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The case of Ukraine: Legislative Provisions

Ukrainian Case

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Research Project „The Image of the Democratic Soldier: Tensions Between the Organisation of Armed Forces and the Principles of Democracy in European Comparison“

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Introduction

The extensive political, economic and social changes in Central and Eastern Europe after the “velvet revolutions” and the break-up of the USSR have brought the issues of democratic reforms, combatting the cold war heritage and implementation of the European standards of civil control on the Ukrainian policy-making agenda.

The focal point of this study is the research on the democratic transformation in the Ukrainian Armed Forces and Security System in a broader historical and political context with a special emphasis on the legislative provisions for such transformation.

The chronological order of legislation overview is aimed at reflecting the dynamics of the development of legislative basis. Although one might deny that such approach gives the clear picture of the institutional mechanism of civil-military relations and civil control, the author believes that focusing on the step-by-step process of building up such mechanism is much more important while researching the new independent state.

Moreover, studying the legislative provisions within the broader context of Armed Forces reforms gives the opportunity to assess the importance of civil-military relations and civil control issue for the Ukrainian policy-makers since 1991 and to define some important milestones.

Certainly, these issues were not on the top of the Ukrainian policy-makers agenda at the early years of independence. However the foreseen NATO membership as well as the willingness to join the EU put them among the priorities now.

Regrettably, current political crisis rooted in the ill-prepared constitutional reform and tensions between the President and Prime-minister creates some obstacles for analysing the detailed responsibilities of the Cabinet of Ministers and the President in the studied sphere, since the amendment of the last year adopted Law “On the Cabinet of Ministers” is foreseen.

However, below there is the analysis of the less politically sensitive documents that are currently forming the legislative background of civil-military relations in Ukraine.

Soviet Heritage

While discussing Ukrainian Armed forces it is impossible to omit the fact that Ukraine as Ukrainian Soviet Socialist Republic was an integral part of the collapsed in 1991 Soviet Union.

Since Ukraine used to be the part of the Soviet Union the impact on Ukrainian Army of Soviet military structuring is tremendously significant. Starting with its early years of its independence, Ukraine spent a lot of efforts in order to gain national armed forces from the separate parts of the Soviet defense structure that remained on Ukrainian territory. Ukrainian armed forces were formed in 1992-1993 from units and staff of the Soviet Kiev Military District.

With the 24 August 1991 decision of the Verkhovna Rada (Parliament) on independence and same year referendum on independence Ukraine inherited a ‘first-class force package’ from the second strategic echelon of the Warsaw Pact’s western theatre of operation: five ground armies, one army corps, four air armies, one air defense army, the Black Sea Fleet, one rocket army, 21 divisions (infantry, tank and artillery), three airborne brigades, and many support units with over 780 000 troops in total.

Besides that, Ukraine inherited the command, control and support structures of three former Soviet military districts (MDs)—Kyiv MD, Odessa MD and Carpathian MD – as well as a substantial portion of the Soviet military educational system: 34 military educational establishments and 78 faculties at civilian universities providing military education and training.

Consequently, Ukraine maintained four armed services under subordination of its Ministry of Defence: Ground Forces, Air Forces, Air Defence Forces and Naval Forces. In addition to these establishments, Ukraine inherited more than 700,000 militarized troops under jurisdiction of the Ministry of Internal Affairs (MVD) and KGB, including KGB subordinated Border Troops. Whereas the USSR Ministry of Defence had no branches in the Union Republics, this was not true of the MVD and KGB. These were relatively cohesive entities, and they added to anxieties about the security of the new state. In response to these anxieties, the Verkhovna Rada established an entirely new force structure, the National Guard of Ukraine, on 23 October 1991. (In December 1999 the National Guard was abolished by presidential decree).¹

The Verkhovna Rada’s decision meant that the new state took ownership of all armaments and military stocks on its territory. This included the world’s third largest nuclear arsenal, with 220 strategic weapon carriers, including 176 land based ICBMs (130 SS-19 and 46 SS-24 missiles) and 44 strategic bombers (19 Tu-160s and 25 Tu-95s). Based on figures from the SALT I Treaty, the total potential of this strategic force was estimated at 1944 nuclear warheads, including multiple independently target able re-entry vehicles (MIRVs) and long-range air-launched cruise missiles. In addition, Ukraine inherited approximately 2500 tactical

1 Sherr J. Ukraine's Defence Reform: An Update
<http://www.globalsecurity.org/military/library/report/2002/G112.pdf>

nuclear weapons, designed for delivery by tactical aircraft, artillery and surface-to-surface missiles.²

What Kyiv, in fact, inherited was a Soviet-built force designed for combined-arms offensive operations against NATO. Its deployment patterns did not match Ukraine's defence requirements and there was no integrated command and control centre.

At independence, Ukraine also took possession of huge volumes of military hardware and stockpiles. According to the Ministry of Defence of Ukraine, this included 6500 battle tanks, more than 7000 armoured combat vehicles, 1500 combat aircraft, 270 attack helicopters, and 350 combat ships and support vessels.

Ukraine also inherited approximately one-third of the Soviet military-industrial complex – 1840 enterprises and research centres employing 2.7 million people and providing 17 % of the total Soviet military-industrial output. Many facilities had unique technological capabilities: for example, the shipbuilding facility at Mykolayiv was the principal construction point for Soviet aircraft carriers, and more than 100 facilities participated in the design and production of missiles and missile components.

Thus, on the one hand, Ukraine instantly became the world's third largest armed power taking into account all inherited conventional and nuclear assets. On the other hand, it soon became clear that this legacy came with an extremely high inheritance tax. The parts inherited in reality were disjointed fragments of the Soviet armed forces, lacking central structures for command, control or planning on a national level.

The *de facto* existence of the described above military and paramilitary forces as well as military-industrial capacities were really challenging for the brand new state and demanded legislation development.

The legislation base which is already developed can be systematised in the following "hierarchy key blocks":

- Constitution of Ukraine (1996), National Security Concept (1997), National Security Strategy (2007), Military Doctrine (2004)
- Laws governing the roles, competencies and functioning of Armed Forces and security bodies: 'On the Armed Forces of Ukraine', 'On the Border Troops of Ukraine', 'On the Internal Troops of the Ministry of Internal Affairs of Ukraine', 'On the Security Service of Ukraine', etc;
- Laws governing the manning and supply of the services;
- Laws governing the finance and control (oversight) of military activity³.

2 Alyson J. K. Bailes, Oleksiy Melnyk and Ian Anthony, Europe's Challenge, Ukraine's Experience, http://editors.sipri.se/pubs/RAPPORT_RELICSOFCOLDWAR.pdf

In the first official stage of armed forces development (1991-96), Ukraine established the primary legislative basis, as well as the institutional and command structures for independent armed forces. It repatriated over 12,000 officers and warrant officers who refused to take an oath of allegiance to Ukraine (and absorbed 33,000 military servicemen from other parts of the USSR). It also disarmed the world's third largest nuclear force, removing the last nuclear warhead from its territory by 1 June 1996.

Besides that, national legislation inherited from Soviet Union the norm on compulsory military recruitment. This norm is reflected in the Law "On Universal Military Service" adopted by the Parliament in 1992.

The law focuses on the status, rights and duties of the youth undergoing pre-conscription military training, conscripts and retired military servicemen.

Within the framework of our project, article 8 of the law worth to be mentioned. It focuses on the youth undergoing pre-conscription military training. Such military training is compulsory at schools. The pupils at the age of 15-16 (10th and 11th grades respectively) are obliged to study the theoretical background of the military service as well as the practical aspects.

Although it is not prescribed by the law, the pre-conscription military training classes usually take place once a week and male/female programmes are different. Military training classes for male pupils is usually taught by the retired military officers, while female pupils focus on nursery during the classes. (In 2002 such practices were legitimized by the President's Decree 948/2002 "On the Concept of Youth's Patriotic Education"⁴ and basically provided Army's interference into educational process with a legal background.)

Regrettably, pupils during their military training study the handbook on the youth undergoing pre-conscription military training published in 1996 by M.Tomchuk, Y.Konotopenko, Y.Kramarenko, Y.Kvashnirov and V.Gudym⁵. Although the collective of the authors made the attempt to meet the demands of the new political situation and the particularities of the new independent state, all they did was just the adaptation of the Soviet realities. Therefore not only the text but even the illustrations reflect the realities of the cold war and of Soviet Army (See more in Annex 1).

Besides that in 1991 the Law on "Alternative service" was adopted (the last amendments in 2004). The law focuses on the persons to whom the Law "On Universal Military Service"

3 Sherr J. Security, Democracy and 'Civil Democratic Control' of Armed Forces in Ukraine. – 2001, - P.7.

4 In original "військово-патріотичне виховання" which means word by word "military-patriotic education"

5 Допризовна підготовка / М.І. Томчук, Я.І. Конотопенко, Ю.В. Крамаренко та ін.; За заг. ред. М.І. Томчука. – Київ: Вежа, 1996. – 416 с. (Pre-conscription Military Training, edited by M. Tomchuk. – Kyiv: Vezha Publishing House, 1996. – 416 p.)

is not applicable. Article 2 of the law defines these persons. They should belong to the religious pacifist organisations (the list of which is approved by the Cabinet of Ministers). In case there is the evidence of such religious Weltanschauung, alternative service as an option is possible, although the duration of the alternative service is 1,5 longer.

It is necessary to emphasise also the role of the October 1993 parliamentary hearings on the national security which seem to be the first attempt to discuss the military issues in their complexity.

The analysis of the Ukrainian security policies has been presented by President Kravchuk. He defined the political, economic, military, and international aspects of the Ukrainian national security and stressed growing interdependence between these dimensions. Military aspects of security have been concentrated on the problem of development of the Ukrainian armed forces. The Ukrainian leadership wanted country's army to be capable of responding to any kind of military threat from any possible direction. The specific emphasis has been made on elaboration of the Ukrainian programs for weapons production. In the background of the Ukrainian military policies in terms of military reforms has been the strong political will to protect Ukraine's independence and territorial integrity from any kind of aggression.

The country's leadership has tried to make it sure that the army as an element of society is built on a legal basis as well as is fully integrated into the process of societal reforms. Non-confrontational relations between various political forces with a non-involvement of the military into any political disputes were defined as a major condition for Ukraine's peaceful transition towards democracy.⁶

Yet much more visible legislation development might be found at the start of the second stage (1996-2000). Although at that period Ukraine's armed forces were a bloated, grossly underfinanced establishment of 400,000, lacking any authoritative, coherent and realistic scheme of transformation and development, the legislation founding stones including Constitution were defined.

Ukrainian Constitution was adopted by the Parliament on 28 June 1996. The constitution puts an emphasis on the role of the President in national security. According to the article 102 the Ukrainian President is the head and the representative of the state and guarantor of its sovereignty and territorial integrity as well as the guardian of the Constitution. He is the Supreme Commander of the Ukrainian Armed Forces (article 106) and this is his duty to ensure the national safety (article 106). The Ukrainian President also chairs National Security and Defence Council of Ukraine (article 106) and has discretionary right to decide on the membership in this body. (Basically, after the Constitutional reform 2006 in Ukraine it turned out that National Security and Defence Council turned to be the only President's instrument

6 Strekal O. Civil Control over The National Security Policymaking process In Ukraine. – Kyiv, 1997. – P. 15.

to legitimise his decisions in the period of political crisis. However, frequent changes of the Council's Secretaries as well as its involvement into the domestic political situation discredited this structure immensely).

Ukrainian President enjoys near exclusive powers regarding other issues of defence and security policy, although after the amendments to Ukrainian constitution which came into force in 2006 this issue is debated by the President and the Prime-Minister. Current example is the debate on NATO integration of Ukraine. Although, this objective is among the declared priorities of Victor Yushchenko he can not neither change the opposite Prime-minister's Yanukovich position nor to foster the process of integration. (The MoD and MFA are the only executive bodies subordinated directly to the President, while the rest of executive branch depends on Prime-minister and can just "sabotage" the mentioned Ministries efforts aimed at further integration of Ukraine into the Western structures).

However, it is the President, who has the right to submit the motion to the Parliament to use the Ukrainian forces in case of armed aggression on Ukrainian territory and to introduce the state of war (article 106). He is further entitled to take decisions regarding military mobilisation and state of war in case of threat of aggression on the whole or part of Ukrainian territory.

The prerogatives of the Ukrainian Parliament regarding security issues are limited in comparison to the President's ones. According to the article 85 of the Constitution the Ukrainian parliament has the standard budgetary powers, sets the principles of the internal and foreign policy of the state. On the motion of the President the parliament declares the war and concludes peace, gives the President its consent to use the Armed Forces in case of the armed aggression against Ukraine, has the power to decide on the internal structure, size and function of the Armed Forces, Security Services and the Ministry of Internal Affairs of Ukraine.

Furthermore, the Parliament has a final say in case of granting foreign military assistance, deployment of Ukrainian Armed Forces abroad and permission of access of foreign troops to Ukrainian territory. Presidential decisions on the mobilisation or introduction of the martial law and emergency state also require parliamentary consent.

The Ukrainian Constitution also defined the role of the Armed Forces and basic military duties of the citizens. There is a very strong emphasis on the security function of the state. Article 17 states that the protection of the sovereignty and territorial integrity of Ukraine, of its economic and informational safety are the most important functions of the state and the duty of the whole Ukrainian nation.

The law forbids the use of the armed forces or other military formations for internal purposes such as limitation of human and citizen rights, change of constitutional order and removal of constitutional governing bodies. Although such ban seems obvious enough even without the constitutional article, in case of post-Soviet republic it serves to emphasise the

breach with past practices when the internal function of the armed forces grew to become almost the most important one.⁷

Moreover, article 65 states that the protection of independence and territorial integrity of the state and of its symbols is also a duty of all the citizens of Ukraine and the military service is compulsory in accordance with legal acts of lower order. Creation of military formations outside the existing law is strictly forbidden. The same constitutional article bans the establishment of foreign bases on the Ukrainian territory. This regulation was a subject of dispute between the President and the Parliament. President Kuchma wanted to avoid the adoption of such an article at all costs because it would severely limit his flexibility during the negotiations with Russia regarding the division of Black Sea Fleet. The Parliament, however, showed little understanding to the presidential objections and used such a procedure of parliamentary vote that it allowed to pass most controversial articles, including the ban of foreign bases in Ukraine. Currently, the only exception is Russian Federation's Black Sea fleet allocated in the Crimea peninsula.

Finally, while describing Constitutional provisions, one cannot omit Article 37 which forbids any political or social organisation from creating its military formations. The same article bans a creation or activity of political parties inside any military structures.

In 1996, the National Security and Defence Council under its then Secretary, Volodymyr Horbulin, drew up a National Security Concept (approved by parliament in January 1997), which directly confronted general cold war ethos. Its authors viewed the probability of large-scale aggression as extremely low. Instead, they drew attention to the dangers of local conflicts in Ukraine's immediate vicinity. They also demanded urgent attention to the risk that the country's civic, institutional and economic weaknesses could be used to undermine the state. These dangers not only called for an entirely new relationship between armed forces and society (and genuine civil-democratic control), but an integrated national security system, a joint approach to military operations and a rationalized division of labour between MOD armed forces and other force structures.⁸

It is worth mentioning that during the described period some constitutional provisions were already developed by the legislation of lower level. For example, the National Security and Defence Council status was regulated in addition to Constitution by special law "On National Security and Defence Council". The law in details described functions and sphere of competence of the Council. Such law was desperately needed to set the Council's Secretariat and to form the basis of this institution's further development (the first years of the Council

7 Gogolewska A. *The Restructuring of Civil – Military Relations in Poland, Ukraine and Russia - a Comparative Study.* – P.27.

8 See the text of the Concept at http://www.nbu.gov.ua/law/97_bez.html

functioning were successful basically due to personal informal relations between the Secretary Volodymyr Horbulin and President Leonid Kuchma).⁹

Besides that during this very period (2000) the law “On Armed Forces” adopted in 1991 was amended. The law duplicates the constitutional norm and defines the President as the Supreme Commander of the Ukrainian Armed Forces (article 7). However, the law focuses more precisely on the structure of the Armed Forces of Ukraine and emphasises the role of Ministry of Defence. It is emphasised that direct management of the armed forces is Commander’s of the Ukrainian Armed Forces prerogative. In case Ministry of Defence is civil person, the function of direct management goes to General Staff Chairman (article 8).

Article 17 of the Law limits the political activities within the Armed Forces of Ukraine. For the period of service military servicemen suspend their membership in political parties and trade unions, although can stay the members of NGOs. The organisation of strikes and the participation in the strikes is not permitted.

However, further period of the development of the national legislation deserves for a special attention. This very period was marked by the declared willingness to join western security system and by the direct efforts aimed at approaching NATO states standards.

The State Program of Armed Forces Reform and Development 2001-2005 adoption marks the start of this period and is the first program designed to translate these principles into reality. Since the ‘stage of reform and development’ began in January 2001, this document has been supplemented by several others, including the Concept of the Armed Forces 2010 and the State Program of Armed Forces Transition Towards Manning on a Contract Basis, designed to transform 295,000 mixed conscript-volunteer force into an all volunteer force by 2010¹⁰. The Program is to be implemented during the period up to 2015 in three phases: 2002-2005, 2006-2010, 2011-2015. Due to the Program standard legislative base regarding the issues of the Armed Forces transition towards the manning and organization of military service procedures on contract basis were be developed. The structure of local military control bodies (military commissariats which are basically the rudiments of the Soviet system) is to be reorganized by means of their conversion into territorial centres (in Autonomous Republic of Crimea and administrative regions) and offices (in administrative districts and cities), as well as by reduction of their number and specification of their functions.¹¹

9 See more: <http://www.dt.ua/1000/1030/46798/>

10 Sherr J. Ukraine's Defence Reform: An Update Available at <http://www.globalsecurity.org/military/library/report/2002/G112.pdf>

11 See more at <http://www.mil.gov.ua/index.php?lang=en&part=profession&sub=profession>

During 2001 – 2005 period main attention was drawn to the study of world experience and abilities to sustain the Armed Forces, development of new principles of military personnel training, improvement of the mechanism of the transition from peace to war time.

One of the main priorities on the mentioned stage was the creation of principally new sergeants' layer and improved system of evaluation of the citizens able to serve on contract – by education, moral and professional qualities and health.

On the first stage the number of the military servicemen on contract was supposed to be increased to 30% from the total number of soldiers, sergeants and sailors and 22% from the total number of the military servicemen that will allow manning of the main number of junior commanders.

Besides that peacekeeping forces of the Armed Forces of Ukraine were completely manned by the military servicemen on contract.

One of the main tasks to carry out on this stage was to decrease the number of the Armed Forces and improvement of its manning at the same time by means of increasing of servicemen on contract.

In order to provide the legal background for the Transatlantic inspirations of Ukraine, in 2001 the President signed the Decree 58/2001 “About the State Program of Ukraine’s cooperation with NATO” which foresees the membership of Ukraine in North Atlantic Treaty Organisation.

The other significant steps to bring the national legislation into accordance with the NATO states standards were the adoption of the Law “On Democratic Civil Control over the Military Organisation and Law Enforcement Bodies of the State”. The Law is based on the existing practices of civil control over the military, paramilitary structures when civil control is considered as one of the basic elements of security and stability.

Nevertheless, the understanding of “control” differs from usual. James Sherr points out that, “as a Western concept, ‘civilian democratic control’ is discussed in Western terms and largely in the English language. Fatefully, Russians long ago incorporated ‘control’ – literally, the French equivalent, ‘contrôle’ – into their own language as kontrol’, and Ukrainians have done the same. Unhappily the Russian and Ukrainian concepts are closer to the French and even more strict.

Kontrol’ is the activity of ‘monitoring’ or ‘checking’. At most, it corresponds to ‘oversight’. But it does not correspond to ‘direction’ (upravlinia) or ‘supervision’ (nadzor). In the Ukrainian as in the Soviet military system, nearly all would concede that, if civilians make military policy, then they need to exercise kontrol’ (oversight) over the military. But should civilians control it? Should they tell military professionals how to implement policy, let alone how to conduct military operations? Should they work in ministries of defence, cheek by jowl with serving officers, on similar issues and on an equal or even more than

equal basis? The narrow notion of kontrol' – perpetuated by poor communication as much as by post-Soviet conservatism – is another reason why many in Ukraine have concluded that 'civilian control is effective and adequate'.

The core issue remains the divide between 'us' and 'them' – between society and state. To this day, most ordinary people in Ukraine do not start with the Enlightenment assumption that 'man is the architect of his fortunes'. Towards the public and political order, they are more likely to start with an attitude of resignation. They no more expect to exercise control over the state than they expect to control the weather, and they expect them, the vlada ('powers') to act according to their own rules and purely in their own interests. In turn, the 'powers' themselves in substantial part comprise the descendants or associates of people who had power before, not to say the products of elite institutions and the mentalities which they instilled. In these conditions it is not surprising – indeed it is almost inevitable – that 'democracy' is limited to elections and that elections are managed and manipulated. If civilians elected by these norms have authority over armed forces, police and security services, that does not mean there is 'democratic control'; nor does it guarantee that these formidable institutions will be used in the interests of the country. The struggle to strengthen 'civil, democratic control' is therefore inseparable from the struggle to strengthen civil society. Nevertheless armed forces do not exist to promote democracy, but to defend national security. For this they must be effective, and a military establishment controlled without understanding, knowledge and judgement will prove to be as a much of a threat to national security as a military establishment which answers only to itself. This point, which sadly is not obvious to every specialist in civil-military relations, is crucial for Ukraine and other newly independent states which face chronic security problems not only because of their geopolitical position, but because of their social and institutional weaknesses. In these countries particularly, it is essential that schemes of 'civilian, democratic control' enhance military effectiveness."¹²

Besides the described above context the law was never properly implemented since it came into force. The military armed forces and law enforcement bodies were frequently used as the political leverages, as it is described in UCEPS Analytical Report "Control over the Law Enforcement Bodies in Ukraine: Civil but Not Democratic"¹³.

Therefore, the statements of Oleg Strekal: "Once political control (often personal and not institutional) over the military is established the ruling elite loses its interest in both full-scaled reform of the army and transformation of the narrow political control over the armed forces into the civilian, public control. In this case basic interests of political and military establishment coincide.

12 Sherr J. Security, Democracy and 'Civil Democratic Control' of Armed Forces in Ukraine. – 2001, P. 2.

13 Контроль над правоохоронними органами в Україні: цивільний, але не демократичний. Аналітична доповідь УЦЕПД ім. Разумкова. – Київ, 2004. – 74 с.

On the one hand, politicians regard the army as closed elitarian institution aimed at securing their personal powers. On the other hand, the military officers (especially on the highest levels of command) appreciate the privilege to be „a state within the state“, to be unreachable for any public critique.”¹⁴ turned to be true.

The necessity to improve the situation and to reform military and paramilitary structures within the Ukrainian security and defence system reached the focal point during 2001–2005 period. Evidence of this was seen during the presidential elections when allegations were made that the Interior Ministry had Yushchenko under surveillance. This raised questions about the politicization of the Interior Ministry and the degree to which Ukraine’s security sector was impartial and apolitical. The need for reform was recognized by the new government with the appointment in early 2005 of Yuri Lutsenko, a popular opposition politician and a leader of antigovernment protests in 2000, as Interior Minister.

Also in 2005, the new head of the SBU (Security Service of Ukraine), Igor Drizhchanyy appointed by President Yushchenko, outlined a reform agenda for it. This included the need for a comprehensive review of threats facing Ukraine and responsibilities of the various security agencies in Ukraine to increase efficiency in the fight against terrorism. In particular, Drizhchanyy has called for a clear allocation of responsibilities in the fight against corruption and organized crime, a responsibility now currently shared by the SBU, the Interior Ministry, and the Prosecutor General’s Office.

Unfortunately, while the reforms led by the Ministry of Defence were certain success, the political crisis in Ukraine led to the lack of reforms in the Ministry of Interior, which led to May 2007 crisis and raised the issue of the possibility of the paramilitary units involvement into the political crisis resolution.¹⁵

Ukraine’s challenges are multiplied by the fact that the country did inherit a relatively centralised Ministry of Internal Affairs and state security apparatus, each of them with their own substantial military forces. These and other military forces have grown substantially since independence. Today, even when the militsia (ordinary police) are excluded, the number of armed personnel serving in what the Constitution terms ‘other military formations’ is more than half as great as the number of personnel serving in Armed Forces subordinated to the Ministry of Defence. The risk posed by this state of affairs is not insubordination but uncoordinated action, the diminution of transparency (which multiplies opportunities for foreign penetration) and loss of control over events. In a country devoid of adequate budgetary resources for defence, swollen security establishments and duplication are also a recipe for corruption and impoverishment.¹⁶

14 Strekal O. Civil Control over The National Security Policymaking process In Ukraine. – Kyiv, 1997. – P. 7.

15 See more at http://www2.pravda.com.ua/en/news_print/2007/5/25/7874.htm,
http://ostro.org/shownews_ks.php?id=38069&lang=en

16 Sherr J. Security, Democracy and ‘Civil Democratic Control’ of Armed Forces in Ukraine. – 2001, - P.7.

Ukraine is still lacking independent monitoring of human rights issues, effective public control over the military budget, independent expertise of the official political military doctrines, public access to the information on crimes in the military.

Anyway, when talking about Armed Forces during the studied period at least certain level of consensus on the necessity of Army professionalisation was reached. It had the support of all branches of power, political parties as well as experts' society and average people. Basically, due to the data of Razumkov Centre poll on the eve of the parliamentary elections all the parties' leaders (with the only exception – Communist party of Ukraine) supported the idea of Army professionalisation. 69% of the population also supported the idea of non-conscript volunteering based military service.¹⁷

Besides that during this not stable from the political changes perspectives period finally the Law “On the Basics of National Security of Ukraine” passed through the Parliament (2003). The Law (article 2) gives the legal background for the further development of National Security Strategy and Military Doctrine of Ukraine.

Article 5 of the law defines human rights and freedoms as the priority for the national security. Among the other priorities civil military control is mentioned.

Among the threats the Law emphasises the possibility of military and security forces involvement into illegal activities (article 7). Article 8 focuses on the necessity of civil control implementation.

By coming of the law into force the developed and adopted in 1997 Concept lost its force. Provisions of the Law describe the authority and basic functions of the President of Ukraine, the Parliament of Ukraine, the National Security and Defence Council of Ukraine, the Cabinet of Ministers of Ukraine; the National Bank of Ukraine; the ministries, the Security Service of Ukraine; the local state administrations and bodies of local self-government. They are aimed at ensuring national security. The control over implementation of measures in the sphere of national security is to be performed respectively by the President of Ukraine, the Parliament of Ukraine, the Cabinet of Ministers of Ukraine, and the National Security and Defence Council of Ukraine within the limits of their authorities prescribed by the Constitution and laws.

Overall the Law gives the impression of “institutional thinking” and a collective approach to its development. It has shown a significant improvement in comparison to its 1997 predecessor. A solid part in the Law is devoted to the protection of human rights and basic freedoms of individuals and citizen. For the first time on the legislative level, Euro-Atlantic integration is declared as a key factor of national security.

Finally, the described period was marked with the adoption of new Military Doctrine. The new Doctrine was ratified in June 2004 and revised in accordance with the new strategic goal

17 Available at <http://www.uceps.org/ua/show/103/>

– full membership in NATO – in April 2005. The Doctrine has a defensive character and “...reemphasizes a statutory and political commitment to a non-nuclear status. It stresses the principle of “reasonable defense sufficiency” in determining the number and types of forces as well as the quantity and quality of conventional weapons. It puts a priority on developing modern, well-trained, and highly mobile forces with emphasis on precision weaponry, intelligence and electronic warfare, air and space defense, and airpower and seapower”¹⁸.

To accomplish these objectives, this doctrine calls for a modern and economically rational defense industrial base.

The Doctrine focuses on the prevention and neutralization of real and potential threats to the national security of Ukraine in the military sphere. According to the Doctrine the main goal of the military security of the state is elimination of external and internal threats to the national security of Ukraine and creating favorable conditions for a guaranteed defense of national interests. It lists real external threats to the national security of Ukraine in the military sphere such as proliferation of WMD and means of their delivery, military-political instability and conflicts in neighboring countries, international terrorism, illegal weapons and explosive devices trafficking, the building up of units and armaments near the Ukrainian borders, and the incompleteness of legislation related to demarcation of Ukrainian borders.

The main internal threats in the military sphere are unlawful activities by extremist, separatist, and radical religious organizations, and attempts to create terrorist or unlawful armed groups.

The Doctrine determines main elements of guaranteeing the national security of Ukraine in the military sphere in peacetime, before aggression, during conflict, and after repelling aggression. It entails the tasks and responsibilities of the Armed Forces and other military formations and law enforcement agencies of Ukraine, such as Internal Troops or militia. It binds together all elements of military power and places them under unilateral operational planning, execution, command and control. The Doctrine concludes that the Armed Forces (means) have to have three main functional components – the Joint Rapid Reaction Forces, Main Defense Forces, and Strategic reserves in order to deter and neutralize threats to national security. It lays down tasks for the Armed Forces and other military formations in peacetime, on the eve of the adversary aggression, and during war.

It also sets main forms and ways for using military force. The Doctrine particularly focuses on main elements of the military security of Ukraine – adherence to the legislation and fulfillment of international agreements about temporary basing of the Russian Black Sea Fleet on Ukrainian territory, introduction of the system of democratic civil control over the military organization of the state and law enforcement agencies, development of military-political partnership and cooperation with NATO and the EU and active participation in international peacekeeping activities. The Doctrine emphasizes that the strengthening of

18 Oleksandr Buniak. Ukrainian Security Policy. Strategy Research Project – 2006. – P.6.

strategic stability in the Central and Eastern European region and achieving interoperability according to the NATO standards are main preconditions for guaranteeing the military security of Ukraine.

The new Doctrine revises the conceptual approaches to integration into European and Euro-Atlantic security structures by acquiring full-scale membership in NATO and the EU.

The described legislation became the basement for the further development of the Armed Forces.

Since 2006 the activities of the Armed Forces were directed towards the accomplishment of the missions defined by **The State Programme of Development of the Armed Forces of Ukraine for 2006-2011**.

In March 2006 the President of Ukraine –approved The Strategic Concept of Employment of the Armed Forces of Ukraine (hereinafter The Strategic Concept).

On the basis of The Strategic Concept, the Minister of Defence approved The Strategic Plan of Employment of the Armed Forces (hereinafter The Strategic Plan), which correlates the defined missions with the process of the Armed Forces development and takes into account economic and mobilization capabilities of the State. The Strategic Plan estimates quantitative parameters of forces and means necessary to ensure the military security of the State under modern conditions, taking into consideration scales and dynamics of modern threats.

According to The Strategic Plan, the civil (although current Minister as well as the majority of the Ukrainian Ministers of Defence has the military background) Minister of Defence and the Commander-in-Chief of the Armed Forces (who is currently Chief of the General Staff) – personally approved combat formations and unit mission statements, which will remain in the combat structure after 2011. This was the first time in the history of the Armed Forces of Ukraine that such planning was carried out for each separate brigade.

Thus, approval of *The Strategic Concept* and *The Strategic Plan*, combat formations and units' mission statements has set a qualitatively new standard for troop training, given a real impetus to combat training as a true priority for developing the Armed Forces and created effective incentives for improving the work of commanders at different levels.

The accomplishment of the missions for 2006, as defined by *The State Programme of Development of the Armed Forces of Ukraine*, closely reflected the considerations and requirements of the above mentioned documents and the experience gained from international military co-operation and participation of Ukrainian military units in international peacekeeping operations. The implementation of *The State Programme of Development of the Armed Forces of Ukraine* was in constant focus of the Verkhovna Rada, Government and the National Security and Defence Council of Ukraine headed by the President of Ukraine.

Despite significant difficulties, incentives for attracting people to military service and having service personnel prolong their contract were implemented; contract service personnel manning plans were completed to 94%; and, a contract service in the Reserve was initiated. Providing interagency coordination of use of forces

- improve co-operation and co-ordination of the armed services in the General Staff, in particular by introducing the position of First Deputy Chief of General Staff and appointing senior officers and generals from different armed services of the Armed Forces to positions in the General Staff;
- functional and structural upgrade of the system of operational command and control of troops, through the creation of a command and control element for joint formations – the Joint Operational Command;
- interoperability of troops during international exercises and fulfilment of missions in the frames of multi-functional formations and multinational contingents of peacekeeping forces has been ensured through the harmonization and circulation of documents, transition to common technical standards, co-ordination of procedures of troop activities, exercises and training of commanding staff and troops, including joint exercises;
- creation and development of multi-functional formations with participation of different combined units at the level of Brigade, Corps.¹⁹

The Armed Forces strength was reduced by 24,000 authorized positions, including 15,000 service personnel; with an end-of-year ratio between senior and junior officers of 1.0:1.13, the Armed Forces are moving towards the “optimal” ratio of 1.0:1.5). The number of higher officers has been stabilized (authorized strength – 143 officers); the number of general positions in the Ministry of Defence has reduced to 7 positions from 17 positions in 2005.²⁰

Now the Defence Ministry analyzes condition of monetary provision of the military men of the Armed Forces of Ukraine with the purpose of gradual increase of its level within the state budget.²¹

Another fact that indicates the progress in the sphere of military reform is that in 2006, the delineation of authorities between the Ministry of Defence and the General Staff was nearly completed, structural changes in the Head Office of the Ministry of Defence and in the General Staff were implemented and the optimization of forces operational control system continued.

19 White Book 2006. Defence Policy of Ukraine. Editors: Barry ADAMS, Oleg CHERNYSHOV, Stephen GLOVER, James GREENE, Hennadiy KOVALENKO. – P.12.

20 Ibidem.

21 Available at <http://en.for-ua.com/news/2007/02/14/124540.html>

As a result of the delineation of authorities, the Ministry of Defence is responsible for the state policy in the defence sphere, implements politico-military and administrative control of the Armed Forces, determines the principles of their development and directions of progress. The General Staff performs the strategic planning of the employment of the Armed Forces and other military formations, and implements defence planning and executes the operational control over the Armed Forces and their direct management.

In implementing the State Programme of Development of the Armed Forces a fundamentally new form of military duty was introduced in 2006 – voluntary service in the military reserve.

In the course of 2006 a number of legislative acts created the legal basis for service in the reserve, including:

- the new edition of the Law of Ukraine “On Military Duty and Military Service” (2006) defines main issues concerning military service in the reserve;
- the Cabinet of Ministers decree 1426 “On the Structure of Military Personnel Reserve” from (2006), which defined the personnel resources for military reserve and its assigned tasks. The Decree 1644 “On the Order and Scale of Pay Provision and Incentives of Subjects to Military Service” (2006), which defined reservists’ pay

Pay for reservists on contract, *UAH/year*²²

<i>Servicemen categories</i>	<i>Scale of pay provision</i>
Higher officers	2,000 (approx. 300 EUR)
Senior officers	1,800 (approx. 270 EUR)
Junior officers	1,600 (approx. 240 EUR)
Warrant officers /senior warrant officers	1,400 (approx. 210 EUR)
Junior sergeants, sergeants, senior sergeants, master sergeants	1,200 (approx. 180 EUR)
Privates	1,000 (approx. 150 EUR)

22 White Book 2006. Defence Policy of Ukraine. Editors: Barry ADAMS, Oleg CHERNYSHOV, Stephen GLOVER, James GREENE, Hennadiy KOVALENKO. – P.41.

Besides the mentioned above documents, the draft presidential decree “On Confirming Procedures of Ukrainian Citizens Serving in the Armed Forces of Ukraine Military Reserves” has been drawn up. It defines the procedures for serving in the reserve.

While talking about the current state of career management, it should be mentioned that the efficiency of the personnel management system was enhanced by a number of measures, including harmonization of job position and qualification requirements. Furthermore a system of calculating the strength and collecting personal data on the officer corps was introduced along with the necessary information and analytical support. This made it possible to decrease the number of personnel managers and reduce the influence of subjective factors in personnel decisions.

The draft “Regulations Concerning the Procedures of Military Service” defines unified rules for enlisting personnel as well as minimum and maximum terms for staying in a military rank.

An automatically updated database provides complete information about every officer. In the space of a few minutes it can provide all the information needed to make a decision concerning promotion, retirement, and evaluation of personnel resources.

Standardized descriptions of service personnel positions now contain details of the position itself and the qualifications needed for candidates to fill the position. Signing a contract for at least five years future service is a precondition for being assigned to a higher position, to study in Ukraine and abroad, as well as for participation in peacekeeping operations.

The approaches toward junior officers have also changed. Special attention is being paid to the first years of their service, as outlined in the Minister of Defence’s “Methodical Recommendations Concerning the Adaptation of Junior Officers to Service Activities in the Armed Forces During the First Three Years”.

These measures not only better regulate the procedures of military service, but will also contribute to the qualitative and structural improvement of officer staff.

To sum it up, 2006 was the first year of implementation of the State Programme of Development of the Armed Forces of Ukraine. Furthermore, it was a crucial year for creating the conditions for transformation of the Armed Forces.

Moreover, after the few years of development in 2007 finally the National Security Strategy was adopted.

Before this moment the Ukrainian Security Strategy did not exist as a formal document and thus was seen as a compilation of different constitutional declarations and national laws

that determined a strategic course of action. But in 2007 the President has signed 105/2007 Decree which made this document to come into force²³.

Since the very introductory part the document focuses on the necessity of human rights and dignity protection and foresees state's national security policy development. Again, the Strategy duplicates the norm on the necessity of civil democratic control over the security sector. Paragraph 3.7 emphasises the necessity of armed forces and law enforcement bodies reforming. The achievement of the European standards in the security sector is set as one of the priorities. Moreover, the legislation (due to the Strategy prescriptions) is to be updated in order to meet European and Euroatlantic criteria (although such criteria are not precisely defined in the Strategy). The authors of the strategy also stress the necessity do demilitarise the Intelligence bodies as well as law enforcement bodies.

Since the document was mostly developed by the National Security and Defence Council's Secretariat experts and since 2005 till 2007 three Secretaries have been chairing this structure, the Strategy looks somewhat eclectic. However, it defines certain priorities of the security policy of Ukraine and therefore might be considered as another milestone of the security sector legislation building.

23 Available at <http://www.president.gov.ua/documents/5728.html>

Conclusion

The Ukrainian Armed Forces and Security Sector as a whole inherited from Soviet Union not only the exaggerated structure but also very limited democratic traditions. The situation was also complicated by the collapse of the economics and absolute absence of legislative provisions for the democratic transformation of the Soviet Armed forces into Ukrainian Army.

It took a significant period of time to develop the basement for the new institutions building and development, moreover it took even longer to set the external priorities of development and to define the strategic goals (National Security Strategy was adopted in 2007 only). Since 1991 the process of transformation was facing the challenges of political instability and economic decline.

However, on the current stage of Security Sector reform considerable progress can be observed. The priorities of Security Sector forming were defined and now are being implemented. Although Ukraine still faces financial difficulties they look minor in comparison with the early years of independence.

While speaking of the political situation, despite the current political tensions it also looks favourable for the further democratic development of the Armed Forces and the Security Sector if the existing legislation is properly implemented.

Institutionally most of the leverages of civil democratic control belong to the President of Ukraine. However, the Parliament with its budgetary functions is probably less influential but not less important. Although, the Parliament does not have the instruments of direct civil control at its disposal, the existing legislation creates the necessary preconditions for gaining them.

Among the visible obstacles for further democratisation of army and civil control one might define lack of political culture both of servicemen and politicians, number of rudiments in the system of military and pre-conscription education and training and finally lack of enthusiasm caused by comparatively low payments to military servicemen.

Despite those deficiencies, in many ways the reform of the armed forces and the democratisation of civil–military relations have been deeper than in any other sector of the security institutions.

It is difficult to assess the general state of reform in security sector in Ukraine. There are important deficiencies in democratic management and control of the security institutions, but certainly not all of them should be attributed to failure or lack of conscious reforms.

The legislative framework for security is not yet complete; however, the existing regulations do not hamper the implementation of democratic procedures in the sector. Much

more detrimental is the lack of strong democratic civic culture that would be a natural safeguard of democratic control of the security sector, and moreover would counter the rampant corruption now also present in the security sector. For such a culture, however, time is needed for its development. Therefore it is very important to try to contribute to the emergence of an informed and interested “security community” in every available way.

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Annex 1



Мал. 23. Лист з армії: син служить зразково

Picture 23. The letter from army: your son is an excellent soldier

The “samovar” on the table is typical for Russia, not for Ukraine. Therefore, presumably, the picture was just reprinted from a Soviet book S.G.



Мал. 24. Порушник військової дисципліни перед товаришами

Picture 24. The military discipline disturber in front of his comrades

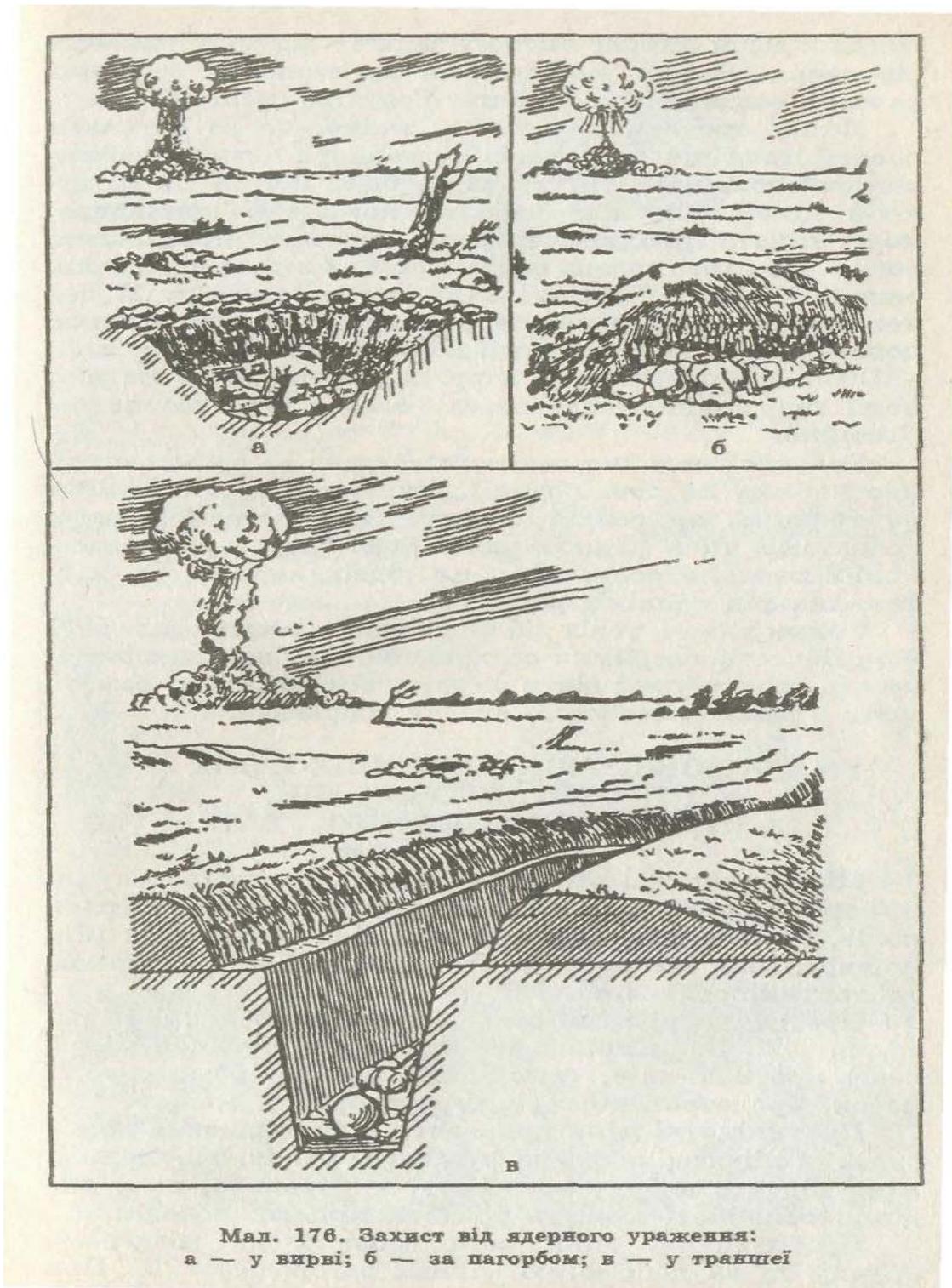
The picture reflects rather the Soviet tradition of “tovarishcheskiye sudy” – comrades’ court, than the Ukrainian realm S.G.



Picture 156. Observation from the position over the rick of hay



Picture 170. In the enemies' trench



Picture 176. Nuclear explosion protection.