1, Article 2 of the Law of Ukraine «On the National Guard» [21]); during the course of the martial law the National Guard of Ukraine fulfills the tasks of defense of the state, subordinated to the Ministry of Defense of Ukraine (Article 6 of the Law of Ukraine «On the National Guard of Ukraine»).

6. State officials of bodies and units of civil protection (State Emergency Service, Emergency and Rescue Service, Strategically Rescue Service of Civil Protection) – the main powers in the sector of national defense are defined in Article 12 of the Law of Ukraine «On the Defense of Ukraine».

7. State officials of the State Border Guard Service of Ukraine – the main powers in the sector of national defense are specified in Article 12 of the Law of Ukraine «On the Defense of Ukraine»; participation in the implementation of territorial defense measures as well as measures aimed at compliance with the legal regime of martial law and state of emergency, is assigned to the responsibilities of the State Border Guard Service of Ukraine in accordance with paragraph 4 of Part 1 of Article 19 of the Law of Ukraine «On the State Border Guard Service of Ukraine» [22].

8. Other central executive authorities (for example, the Ministry of Internal Affairs of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of Ukraine, etc.) – the main powers in the sector of national defense are defined in Article 13 of the Law of Ukraine «On the Defense of Ukraine».

9. State officials and prosecutors of the public prosecutor's office – the prosecutor's office fulfills powers in the sphere of national security of Ukraine in accordance with the Constitution of Ukraine and the Law of Ukraine «On the Prosecutor's Office of Ukraine» (Article 13 paragraph 13 of the Law of Ukraine «On the Fundamentals of National Security of Ukraine»). The organizational and legal status of prosecutors is established by the Law of Ukraine «On Prosecutor's Office» [23]. At the same time, the legal status of employees working in the apparatus of the Prosecutor's Office is determined in accordance with the General Law «On Civil Service».

10. Judges of courts of general jurisdiction – courts of general jurisdiction carry out legal proceedings in cases of crimes in the area of protection of state secrets, inviolability of the state border of Ukraine, provision of call and mobilization.

11. State officials of local state administrations – the main powers in the sector of national defense are defined in Article 14 of the Law of Ukraine «On the Defense of Ukraine».

12. Officials of local self-government bodies – the main powers in the sector of national defense are defined in Article 15 of the Law of Ukraine «On the Defense of Ukraine».

It should be noted that an important role in the national defense sector of Ukraine is played by civil servants who took direct part in the east of the country in the anti-terrorist operation (from April 2014 to April 2018) and joint operations (from April 2018 and until now). Thus, the Decree of the Cabinet of Ministers of Ukraine «On Approval of the Procedure for the Psychological Rehabilitation of the Participants of the Antiterrorist Operation and the Victims of the Revolution of Attractiveness» clearly defines the definition of the participants in the anti-terrorist operation – these are persons who participated directly in the antiterrorist operation and who have one of the following statuses: a participant in hostilities – in accordance with p. 19 and 20 of part one of Article 6 of the Law of Ukraine «On the Status of Veterans of War, Guarantees of Their Social Protection»; the invalid of war – in accordance with p.11-14 of part two of Article 7 of the above-mentioned Law; participant to the war (war veteran) – in accordance with p. 13 of Article 9 of the mentioned Law [24]. And in the text of the Law of Ukraine «On the Status of War Veterans, Guarantees of Their Social Protection» it is said that the participants of the antiterrorist operation may be civil servants of enterprises, institutions, organizations involved in the anti-terrorist operation, to ensure the implementation of measures to ensure the national security and defense. It is clear that such employees, including civil servants, still refer to civil servants in the national defense sector and, at the same time, they are subject to certain provisions of the civil service legislation of Ukraine.

The above provides grounds for arguing that the civil service in the national defense sector is inextricably linked with passing militarized service. These types of public service are conducted within the framework of one public administration. For example, the personnel of the State Service for Special Communications and Information Protection of Ukraine include servicemen, state officials and other employees [20]. A similar approach to the structuring of personnel is also characteristic for the National Guard of Ukraine, civil protection agencies and the State Border Guard Service of Ukraine.

Moreover, in case of the district, regional state administration's acquisition of the status of a district or regional military administration¹, the posts of state officials in such administrations may be replaced by servicemen of military formations established in accordance with the laws of Ukraine, by persons of ordinary and commanding members of law enforcement agencies, civil defense services, who are sent there in accordance with the procedure established by law for the performance of tasks in the interests of the state's defense and its security (Article 4 of the Law of Ukraine «On the Legal Regime of Martial Law»).

¹ Military administration is a temporary state body that can be formed to ensure the introduction and implementation of measures for the legal regime of martial law, defense, civil protection, public order and security, protection of the rights, freedoms and legitimate interests of citizens.

It is also important to note that, in accordance with Article 12 of the Law of Ukraine «On National Security of Ukraine», the security and defense sector of Ukraine consists of four interrelated components: security forces; the forces of defense; defense industrial complex; citizens and public associations that voluntarily participate in the provision of national security [7]. Undoubtedly, persons performing functions in the field of defense-industrial complex are civil servants working in the national defense sector of Ukraine. However, at the same time their legal status is not regulated by the current domestic legislation, although it is obvious that this status should be clearly defined in the above-mentioned Law, by supplementing it with the relevant provisions. In addition, the legal status of citizens and public associations that voluntarily participate in the provision of national security and defense, in particular, also requires its proper legal consolidation. Thus, for the proper legal regulation of relations arising in the course of civil servants performing functions in the national defense sector, it is also necessary to amend the Law of Ukraine «On National Security of Ukraine» and thus regulate the gaps existing in the domestic legislation to date.

According to our conviction, following the above-mentioned and after a thorough analysis of the Lithuanian legislation regulating the issue of civil service in the national defense sector, the following should be singled out.

NATO plays a special role in the Lithuanian national defense sector. Section II of the Lithuanian Law «On the Basics of National Security of the Republic of Lithuania» dated December 19, 1996, stipulates that Lithuania, in the event of a direct threat to its territorial integrity, political independence or security, urgently requests NATO consultations [25]. Taking into account that the officers of the committees carry out the coordination and organizational functions in the Lithuanian national defense sector, we can say that they are an important part of ensuring the national security of the state.

Public servants of the Office of the Cabinet of Ministers of Lithuania carry out organizational, coordinating, and analytical functions of the highest executive body in the state [26]. But despite the fact that these civil servants are not empowered in the field of defense in accordance with national legislation, we can say that they fulfill the auxiliary functions of the Cabinet of Ministers all the same with officers in the national defense sector. We emphasize that the functions of the Cabinet of Ministers of Lithuania in the system of national defense are defined and enshrined in the Law of Lithuania «On the Fundamentals of National Security of the Republic of Lithuania».

As for the Ministry of National Defense of Lithuania, namely civil servants of this body are considered. The Ministry consists of a sufficiently large number of departments, commissions and working groups that carry out the organizational functions of the body and their main task is to ensure the proper and effective functioning of the Ministry of National Defense of the Republic of Lithuania. The above departments include: Second Division of Operations at the Ministry of National Defense; the department of centralized financial and property services;

Department of Infrastructure Development at the Ministry of National Defense; Department of general affairs; Division of mobilization and civil resistance; and the Information Technology Service at the Ministry of National Defense. Commissions in which civil servants work in the sectors of national defense of Lithuania include: Election Commission and Appraisal of Association Programs and State Institutions (Order of the Minister of National Defense «On Formation of the Election Commission and Appraisal of Association Programs and NGOs»); Commission on Planning of Publishing and Publications of the Ministry of National Defense (Order of the Minister of National Defense «On Approval of the Regulations of the Publishing Commission for the Planning and Approval of the National Defense System»); Public Relations Coordinating Unit of the Ministry of National Defense (Order of the Minister of National Defense «Conclusion of the Group for the Coordination of Public Relations of the Ministry of National Defense and approval of its work regulations»); National Defense Research Coordination Unit (Order of the Minister of National Defense «On the Establishment of the Group for the Coordination of the Research Work of the National Defense System and the Approval of its Rules of Work»); Advisory Board on the Awards and Promotions of the Ministry of National Defense (Order of the Minister of National Defense «On the establishment of the Advisory Commission for the awarding and promotion of the Ministry of National Defense and approval of its provisions»), the Commission on the Selection and Certification of Civil Servants National Defense System (Order of the Minister of National Defense «On Approval of the Regulations and Formation of the Commission»); Commission on the Selection of Civil Servants for Servicing Abroad (Order of the Minister of National Defense «On the Establishment of the Commission for the Selection of Civil Servants of the National Defense System for Service Abroad and approval of its provisions»), the Commission on the Selection of Civil Servants for the Improvement of Qualifications Abroad (Order of the Minister of National Defense «On Approval of the Commission on the Selection of Civil Servants for Diversification of qualifications abroad and its provisions»); Commission for Evaluation of the Civil Service of the Ministry of National Defense (Order of the Minister of National Defense «On the Formation of the Civil Service Evaluation Commission for Civil Servants»); Commission for consideration of applications for material support of the Ministry of National Defense (Order of the Minister of National Defense «On the Formation of the Application for Submission of the Commission on Material Benefits and Approval of its Rules of Work»); Commission on the coordination of communication systems and information systems of the National Defense (Order of the Minister of National Defense «On approval of the Rules of work of the Coordinating Commission on information and communication systems of the National Defense System»); Special Committee of Experts on Personnel (Order of the Minister of National Defense «On the Establishment of the Special Commission of Experts on Personnel of the Ministry of National Defense and Approval of its Provisions») [27].

Despite the fact that the civil servants of the above-mentioned bodies perform functions that are related to the national defense sector, their professional activity is still regulated by the main labor legislation of Lithuania, but it is also regulated by special legal documents, depending on the particulars of professional activity.

By the way, in accordance with the Law of Lithuania «On the Fundamentals of National Security of the Republic of Lithuania» some powers within the scope of its competence in the field of national defense are held by civil servants of such bodies and institutions as: the Ministry of Foreign Affairs of Lithuania, the Ministry of the Interior of Lithuania and its internal Public Security Service, Financial Crime Investigation Service, State Border Guard Service, Department of Public Security, specialized research institutions, Lietuvos šaulių sąjunga, etc.

In general, in accordance with Article 71 of the Lithuanian Law «On the Organization of the National Defence System and Military Service», civil servants of the national defense system of Lithuania are divided into civil servants who carry out civil service of protection under civil service contracts and other civil servants.

Civil service of national defense is carried out according to the established procedure at the institutions of the national defense system, other state or municipal institutions, as well as in international or European educational institutions and foreign institutions, where it is not necessary to involve servicemen for the fulfillment of official functions, but requires special knowledge or experience in the field of the national defense. In order to ensure the high qualifications and stability of the civilian personnel of the national defense system, the government may impose restrictions on which part of the civil servants of the national defense system may fall under the terms of the employment contract. Within these limits, the Minister of National Defense establishes the positions of civil servants of the national defense system. The labor relations of civil servants of the national defense system are regulated by the Law of Ukraine «On Civil Service» [8].

At the same time, with regard to civil servants in the national defense sector, the Law of Lithuania «On the Organization of the National Defence System and Military Service» stipulates that some requirements and conditions of service are regulated by the Statute of the Civil Protection Service and qualification categories for such employees can also be awarded in accordance with the procedure established by the Statute of the Civil Protection Service. And civil servants with whom a civil defense contract has been concluded and which have certain conditions of service and social guarantees applicable to servicemen of professional military service may receive them in accordance with the procedure established by the regulatory enactments of the Cabinet of Ministers of Lithuania. We emphasize that when entering the civil service in the national defense sector, the person takes an oath, as established by the Statute of the Civil Defense Service. Obligatory condition of the civil service contract is the obligation to serve in the civil service of the National Defense Service in accordance with the conditions and procedure established by laws, other legal acts and statutes. In addition, the monetary compensation of civil

servants of the Civil Defense Service is regulated by the Law of Lithuania «On Civil Service» and the Statute of the Civil Defense Service.

Conclusions. Thus, based on a thorough analysis of domestic and foreign legislation, the peculiarities of civil service in the national defense sector are as follows:

1) civil service in the sphere of national defense as a public professional activity combines two levels: internal (organizational) – refers to personnel service and external issues (law enforcement) – concerns the performance of tasks and functions in the national defense sector;

2) civil service in the national defense sector is inextricably linked with a militarized service that manifests itself: a) in the joint service within a single public administration; b) in case of the replacement of the positions of civil servants of military administrations by militarized service representatives; c) when replacing certain military positions in the Armed Forces of Ukraine by civilians (on terms of a fixed-term employment contract);

3) civil service in the national defense sector is often called upon to perform a secure role in the implementation of the main tasks by specially authorized subjects (their officials) in this area;

4) the legal regulation of civil service in the national defense sector is characterized by dualism, which consists in regulating the issues of passing in two directions: general (Law of Ukraine «On Civil Service») and special (for example, the Law of Ukraine «On Prosecutor's Office»). By the way, such dualism is inherent in the legal regulation of civil service in the system of national defense of Lithuania;

5) civil service in the national defense sector, both in Ukraine and in Lithuania, plays a very important role in the implementation of an effective defense policy of the state. But with radical comparative analysis of regulatory and legal bases, the imperfect legal regulation of the relations that arise in this sphere in Ukraine is obvious. Therefore, based on positive international practice and experience, we consider it necessary to improve domestic legislation in the field of civil service in the national defense sector, by supplementing the provisions of the Law of Ukraine «On Defense of Ukraine» according to civil service in the field of defense. And also, in connection with this change, bring other regulatory acts in this area into conformity;

6) proper legal consolidation in Ukraine also requires the administrative and legal status of civil servants in the sphere of the defense industrial complex and the status of citizens and public associations that voluntarily participate in the provision of national security and defense. It is obvious that in order to effectively improve the legal regulation of relations arising from the performance of the functions mentioned above by the above-mentioned employees in the national defense sector, it is also necessary to amend the Law of Ukraine «On National Security of Ukraine» and thus regulate the gaps existing in the domestic legislation to date;

7) it is also important to establish in Ukraine, at the legislative level, a clearly defined notion of «civil service in the field of national defense». This will to a certain

extent help to resolve the relationship in the course of such a service and avoid problems in law enforcement practice.

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Особенности гражданской службы в секторе национальной обороны

Дается характеристика гражданской службы в секторе национальной обороны с учетом её особенностей и специфики соответствующей сферы. На основе анализа отечественного и зарубежного законодательства выделяются следующие особенности: гражданская служба в секторе национальной обороны как публичная профессиональная деятельность двухуровневая (организационный и правоприменительный); она неразрывно связана с милитаризованной службой и часто призвана выполнять обеспечительную роль по воплощению основных задач специально уполномоченными субъектами (их должностными лицами). Следует учитывать также то, что правовое регулирование гражданской службы в секторе национальной обороны Украины характеризуется дуализмом, заключающемся в регулировании вопросов её прохождения в двух направлениях: общем (например, Закон Украины «О государственной службе») и специальном (например, Закон Украины «О прокуратуре»). Особое внимание уделяется зарубежному опыту в этой сфере на основе сравнения такой службы в Украине и Литве. Подобный дуализм присущ и правовому регулированию гражданской службы в системе национальной обороны Литвы. К тому же, как в Украине, так и в Литве, она играет важную роль для осуществления эффективной оборонной политики государства. При сравнительном анализе нормативно-правовых баз установлено несовершенное правовое регулирование отношений, возникающих в этой сфере в Украине. Поэтому необходимо усовершенствовать отечественное законодательство касательно гражданской службы в секторе национальной обороны путем дополнения Закона Украины «Об обороне Украины» положениями о гражданской службе в сфере обороны и привести в соответствие другие нормативно-правовые акты в этой области. Надлежащего правового закрепления в Украине требуют административно-правовой статус государственных служащих сферы оборонно-промышленного комплекса и статус граждан и общественных объединений, добровольно участвующих в обеспечении национальной

безопасности и обороны. Закрепление в Украине на законодательном уровне четкого определения «гражданская служба в сфере национальной обороны» в определенной степени поможет урегулировать отношения при прохождении такой службы и избежать проблем в правоприменительной практике.

Ключевые слова: гражданская служба; сектор национальной обороны; публичная профессиональная деятельность; национальная безопасность.

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