

MARIA CURIE-SKŁODOWSKA UNIVERSITY

**DEVELOPMENT AND MODERNIZATION
OF THE LEGAL SYSTEMS OF EASTERN EUROPE:
EXPERIENCE OF POLAND AND PROSPECTS
OF UKRAINE**

Volume 1

Collective monograph

Lublin, Poland
2017

UDC 340.15(438+477)
LBC 67.022(4Pol+4Ukr)
D 64

*Recommended for publication
by the Academic Council of Maria Curie-Skłodowska University*

Editorial Board:

dr hab. **Arkadiusz Bereza**, prof. nadzwyczajny, Prorektor ds. Ogólnych UMCS;

dr hab. **Andrzej Wrzyszczyński**, prof. nadzwyczajny, Prodziekan Wydziału Prawa i Administracji UMCS;

prof. dr hab. **Wiesław Skrzydło**, prof. zwyczajny Katedra prawa konstytucyjnego Wydziału Prawa i Administracji UMCS;

dr hab. **Beata Jeżyńska**, prof. nadzwyczajny, Kierownik Katedry Prawa rolnego i gospodarki gruntami Wydziału Prawa i Administracji UMCS.

The authors of articles usually express their own opinion, which is not always comply with the editorial Board's opinion. The content of the articles is the responsibility of their authors.

Development and modernization of the legal systems of Eastern Europe: experience of Poland and prospects of Ukraine: Collective monograph. Vol. 1. Lublin: Izdawnictwo "Baltija Publishing", 2017. 368 p.

CONTENTS

Babanly Rasim

How to provide the rule of law principle implementation
in the sphere of sentencing?..... 1

Bielov D. M., Hromovchuk M. V.

The basic law of the state: peculiarities of legal nature 19

Bernaziuk I. M.

Notion of civil society and peculiarities of its role in formation
and implementation of state policy of Ukraine 42

Bernaziuk Ya. O.

Opportunities of civil society institutions in the process of adoption
and implementation of legal acts of state authorities 60

Veklych V. O.

Layers and directions of legal administrative support for the prevention
of corruption in Ukraine: practice of law enforcement 77

Kvit N. M., Kvit A. D.

Biobank concept: legal and medical aspects 95

Kivalov S.V.

Problems and prospects of application of mediation procedures
for settling public legal disputes in Ukraine..... 115

Kovalko N. M.

Approximation the national banking system of Ukraine to European union law 134

Коломоєць Т. О.

Патронатна служба за законодавством України:
деякі дискусійні питання регламентації..... 148

Kostiuk V. L.

Social rights in welfare state: the concept, issues and perspectives
at conditions of post-soviet society transformation..... 163

Погорецький М. А.

Вплив литовських статутів 1529, 1566, 1588 рр. та законодавства російської
імперії XVIII – XIX ст. на становлення інституту гарантій адвокатської
таємниці у кримінальному процесі України..... 182

Rohach O. Ya., Mendzhul M. V.

The impact of forced internal migration on the development of legal system:
the experience of Ukraine and the states of Central and Eastern Europe 205

Сергєєва Д. Б.

Використання результатів негласних слідчих (розшукових) дій
із метою отримання окремих видів доказів у кримінальному провадженні 220

Сердюк В. П., Сердюк Є. В.

Ефективність висновку експерта у кримінальному провадженні України 241

Старенький О. С.

Реалізація засади змагальності під час отримання доказів захисником
шляхом залучення експерта 258

Татаренко Г. В., Гніденко В. І.

Недержавні пенсійні фонди: українські реалії
та польські перспективи (досвід Польщі для України) 278

Телефанко Б. М.

Рецидив злочинів і протидія йому в Україні 296

Chystokletov L. G., Khytra O. L.

Role of the state authorities in the mechanism of administrative
and legal provision of business entities safety in Ukraine 313

Shpakovych O. M.

Application of acts of international organizations
to the national legal systems of the member states 331

Yurkevych K. I.

Theoretical and practical aspects of the current constitutional law globalization 347

Chystokletov L. G.,
*Doctor of Juridical Sciences, Professor,
Professor at Department of Administrative-Legal Disciplines,
Lviv State University of Internal Affairs, Lviv*

Khytra O. L.,
*Candidate of Juridical Sciences,
Senior Lecturer at Department of Administrative Law
and Administrative Process,
Lviv State University of Internal Affairs, Lviv*

ROLE OF THE STATE AUTHORITIES IN THE MECHANISM OF ADMINISTRATIVE AND LEGAL PROVISION OF BUSINESS ENTITIES SAFETY IN UKRAINE

Summary

The juridical analysis of solving problems of state authorities activity as a separate direction of scientific research in the legal mechanism of administrative provision of business entities safety in Ukraine (hereinafter – AP BES) has been carried out in this scientific work. The essence of AP BES mechanism has been found out. Particular attention was paid to the work of the committees of the Verkhovna Rada of Ukraine. In the constituent of the AP BES mechanism the characteristics of the administration of the President of Ukraine and the Cabinet of Ministers of Ukraine has been given concerning the drafting of bills and their implementation regarding the AP BES. It was noted that this question had not been investigated in Ukraine before. All this confirms the importance of scientific researches in this direction and predetermines the need for further developments in this field.

Introduction

Of the principal significance in determining the place of government bodies in the field of AP BES are the general provisions fixed in the Constitution, according to which in the Article 3 is stated that «The person, his life and health, honour and dignity, inviolability and safety are recognized in Ukraine as the highest social value». Also Article 43 of the Basic Law of Ukraine, states that «Everyone has the right to proper, safe and healthy working conditions» [1].

In support of the stated above, in accordance with the provisions of the Law of Ukraine «On the Fundamentals of National Security of Ukraine» from June 19, 2003, № 964-IV [2], the priorities of Ukraine's national interests are the creation of a competitive, socially oriented market economy and ensuring constant growth of living standards and welfare of the population; Preservation and strengthening of scientific and technological potential, approval of an innovative model of development; Provision of ecologically and technologically safe conditions for the life of citizens and society, preservation of the natural environment and rational use of natural resources, as well as the development of equal, mutually beneficial relations with other countries of the world in the interests of Ukraine, which in turn requires the security of economic entities as one from the measures to counteract threats to national interests and national security of Ukraine. Thus, the most responsible role is relied on the state authorities of Ukraine, which are legal and organizational grounds in AP BES mechanism.

In connection with the stated above facts we can affirm that the security of business entities by state power institutions has never lost its relevance, especially today, when we have diversity and a large number of public authorities which do not clearly coordinate their actions and forms of interaction. In such conditions, the implementation of the state strategy for ensuring sustainable development of economic activity, its protection and safety is a priority of the state policy of Ukraine. There is no doubt that despite the significant amount of scientific researches devoted to problematic issues of providing economic activity by state authorities, at the present stage of economic development, the science of administrative law has not developed a conceptual model for ensuring the safety of economic entities.

Taking into account the mentioned above, it seems possible to investigate the problematic nature of the tasks performed by public authorities in the field of AP BES and to determine the ways of their securitization, which should positively influence the social, political, ideological and economic preconditions of the economic activity development.

1. Essence and notion of the mechanism of administrative and legal provision of business entities safety in Ukraine

Events in our country and around it after the beginning of the Revolution of Dignity have demonstrated with the new force the acuteness of the problems of ensuring the proper quality and efficiency of the regulatory legal base, strengthening the organizational fundamentals of legal regulation

of the security of economic entities and other components of the system of ensuring the national security of Ukraine, which has been properly reflected in the Strategy of National Security of Ukraine, approved by the Decree of the President of Ukraine from May 26, 2015 № 287/2015 [3], as well as the Concept for the development of security and defence sector of Ukraine, approved by the Decree of the President of Ukraine from March 14, 2016 № 92/2016 [4] as a strategic task of the complex improvement of legislation on the questions of national security and defence of Ukraine, regulation of the structure and components of the security and defence sector, its management system, coordination and the interactions of its organs.

Before considering the role of the state authorities of Ukraine in the mechanism of the AP BES, it will be the right thing to determine the essence of this mechanism.

The term «mechanism of administrative and legal security of economic entities» is not widely used in Ukrainian scientific literature. This is due to the fact, that the safety of business entities is a relatively new category for domestic law science and, above all, for an administrative law.

In the candidate's dissertation of A.V. Syusukin we can read: «The administrative-legal mechanism of providing economic security consists of the following basic elements: legal norms; public relations; monitoring of factors that determine the emergence of threats to economic security; law-making; enforcement» [5]. As we can see, in this situation the institutional component of the mechanism of administrative and legal provision of economic security is ignored. However, it can be said that A.V. Syusukin makes the clear difference between the notion under discussion and the concept of the mechanism of administrative and legal provision of economic security. But, the opposite follows from his dissertation, especially from the title and content of its second section.

The institutional component of the mechanism of administrative and legal provision of economic security is ignored also in the definition of this mechanism, suggested by S.N. Maksimov. In the report made on the base of his dissertation work, S.N. Maksimov states that this mechanism is «a set of goals, principles, methods, provided by the current legislation, which reflect the accumulated positive experience of using the system of legal means aimed at providing the ES (economic security – *L. Ch.*), on the application of administrative and legal norms regulating the governing relations in the field of ensuring economic security in order to create the best conditions for a clear and consistent reflection of public interests in this area» [6, p. 25]. In the dissertation body this definition is not given because of some unknown

reasons. But it completely interprets the essence of characteristics of the mechanism of administrative and legal provision of economic safety given in this dissertation [7, p. 131–132].

Although in the given above statements of A.V. Syusukin and S.N. Maksimov about the mechanism of the AP BES there is no indication of the subjects of the formation and functioning of this provision, there is reason to believe that the given moment contradicts their position on this issue. Thus, A.V. Syusukin notes that «the functioning of the mechanism of administrative and legal security of economic security can be represented as follows: the state perceives the threat, evaluates it, develops policies and concrete measures to block or neutralize emerging or possible threats, and then implements these measures through the application of administrative and legal means and methods» [3]. And in the dissertation of S.N. Maksimov among the key elements of the mechanism of administrative and legal regulation of economic security, which in this dissertation is identified with the mechanism of the AP BES [7, p. 130–132], the subjects of legal relations appear [7, p. 132].

Also controversial is the statement about the interpretation of the mechanism of the AP BES, proposed in the article by S.I. Lekar [8], in which this mechanism and the administrative and legal mechanism of ensuring economic security are considered as identical concepts. Almost at the beginning of the presentation of the main material of this study, the administrative and legal mechanism for ensuring the country's economic security is defined as the system of administrative and legal means by which the state influence on social relations is carried out in the process of implementation of the state economic policy in order to bring it in accordance with the goals and objectives of the state economic security provision, assigned to the authorized state bodies [8, p. 33], and a little further it is indicated that «the subject of the realization of the administrative and legal mechanism for ensuring economic security is the state represented by the authorized bodies of state authorities» [8, p. 34]. That is, from this part of study [8] it turns out that the state authorities do not belong to the administrative-legal mechanism of economic security provision.

And then, implementing into life decomposition of this mechanism into blocks, S.I. Lekar absolutely correctly, as we think, separates the institutional block [8, p. 34], which «consists of two elements, first of all, of state authorities, and secondly, of civil society structures, namely, public organizations, local governments, etc.» [8, p. 35]. By the way, outlined in his study [8], composition of the institutional block shows that there is

another contradiction in it. It's about this. According to S.I. Lekar, the indicated block also includes non-governmental organizations, what contradicts proposed by the author definition of the administrative and legal mechanism for ensuring economic security. After all, as we have seen, in this definition there are goals and tasks of exclusively state bodies.

Continuing to find out the essence of the mechanism of the APS BE, we also turn to the judgments of R.O. Bank concerning the mechanism of administrative and legal security of entrepreneurial activity. It is quite obvious that attempts of making theoretical analysis of the latter are of particular interest to us. So what is our assessment of the attempt made by R.O. Bank? We believe that it lacks sequences, and here are our explanations. On the one hand, this scientist states that «the basic element of the administrative and legal mechanism for the security of entrepreneurial activity is the right» [9, p. 32]. There are many reasons to think that R.O. Bank considers the notion of «administrative-legal mechanism of provision the entrepreneurship activity safety» and «mechanism of administrative-legal provision of the business entities safety» as the equal ones.

On the other hand, there is hardly any reason to believe that this provision was taken into due account in his definition: «<...> as mechanism of administrative and legal security of entrepreneurial activity we understand the system of state authorities bodies, local self-government and public organizations which on the base of the legislation norms within organizational forms, using different methods, means and ways provide a needed state of business safety» [9, p. 34].

On the contrary, it is easy to conclude from this definition that in the structure of the mechanism the essence of which we are intended to reflect, do not belong the instruments of the right. In addition, we can note that the part of the subjects of the latter has been also ignored there.

Thus, from the described approaches of understanding, it should be noted that the basis of the mechanism of administrative and legal security of economic entities, in our opinion, should be its institutional component, formed by legal and physical persons involved in the formation, use and improvement of this provision. After all, without them the latter can neither be created nor functioned. Since this component is characterized by the phenomenon of steady growth of the role of the non-state system of ensuring the safety of economic entities, it is difficult to overestimate the significance which, in terms of clarifying the essence of the mechanism of the AP BES, has the scientific results obtained in the process of understanding this phenomenon by representatives of post-Soviet jurisprudence.

In spite of the mentioned above disadvantages of the studied views on the essence of the mechanism of administrative and legal provision of economic security and the mechanism of administrative and legal safety of entrepreneurial activity, we consider these views to be a milestone in determining the essence of the mechanism of the AP BES. Based primarily on them that we came to the conclusion that this mechanism is a system, formed by legal and natural persons, due to the actions of which the administrative and legal security of economic entities is formed, it works and is improved, as well as the principles, forms and methods of its administrative-legal regulation.

2. Role of the Verkhovna Rada of Ukraine in the administrative and legal provision of business entities safety in Ukraine

Investigating the role of public authorities in Ukraine in the mechanism of the AP BES it should be noted that in the system of ensuring the safety of economic entities as a functioning subsystem of the institutional security of the National Security, in accordance with chapters IV–VI of the Constitution of Ukraine, the Verkhovna Rada, the President and the Cabinet of Ministers of Ukraine are in the first place.

To the rights of the Verkhovna Rada of Ukraine, the realization of which directly affects the APS BE, are basically included: the adoption of laws; determination of the principles of domestic and foreign policy; approval of the State Budget of Ukraine, amendments thereto, monitoring of its implementation; approval of national programs of economic, scientific and technical, social development and environmental protection; hearings of the annual and extraordinary reports of the President of Ukraine on the internal and external situation of Ukraine; consideration of the Program of activities of the Cabinet of Ministers of Ukraine and the decision on its approval; control over the activity of the Cabinet of Ministers of Ukraine; approval of the decisions on obtaining loans for Ukraine from foreign states, banks and international financial organizations not provided for by the State Budget of Ukraine, control over their use; the approval of the decrees of the President of Ukraine on the introduction of a martial law or state of emergency in Ukraine or in its separate regions, the announcement of certain areas as zones of emergency ecological situation; consent to sign the international treaties of Ukraine and their denunciation; making a decision to send a request to the President of Ukraine at the request of the people's deputy of Ukraine, a group of people's deputies of Ukraine or a committee of the Verkhovna Rada of Ukraine, previously supported by at least one third of

the constitutional whole of the Verkhovna Rada of Ukraine; approval of the list of objects of state property right, which are not subject to privatization, determination of legal principles of seizure of objects of the right of private property [1].

The analysis of the multifaceted activity of the Verkhovna Rada of Ukraine, starting from 1991, shows that, in the majority of cases, its effectiveness depends on the productive functioning of parliamentary committees. Scientists consider the activities of parliamentary committees mainly from the perspective of the powers of the entire parliament, participation in legislative work and provision of parliamentary control [10, p. 221]. But, taking into consideration the increasing attention to issues related to administrative and legal security entities, we believe that today the complexity of performing these tasks by the committee should be directed for decreasing of the Verkhovna Rada of Ukraine work concerning the minor issues and thus transferring its attention on preparation, discussion and finalization of the main bills, which determine the organizational and legal status of the economic entities safety. And on this occasion the German scientist A. Fosskule quite rightly notes that public debate in Parliament serve not only for producing, but also for representing of already taken decisions, what enables us to speak about the «deplenarization» of the decision-making [11].

Research of the activities of the Verkhovna Rada of Ukraine on the formation of bills related to the AP BES, shows a peculiar role in this process of the Committee of Verkhovna Rada of Ukraine on Industrial Policy and Entrepreneurship, the Committee of the Verkhovna Rada of Ukraine on economic policy, the Committee of the Supreme Council of Ukraine on the Legislative Support of Law Enforcement, the Committee of the Verkhovna Rada of Ukraine on Agrarian Policy and Land Relations.

Thus, the subjects of the Verkhovna Rada Committee on Industrial Policy and Entrepreneurship are:

- industrial policy and development of separate branches of production; foreign economics, investment activity, special (free) economic zones and territories of priority development, technological parks;
- standardization, confirmation of conformity, accreditation and metrological activity;
- public-private partnership;
- space activities;
- development of entrepreneurial activity and guaranteeing the rights and legitimate interests of business entities.

It is absolutely obvious, that the competence of the Verkhovna Rada of Ukraine Committee on Industrial Policy and Entrepreneurship, including space activity are to some extent related to administrative and legal aspects of the entities safety.

The same can be stated about the subjects of the Verkhovna Rada of Ukraine Committee on economic policy (on public policy, mortgage, lease, concession, lease, product distribution, asset management, which are state or municipal property, privatization of state and municipal property, nationalization, re-privatization, bankruptcy regulation of public procurement prices and tariffs, pricing, economic legislation, government policy on waste and scrap; non – agricultural cooperation, competition policy, the development of economic competition, consumer protection, regulatory policy).

The Committee of Verkhovna Rada of Ukraine on Agrarian Policy and Land Relations (issues of economic policy in the agricultural sector, state regulation of agro-industrial production and applied researches in agriculture, agricultural cooperation, regulation of land relations, except the land relations within the areas of building, forestry, water and fishing).

The place of the Committee of the Verkhovna Rada of Ukraine on legislative support of law enforcement in the mechanism of the AP BES defines the following subjects of the committee:

- legislation on administrative offences;
- organization and activity of the prosecutor's office, other law enforcement authorities;
- operational and search activities;
- administrative supervision of persons released from the places of imprisonment;
- organization of protection of public order and public safety;
- security and detective activity;
- state protection of law enforcement officers;
- social protection of law enforcement officers and their families.

The issues of the administrative and legal protection of the economic entities safety belong to the subjects of jurisdiction and other committees of the Verkhovna Rada of Ukraine. So, these issues are closely connected with such subjects of the Verkhovna Rada of Ukraine on budget as the state fiscal policy, intergovernmental relations, financial activities of state bodies.

Really very close is their connection with the part of the subjects of command of the:

– Committee of Verkhovna Rada of Ukraine on European integration (with the adaptation of Ukrainian legislation to EU legislation, ensuring its compliance with the obligations of Ukraine to the Council of Europe, conformity assessment laws with international legal obligations of Ukraine in European integration, public policy in the European integration consent to be bound by international treaties of Ukraine with the EU and countries that are its members, the denunciation of these agreements, cross-border and interregional cooperation with the EU countries);

– Committee of the Verkhovna Rada of Ukraine on prevention and corruption interact (with the formation and implementation of anti-corruption policy, anti-corruption examination of draft laws submitted by the subjects of legislative initiative, preventing and counteraction to corruption, preventing and resolving conflicts of interest, rules of ethical conduct in the public service; financial control of persons authorized to perform functions of the state and local self-government, responsibility for the commission of corruption offences, and also offences, related to corruption, law enforcement and government authorities in terms of their responsibilities in preventing and counteracting to corruption);

– Committee of Verkhovna Rada of Ukraine on Legal Policy and Justice (with the proper assessment of the conformity of bills and drafts of the other acts of the Verkhovna Rada of Ukraine of Constitution of Ukraine; standards of the rulemaking activity and planning of the legislative activity of Verkhovna Rada of Ukraine, legislative support of the President of Ukraine, the Cabinet of Ministers of Ukraine, central executive authorities; execution of judgments of the European Court on Human Rights; organization and activity of justice bodies; administrative law; legal assistance to citizens, organizations and regulation of the advocacy activity, international commercial arbitration, arbitration proceeding).

Verkhovna Rada of Ukraine concerning the improvement of the mechanism of state policy realization in the sphere of the entities security also performs the other actions which, according to the Constitution of Ukraine, are within its jurisdiction.

3. Powers of the President of Ukraine as a Guarantor of the administrative and legal provision of business entities safety in Ukraine

The next government body, which occupies a key place in ensuring the security of business entities, is the President of Ukraine.

The legal status of the President of Ukraine is specified in Section V of the Constitution, which defines the place and role of the President in the

state, outlining the terms of his main responsibilities. According to Art. 102 of the Constitution of Ukraine, President is the guarantor of state sovereignty and territorial integrity of Ukraine, compliance with the Constitution of Ukraine, rights and freedoms of a man and a citizen [1].

But the detailed analysis of the practice of the constitutional provisions of this section, and insufficient study of the relevant issues in theoretical research of our scientists to some extent makes it difficult to determine the articles of the specified section and requires their careful interpretation. And this, first of all, is due to the fact that for a rather long time in the scientific and juridical world, the discussion on the appropriateness of adopting a draft law «On the President of Ukraine», which by the way was registered in 1999 [12] and even adopted by the Parliament in the second reading, did not become a law. On this occasion, we believe that, under the conditions of the political and economic crisis in the country, the adoption of the Law of Ukraine «About the President of Ukraine» will contradict the provisions of the current Constitution and will lead to a misbalance of the existing system of checks and balances in Ukraine, which will have the same negative effect on ensuring the safety of business entities.

The most important legal powers of ensuring the safety of economic entities are outlined in Article 106 of the Constitution of Ukraine, according to which the President of Ukraine ensures the national security of Ukraine (Article 106 (1) of the Constitution of Ukraine), heads the National Security and Defence Council of Ukraine (paragraph 18 Article 106 of the Constitution of Ukraine), acts as the guarantor of ensuring the security of economic entities, in accordance with clause 29 of Art. 106 of the Constitution of Ukraine, signs laws adopted by the Verkhovna Rada of Ukraine, which determine the priority directions of improvement of the state policy in the field of economic activity and the security of its subjects, and in case of their inappropriate nature, they have the right to veto the laws passed by the Verkhovna Rada of Ukraine (except for laws on the introduction of Changes to the Constitution of Ukraine), with their subsequent return to the Verkhovna Rada of Ukraine (Article 30, Article 106 of the Constitution of Ukraine) for the purpose of counteraction to corruption, other violations and criminality in the sphere of activity of subjects. Constitution of Ukraine gives the President of Ukraine significant powers in the sphere of formation of the juridical branch, so he can appoint and dismiss a third of the constitutional court of Ukraine (Article 22, Article 106 of the Constitution of Ukraine), and also, in accordance with Article 128 of the Constitution of Ukraine, he can confirm, after the submission of the

High Council of Justice, in the manner prescribed by law, the posts of judges. Besides, the President of Ukraine has the right to appoint and dismiss from the post with the consent of the Verkhovna Rada of Ukraine, the General prosecutor of Ukraine, and after the submission of proposal to the Verkhovna Rada of Ukraine to appoint and dismiss the Head of the Security Service of Ukraine. The exclusive right of the President of Ukraine is also the decision on admitting to the citizenship of Ukraine and termination of citizenship of Ukraine, in support of this fact, in order to carry out economic and legal reform, sustainable development of economic activity, after the Revolution of Dignity in our country a lot of people from the other countries, for example, Georgia, the Baltic States, the United States and other have been invited to Ukraine and appointed to key positions in state bodies with the provision of citizenship and refuge.

Thus, the powers of the President of Ukraine in the field of ensuring security of economic entities should be divided into:

- powers that are executed over a certain range of subjects, namely, state authorities, officials, local governments, associations of citizens, citizens of Ukraine, foreign citizens, etc.;
- powers that cover the economic, socio-cultural and administrative-political spheres;
- powers regulating relations aimed at achieving the national goal (improvement of state policy in the field of ensuring the safety of economic entities, formation of priority areas in the field of gas industry, determination of the basic principles that should be the basis for their future transformations).

The President of Ukraine is also in charge of the areas of national security and defence of the state. He heads the National Security and Defence Council of Ukraine (the National Security and Defence Council), a national security and defence coordinating body under the President of Ukraine, whose staff is formed personally by the President. According to Part 1 of article 107 of the Constitution of Ukraine, the National Security and Defence Council of Ukraine coordinates and controls the activities of executive bodies in the field of national security and defence.

On December 25, 2014 Verkhovna Rada supported in the second reading and in general the bill № 1343 «On Amendments to the Law of Ukraine «On the National Security and Defence Council of Ukraine (NSDC)», which significantly extended the powers of this body. 253 people's deputies voted for the relevant document. Based on the content of the amendments to the Law of Ukraine «On the National Security and Defence Council of

Ukraine», this council had turned into the centre of real political influence, and its secretary became a figure that was close to the President, Prime Minister and Speaker of Parliament in political weight. This document included a long-term plan of action and affected absolutely all spheres of life, up to household communal issues. Previously, the National Security and Defence Council could only submit its wishes to the President – those that contained important strategic issues, and from that time, with any important issues, the NSDC was able to make appropriate decisions itself [13]. This also concerned the resolution of issues related to urgent measures for ensuring the safety of business entities. As the Director of the sociological service «Ukrainian barometer» V. Nebozhenko emphasized, from now the National Security and Defence Council will be a peculiar platform for the interaction of all three branches of power, and political responsibility for interaction between them will be carried out personally by O. Turchinov. «It is at the meetings of the National Security and Defence Council that representatives of the Verkhovna Rada, the Cabinet of Ministers and the Presidential Administration need to find consensus, based on a very clear criterion – the national security of Ukraine and strengthening of the country's defence», – summed up V. Nebozhenko [13].

Taking into account the said powers of the President, particular attention should be paid to the message to the people and annual and extraordinary letters to the Parliament of Ukraine, which analyzes the state and prospects for the development of economic activity in Ukraine (Article 2, Article 106 of the Constitution of Ukraine). On this occasion, in the analytical report to the Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine «On the Internal and External Situation of Ukraine in 2016» it is indicated that «the main tasks of the development of the security and defence sector of Ukraine are determined by the relevant Concept approved by the Presidential Decree of 14.03. 2016 № 92. In particular, the Concept for the development of the security and defence sector of Ukraine identified ways of forming national security and defence capabilities that will enable Ukraine to restore territorial integrity within the boundaries of The internationally recognized state border of Ukraine, guarantee the peaceful future of Ukraine as a sovereign and independent, democratic, social and law-governed state, as well as ensure the creation of a national system for responding to crisis situations, timely detection, prevention and neutralization of external and internal threats to national security, guaranteeing personal security, Constitutional rights and freedoms of man

and citizen, providing cyber security, operational joint response to crisis and emergency situations» [14, p. 43–44].

4. Place of the Cabinet of Ministers of Ukraine in realization of the administrative and legal provision of business entities safety

Among the subjects of administrative and legal security of economic management in Ukraine, the Cabinet of Ministers of Ukraine is also the highest body in the system of executive bodies, which, according to the Constitution of Ukraine, takes measures to ensure the rights and freedoms of man and citizen, including the field of administrative and legal security of economic entities.

In accordance with Article 2 of the Law of Ukraine «On the Cabinet of Ministers of Ukraine» of February 27, 2014 № 794-VII, its main tasks in the field of security of economic entities [15] include:

- ensuring the state sovereignty and economic independence of Ukraine, the implementation of the internal and foreign policy of the state, the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, aimed at improving the security of economic entities;

- the development and implementation of national programs of economic, scientific and technical, as well as the development, approval and implementation of state target programs, the National Security Strategy of Ukraine, which identifies the actual threats to national security and priorities of state policy in this area, the component of which is the security of managing authorities;

- provision of development and state support of scientific and technical and innovative potential in the field of ensuring the security of economic entities, which should be carried out by: a) strengthening budgetary supervision, which, based on the analysis of the process of preparation and implementation of financial plans of economic entities, identifies the main obstacles, as well as recommendations for improving the preparation of such plans in order to improve the management of fiscal risks; b) elaboration of the basic principles of the state policy of management of subjects of management; c) improvement of their corporate governance, which will have a positive impact on the national economy and the business environment and will contribute to increasing the investment attractiveness of Ukraine for international investors; d) restructuring and reorganization of business entities, as well as transparent and complex privatization;

- implementation of measures to ensure public order and fight against crime, to eliminate the consequences of emergencies.

An important role of the Cabinet of Ministers of Ukraine in improving the efficiency in the field of economic activity and ensuring the safety of economic entities is confirmed by the following normative and legal acts, such as: Resolution of the Verkhovna Rada of Ukraine dated December 11, 2014 № 26-VIII. «On the Program of Activities of the Cabinet of Ministers of Ukraine», which stated that its main objective is to ensure the national security in Ukraine, which is part of the security of economic entities, the introduction of a regulatory model that includes the number and functions of supervisory bodies in accordance with EU standards and the Agreement on the association between Ukraine on the one hand and the European Union (2015–2016), as well as the completion of the reduction of the number of controlling bodies from 56 to 28, the functions – from 1032 to 680 (first half of 2015), bringing the number of controlling bodies and their functions in full compliance with European standards (2016) [16] and the Resolution of the Cabinet of Ministers of Ukraine dated on May 27, 2015 № 662-r «On Approval of the Strategy for Enhancing the Efficiency of the Business Entities of the Public Sector of the Economy», in which is pointed on the development of the main principles of the state policy of economic entities governing, improvement of their corporate governance and restructuring, as well as the reorganization of business entities in privatization process [17].

Taking into account the formulated statements, by resolving organizational and legal issues in the field of ensuring the safety of economic entities by the Cabinet of Ministers of Ukraine, as well as analyzing of domestic scientific achievements, it should be noted that today in our country there are no normative legal acts, norms of which would be completely determined by the scientific and practical approaches of improving the implementation of state policy realization in the field of ensuring the economic entities safety.

On this occasion, a draft law «On the Legal Principles of State Policy in the Field of Business Entities Safety» should be worked out and submitted to the Verkhovna Rada of Ukraine.

The text of the bill should contain the following sections:

- determination of the basic concepts: «state policy in the field of security of entrepreneurial activity», «security of economic entities», «administrative and legal safety of economic entities», «challenges and threats to the economic entities safety»;
- legal regulation, purpose, tasks and principles of state policy in the field of security of economic entities;
- objects protected from potential threats and illegal encroachments;

- order and mechanism of operational response to the challenges and threats that arise in the field of security of business entities;
- prevention of negative influence on the obstruction of economic activity from the side of state authorities;
- system and powers of subjects of safety provision in the field of economic activity;
- principles of organization and functioning of the security system of economic entities;
- determination of the state body responsible for general coordination and organization of work on implementation of the state policy in the field of ensuring the safety of economic entities;
- mechanisms of interaction of state and non-state institutions of the security system of economic entities;
- guarantee of personal safety of economic entities;
- the ways of reforming the system of ensuring the safety of economic entities;
- improvement of administrative and legal regulation of the system of ensuring the safety of economic entities;
- the responsibility for violation of the legislation on the security of economic entities.

Conclusions

From the given above study on the administrative and legal security of economic entities by Verkhovna Rada, the President and the Cabinet of Ministers of Ukraine we can conclude that, unfortunately, today there are many common problem issues between the public authorities, business entities and the public that require coherence and regulations – this is a matter of competition, investment, protection and security of business entities.

In this regard, the research of the role of AP BES of Verkhovna Rada of Ukraine through the prism of these powers of the constant committees of the Verkhovna Rada of Ukraine allow to identify a number of reasons and gaps in parliamentary legislation, indicating their contradictions and inconsistencies, especially, concerning the improvement of the system itself, structures and definitions of the priorities of Verkhovna Rada committees, and secondly, resolving the issues connected with the informing the public about their work.

Concerning the first issue, it is associated with the unreasonable insistence of some deputies' fractions, after every parliamentary elections of the next

convocation; to create a new structure of the committees, caring at the same time only of getting the chief positions unreasonably increasing their amount, and most of the time bypassing global strategic issues of business entities security improvement. Regarding the analysis of the condition of this matter, connected with non-fulfilment by some committees of the Verkhovna Rada of Part 2 of the Chapter 9 of the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» concerning informing the public about their work, as well as Part 3 of the Chapter 9 of the mentioned above Law about the spreading in the prescribed way of information about its activities through its web page on the official website of Verkhovna Rada of Ukraine in the global information network Internet, parliamentary TV channel «Rada» and through the other media [18], so the way of this problem solving may be the acceptance by Verkhovna Rada of Ukraine of the normative act on the base of which the authority committees powers would be clearly defined concerning the creating of their own official websites and list of information, which should be published on these sites.

Also, analysing deeply the activity of the Cabinet of Ministers of Ukraine in the AP BES, it can be concluded that the normative and legal acts of the Cabinet of Ministers of Ukraine, which are aimed at improving the mechanism of administrative and legal security of economic entities, still do not solve current problems in the indicated sphere. The current legal normative acts, in connection with the aggravation of the political and economic crisis, do not take into account the changes in the safety of business entities related to new challenges and threats in this area.

Solving of these problems requires the use of a set of consistent interrelated measures, the main content of which is to change the directions, priorities and means of the state influence on economic relations.

References:

1. The Constitution of Ukraine [Electronic resource]. – Access mode: http://kodeksy.com.ua/konstitutsiya_ukraini.htm.
2. About the Fundamentals of National Security of Ukraine: Law of Ukraine dated on June 19, 2003 № 964-IV [Electronic resource]. – Access mode: <http://zakon2.rada.gov.ua/laws/show/964-15>.
3. The National Security Strategy of Ukraine: Decree of the President of Ukraine dated on May 26, 2015 № 287/2015 [Electronic resource]. – Access mode: <http://zakon2.rada.gov.ua/laws/show/287/2015>.
4. Concept of development of the security and defence sector of Ukraine: Decree of the President of Ukraine dated on March 14, 2016 № 92/2016

[Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/92/2016/paran2#n2>.

5. Syusukin O. V. Administrative-legal regulation in the sphere of economic safety ensuring : diss. of the cand. of law : 12.00.14 / O. V. Syusukin. – Rostov-on-Don, 2004. – [Electronic resource]. – Access mode: <http://www.dissercat.com/content/administrativno-pravovoe-regulirovanie-v-sfere-obespecheniya-ekonomicheskoi-bezopasnosti>.

6. Maksimov S. N. The administrative-legal provision of economic security in the Russian Federation: conceptual and methodological aspects: author's abstract of the disse. for getting the scient. degree of the doct. of law sc. : 12.00.14 «Administrative law and administrative process» / S.N. Maksimov. – Moscow, 2014. – [Electronic resource]. – Access mode: http://dissovet.Rudn.ru/web-local/prep/rj/index.php?Id=28&mod=dis&dis_id=360.

7. Maksimov S. N. Administrative and legal provision of economic security in Russian Federation: conceptual and methodological aspects : diss. of doct. of law: 12.00.14 / S.N. Maksimov. – Moscow, 2014. – 298 p. – [Electronic resource]. – Access mode: http://dissovet.rudn.ru/weblocal/prep/rj/index.php?id=28&mod=dis&dis_id=360.

8. Lekar S. I. Structure of the administrative-legal mechanism for ensuring state economic security / S. I. Lekar // European perspectives. – 2013. – № 1. – P. 33–36.

9. Bank R.O. Administrative and legal principles of ensuring the security of entrepreneurial activity in Ukraine: diss. of the cand. of law: 12.00.07 / R.O. Bank. – Kyiv, 2014. – 230 p.

10. Dreval Yu. D. Participation of committees (commissions) in ensuring the mechanism of parliamentary control / Yu.D. Dreval // Theory and practice of public administration: collection of scientific works. – Kharkiv: Publishing house of KhRI NASA «Magistr», 2009. – Vol. 3(26). – P. 221–228.

11. Fosskule A. The Erosion of the Parliamentary System in the Federal Republic of Germany / A. Fosskule // Constitutional Law: The East European Review. – 2004. – № 2. – P. 59–64.

12. Draft Law «About the President of Ukraine» [Electronic resource]. – Access mode: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=6221.

13. Appointment of O. Turchinov on the post of the secretary of the National Security and Defence Council of Ukraine and extension of powers of the Council of Bureaux in expert opinions [Electronic resource]. – Access

mode: http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=681:onovlennya-rnbou&catid=8&itemid=350.

14. Analytical report to the Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine «On the Internal and External Situation of Ukraine in 2016». – Kyiv: NISS, 2016. – 688 p.

15. Cabinet of Ministers of Ukraine : Law of Ukraine dated on February 27, 2014 № 794-VII // Bulletin of the Verkhovna Rada of Ukraine. – 2014. – № 13. – Art. 222.

16. About the Program of the Cabinet of Ministers of Ukraine activity: Resolution of the Verkhovna Rada of Ukraine dated on December 11, 2014 № 26-VIII [Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/26-19>.

17. On approval of the Strategy for improving the efficiency of business entities activity of the economy state sector: Order of the Cabinet of Ministers of Ukraine dated on May 27, 2015 № 662-p [Electronic resource]. – Access mode: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248295032>.

18. On committees of the Verkhovna Rada of Ukraine: Law of Ukraine dated on April 4, 1995 № 116/95-BP [Electronic resource]. – Access mode: <http://zakon2.rada.gov.ua/laws/show/116/95-vv>.