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THEORETICAL AND LEGAL INTERPRETATION OF THE COMPETENCE AND FULL POWERS OF LAW ENFORCEMENT BODIES AS PUBLIC POLICY MAKERS IN THE FIELD OF NATIONAL SECURITY AND DEFENCE

Abstract. Purpose. The purpose of the article is to reveal the correlation between the categories of ‘full powers’ and ‘competence’ through the prism of law enforcement bodies as public policy-makers in the field of national security and defence. **Results.** It is established that discussions on the categories of ‘full powers’ and ‘competence’ in legal science are mostly polemical. Their legal definition will help to put an end to this issue. It is proved that obtaining of the right to do something (full powers), which is provided by law, implies obtaining of the appropriate status. That is, if you get the opportunity to purchase something – you are a buyer, and if you get the right to drive a motor vehicle – you are a driver. This in turn imposes on such a person both rights and duties. Regarding the theoretical and legal understanding of the competence and full powers of law enforcement bodies as public policy-makers in the field of national security and defence, the following is summarised: 1) the competence of law enforcement bodies as public policy-makers in the field of national security and defence should be understood as the area of exercising full powers of law enforcement bodies and a set of those unique features of their administrative activity that enable to distinguish it from related types and areas of application; 2) the full powers of law enforcement bodies as public policy-makers in the field of national security and defence are a set of mandatory actions, enshrined in legal regulations, the performance of which is determined as necessary to achieve the goals of the functioning of such bodies and their performance of tasks and functions related to the protection and defence of national interests. **Conclusions.** It is determined that the correlation between these categories is conditionally proportional. It is impossible to consider competence separately from full powers, as well as full powers from competence. Although from the theoretical and legal discourse perspective, the full powers of law enforcement bodies as public policy-makers in the field of national security and defence are part of their competence.

Key words: public policy, competence, national security, national defence, full powers, law enforcement bodies.

1. Introduction

As it is known, a special role in predicting, detecting, identifying and countering threats to national security and defence is played by the public policy-makers in this field. Their capabilities, full powers and activities should ensure the effectiveness of the State’s security function (Yarovyi, 2019). The leading actors are law enforcement bodies. Therefore, competence and full powers are an important element of their administrative and legal status.

It should be emphasised that the study of their competence and full powers is required, because only in this way it is possible to reveal

the content of the authorised actor’s performance, real functions, and as a result, to make reasonable recommendations and proposals regarding the administrative and legal status of the body, changes and amendments to the current legislation (Zamryha, 2019, p. 268). However, the basic point is that the scientific doctrine and legal regulations of Ukraine do not have clarity in the issues of conceptual and substantive understanding of the competence and full powers of authorised actors in general and law enforcement bodies in particular.

The topic under study is a common subject matter of scientific research by domestic

scientists, but only in a general aspect. In particular, scientists, such as I. Borshchevskiy, M. Holovan, D. Holosnichenko, I. Holosnichenko, O. Hryn, A. Zamryha, N. Kushlakova, S. Leiko, O. Ponomarev, M. Potip, O. Riezniak, R. Sydorkina, S. Shoptenko, T. Yarovyi, laid the foundation for the theoretical and legal understanding of the competence and full powers of law enforcement bodies as public policy-makers in the field of national security and defence. However, it has not been studied directly in the given context.

The purpose of the article is to establish the correlation between the categories of 'full powers' and 'competence' through the prism of law enforcement bodies as public policy-makers in the field of national security and defence.

2. Theoretical and legal interpretation of the competence of law enforcement bodies

As noted above, today there is no unanimous interpretation among scholars regarding the correlation of these categories. Some scholars believe that the term 'full powers' is broader than the category 'competence'. For example, the authors of the *International Police Academy* have determined that legislative full powers in a broad sense are rights and duties in any form (oral, written, direct, indirect) of bodies to exercise power on their own behalf (on the territory entrusted to them in a certain period of time, in relation to a circle of persons, within the subject matter of the legal and regulatory mechanism), using persuasion, coercion and encouragement as the main means of streamlining objectively existing administrative relations (Rymarenko, Kondratiev, Moiseiev, Tatsii, Shemshuchenko, 2006, p. 266; Potip, 2012, p. 32). On the contrary, other authors believe that full powers are a structural element of competence, considering competence as a legal characteristic by which the position of a particular body in the political and legal space is accurately fixed. Its constituent elements enable to determine the legal position of a particular body as a party to power relations as clearly as possible (Borshchevskiy, Hryn, 2020, p. 56).

Therefore, for a more accurate understanding of these categories, the explanatory dictionary of the modern Ukrainian language should be referred. Thus, it interprets the term 'competence' as: 1) good knowledge of something; 2) the range of full powers of any organisation, institution or person (Bilodid, 1970).

To be precise, the term 'competence' comes from the Latin 'corpeienria' (conduct, ability, belonging to law), that is the range of full powers granted by law, statute or other act to a particular body or official; knowledge and experience in a particular field (Prohorov, 1984, p. 613; Holovan, 2008, p. 24). From a managerial per-

spective, competence determines the position of a particular body in their system, and also acts as a method of regulating the relationship between these bodies (Lazarev, 2017; Kushlakova, Sydorkina, 2018).

Relying on the review of scientific literature, we present the main approaches to the interpretation of the concept of 'competence'. For example, scientists understand it as: a set of interdependent qualities of a personality (knowledge, skills, abilities, ways of activity), which are set to a certain range of issues and processes and necessary for high-quality, productive activity in relation to them (O.V. Kuchai); integrative concept that contains the following aspects: readiness for target calling; readiness for evaluation, readiness for action, readiness for reflection (O.I. Pometun); objective category, socially recognised level of knowledge, skills and abilities, attitudes, etc. in a certain sector of human activity as an abstract carrier (based on discussions organised within the UNDP project 'Education Policy and Peer Education'); some alienated, predetermined requirement for the training of a person (properties or qualities, potential abilities of a person), predetermined requirement for knowledge and experience in a certain field (M.S. Holovan) (Leiko, 2013, pp. 131–132).

Legal encyclopaedias interpret competence as: 1) a set of legally established full powers, rights and duties of a particular state body (local self-government body) or official (Rymarenko, Kondratiev, Moiseiev, Tatsii, Shemshuchenko, 2006); 2) a set of rights and duties established in an official – legal or non-legal – form, i.e. the full powers of any agency or official, which determine the ability of this body or official to make binding decisions, organise and control their implementation, and take responsibility measures if necessary (Shemshuchenko, 2001). That is, in the first interpretation, full powers are not identified with rights and duties while in the second, they are.

In the above interpretations of competence, their common basis is their content: knowledge that a person should have; the range of issues in which a person should be aware; the experience necessary for the successful performance of work in accordance with the established rights, laws, statutes. Knowledge, a range of issues, and experience are presented as generalised concepts that do not relate to a specific person, which are not his/her personal characteristics. The above interpretations clearly reflect the cognitive (knowledge) and regulatory (full powers, law, statute) aspects of this concept (Holovan, 2008, p. 24).

With regard to the definition of competence in administrative law, S. Shoptenko underlines

an example that in addition to the classical approach, there is also a restrictive approach, in which the content of competence is reduced exclusively to the totality of full powers, and an expanding approach, which includes in the structure of competence, in addition to the subject matters of authority and full powers, tasks, functions, methods of activity, etc. (Shoptenko, 2017). In turn, O. Ponomarov, studying the administrative and legal status of the tax police, adds that its competence consists of basic and additional elements. The main elements determine the content of competence, and additional elements reflect its distinctive features (Ponomarov, 2015).

Accordingly, competence is defined by a certain organisation, institution, State as a predetermined requirement for knowledge, skills, abilities that a person should possess for successful performance within the sphere where this activity will be performed. Therefore, competence should be understood as a certain sphere, a range of activities, a predetermined system of issues that a person should be well aware of, i.e. have a certain set of knowledge, skills and attitude to them (Leiko, 2013, p. 133).

In our case, this is the area of exercising full powers of law enforcement bodies and a set of those unique features of their administrative activity that enable to distinguish it from related types and areas of application.

3. Theoretical and legal interpretation of the full powers of law enforcement bodies

The term 'full powers' should be further analysed. For example, in the above-mentioned dictionary 'full powers' are defined as: 'the right granted to someone to do something' (Bilodid, 1970). Such a right, its scope shall be defined by law. And we do not agree with the criticism of O. Rieznik (2018) that the granted right does not include duties, this is not true. After all, 'right' and 'rights' are different categories. Obtaining of the right to do something (full powers), which is provided by law, implies obtaining of the appropriate status. That is, if you get the opportunity to purchase something – you are a buyer, and if you get the right to drive a vehicle – you are a driver. This in turn imposes on such a person both rights and duties. A similar perspective is in the *Great Encyclopaedic Dictionary of Law* edited by Yu. Shemshuchenko that interprets 'full powers' as a set of rights and duties of state bodies and public organisations, as well as officials and other persons assigned to them in the manner established by law for the implementation of their functions (Shemshuchenko, 2001). Therefore, D. Holosnichenko and I. Holosnichenko define 'full powers' through the system of rights and duties

acquired in a legitimate way by the State, local self-government, state bodies and local self-government bodies, their officials, other parties to legal relations in order to ensure the opportunities, needs and interests of a person and citizen, individual social groups and entire society (Holosnichenko, Holosnichenko, 2011, p. 153). Therefore, if the full powers are a set of rights and duties and additionally responsibilities, the competence includes the sphere (subject matter) of authority. Accordingly, the type of activity is important for both competence and full powers.

It should be added that the legitimate definition of 'full powers' is as follows: 1) a document issued by a competent authority of a State (Vienna Convention on the Law of Treaties, 1969); 2) these are the rights and duties assigned to the executive body, including the duty to bear responsibility for the effects of the exercise of full powers – the so-called 'jurisdictional' duties (Decree 810/98 of the President of Ukraine of July 22, 1998 'On measures to implement the Concept of Administrative Reform in Ukraine').

Thus, competence is the scope of full powers that are assigned to a body (official) in accordance with the tasks and functions assigned to it, and full powers are the rights and duties assigned to a body (official), as well as responsibility for the effects of decisions taken (Draft Law of Ukraine On Delegated Full powers, 2008).

4. Conclusions

The conducted research allows us to state that discussions on the categories of 'full powers' and 'competence' in legal science are mostly polemical. Their legal definition will help to put an end to this issue.

As for the theoretical and legal understanding of the competence and full powers of law enforcement bodies as public policy-makers in the field of national security and defence, we can sum up the following:

1) the competence of law enforcement bodies as public policy-makers in the field of national security and defence should be understood as the area of exercising full powers of law enforcement bodies and a set of those unique features of their administrative activity that enable to distinguish it from related types and areas of application;

2) the full powers of law enforcement bodies as public policy-makers in the field of national security and defence are a set of mandatory actions, enshrined in legal regulations, the performance of which is determined as necessary to achieve the goals of the functioning of such bodies and their performance of tasks and functions related to the protection and defence of national interests.

The correlation between these categories is conditionally proportional. It is impossible to consider competence separately from full powers, as well as full powers from competence. Although

from the theoretical and legal discourse perspective, the full powers of law enforcement bodies as public policy-makers in the field of national security and defence are part of their competence.

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ТЕОРЕТИКО-ПРАВОВЕ РОЗУМІННЯ КОМПЕТЕНЦІЇ ТА ПОВНОВАЖЕНЬ ПРАВООХОРОННИХ ОРГАНІВ ЯК СУБ'ЄКТІВ ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ НАЦІОНАЛЬНОЇ БЕЗПЕКИ І ОБОРОНИ

Анотація. Мета. Метою статті є розкриття співвідношення між категоріями «повноваження» та «компетенція» через призму діяльності правоохоронних органів як суб'єктів формування та реалізації державної політики у сфері національної безпеки і оборони. **Результати.** Виявлено, що дискусії щодо категорій «повноваження» та «компетенція» в юридичній науці мають здебільшого полемічний характер. Поставити крапку у цьому питанні допоможе легальне визначення їхніх дефініцій. З'ясовано, що отримати право на здійснення чогось (повноваження), що передбачено нормою, включає в себе і отримання відповідного статусу. Тобто, якщо ти отримувеш можливість придбання чого-небудь – то ти покупець, а якщо отримав право керувати автотранспортом – то ти водій. Це, в свою чергу, накладає на таку особу як права, так і обов'язки. Щодо теоретико-правового розуміння компетенції та повноважень правоохоронних органів як суб'єктів формування та реалізації державної політики у сфері національної безпеки і оборони узагальнено наступне: 1) під компетенцією правоохоронних органів як суб'єктів формування та реалізації державної політики у сфері національної безпеки і оборони слід розуміти сферу реалізації повноважень правоохоронних органів та набір тих унікальних особливостей їхньої адміністративної діяльності, які дають змогу відмежувати її від суміжних різновидів та сфер застосування; 2) повноваженнями правоохоронних органів як суб'єктів формування та реалізації державної політики у сфері національної безпеки і оборони є сукупність закріплених актами законодавства обов'язкових дій, вчинення яких визначено як необхідне для досягнення цілей функціонування таких органів та виконання ними завдань та функцій, пов'язаних із забезпеченням охорони та захисту національних інтересів. **Висновки.** Визначено, що співвідношення між цими категоріями є умовно співпропорційне. Неможливо компетенцію розглядати відділено від повноважень, як і повноваження від компетенції. Хоча з теоретико-правового дискурсу повноваження правоохоронних органів як суб'єктів формування та реалізації державної політики у сфері національної безпеки і оборони є частиною їхньої компетенції.

Ключові слова: державна політика, компетенція, національна безпека, національна оборона, повноваження, правоохоронні органи.

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