

Volodymyr Stets

*PhD student of the State Studies and Law Chair,
ORIPA NAPA under the President of Ukraine*

LOCAL SELF-GOVERNMENT BODIES AS SUBJECTS OF ENSURING THE CYBERSECURITY OF UKRAINE

The article examines the place and role of local self-government bodies in the national cybersecurity system of Ukraine. The system of local self-government bodies is considered as a non-state subsystem of public management in the issues of local importance. The peculiarities of the legal status of these bodies as subjects of ensuring the cybersecurity of Ukraine are analyzed. The topic of the research allowed to identify certain problems in the current legislation of Ukraine.

Key words: *national security; cybersecurity; subjects of ensuring cybersecurity; local self-government bodies; powers.*

Постановка
проблеми

The construction of the «state in a smartphone» announced by the President of Ukraine accelerates the informatization of all spheres of public life in Ukraine. At the same time, there is a constant increase in the number and level of cyber threats, which requires the creation of an adequate national cyber security system for these cyber threats. One of the subjects to ensure cybersecurity is the legislatively defined local self-government bodies (LSGBs). Therefore, to determine their place in the general structure of the national cybersecurity system and their authorities is important for building an effective system of ensuring the cybersecurity of Ukraine, for identifying ways to improve it.

Аналіз
останніх
досліджень
і публікацій

Various aspects of the problems of the national security ensuring system in general and the subjects of

ensuring national security, in particular, were considered in the works of scientists O.P. Dzyoban, V.A. Lipkan, G.P. Sytnyk, Y.O. Mikhailova, M.M. Shevchenko, and others. The system of ensuring cybersecurity and the subjects of ensuring cybersecurity was studied by D.V.Dubov, I.V.Diordytsya, R.V.Lukyanchuk, O.V.Ostrovii, V.V.Bukharev, V.P.Shelementsev, Tarasyuk A.V., and others. However, almost all researchers consider either the systems of ensuring national and cybersecurity in general, or only the main subjects of ensuring national and cybersecurity to which they do not include LSGBs.

An exception is the works of some researchers of national security problems. Ponomaryov S.P. considered the LSGBs as subjects of national security. Demidenko V.O. studied LSGBs as subjects of national security [1] and subjects of information security without emphasis on

© Стець В.В., 2021.

cybersecurity. His other work is devoted to considering the principles of application of the legislation of Ukraine in the field of cybersecurity by LSGBs [2]. Krikun V.V. studied the legal status of LSGBs as a subject of protection of critical infrastructure of Ukraine. It can be concluded that there are very few publications devoted to the place and role of LSGBs in the system of ensuring cybersecurity.

Виділення невіршених раніше частин загальної проблеми

The issues of comprehensive consideration of LSGBs as subjects of ensuring the cybersecurity of Ukraine remains insufficiently explored. This makes it impossible to accurately define their place in the structure of the national cybersecurity system, identify problems and develop ways to improve Ukraine's cybersecurity ensuring system.

Мета

The purpose of the article is to consider the place of local self-government bodies in the national cybersecurity system, features of their legal status as subjects in ensuring the cybersecurity of Ukraine, and some problematic issues related to the research topic.

Виклад основного матеріалу

The basis of a system of ensuring cybersecurity is a totality subjects of ensuring cybersecurity. Each of them occupies a special place in this system and solves specific tasks within its competence defined by the legislation.

The place and role of LSGBs in the system of ensuring the cybersecurity of Ukraine are determined by the essence, principles of functioning, and legal status of local self-government (LSG) enshrined in Ukrainian legislation.

The essence of LSG, as it follows from the Constitution of Ukraine [4] and the Law of Ukraine «On Local Self-Government of Ukraine» [5], is the right of individuals who form a territorial community in a certain territory, independently or under the responsibility of LSGBs and officials to decide issues of local importance within the powers defined by the Constitution and laws of Ukraine. A necessary condition for the real realization of this right is the ability of the territorial community to independently resolve the issues of local importance.

Thus, it follows from the essence of the LSG that a special object of management in the LSG system is the totality of all issues of local importance within the powers of the LSG. The assignment of the LSG is to address these issues. The issues of general state importance must first be decided by the state through its bodies. Ensuring Ukraine's national security and cybersecurity as a component of national security are general state issues.

Therefore, the importance of cybersecurity tasks for the LSG depends on the degree of danger from real and potential cyber threats to the proper functioning of the life support systems of the local community. Demidenko V.O. [2] emphasizes that «the significance of protecting the vital interests of man and citizen, society and the state in the use of cyberspace in the sphere of functioning of local government will only increase, due primarily to the gradual decentralization of public power».

Cyberspace, unlike the territory of the state, has no administrative-territorial division, it has no interstate and domestic borders. That is, the information infrastructure with connection to global networks of information

transmission such as the Internet of any territorial community automatically becomes an element of cyberspace of Ukraine and is included in the sphere of state interests in ensuring the cybersecurity of Ukraine.

The implementation of the management functions of a LSGBs is accompanied by the generation of different in volume and importance of internal and external information flows, including between LSGBs and public authorities. Also, some LSGBs carry out their management functions on the territory where objects important for national security and defense are located. Problems with the own cybersecurity of the information infrastructure of a particular territorial community can lead to the emergence of the so-called «back door» for intruders to enter the cyberspace of Ukraine. Thus, state and local interests in the field of cybersecurity of Ukraine are combined.

One of the main principles of the LSG is organizational independence, which is enshrined in Article 5 of the Constitution [4]. After analyzing this provision, the Constitutional Court of Ukraine (CCU) concluded that «local self-government bodies are not bodies of state power» [8]. Also, the CCU pointed out that LSG and public administration are two organizationally separate areas of activity. Thus, the LSG is a non-state component of public authority and public management and performs power-management functions in a certain area to address issues of the local character of the inhabitants of this territory.

The territorial community is the primary subject of management of local affairs, which are referred to the competence of the LSG. It performs management functions directly and through local governments, which are secondary subjects of management. The LSG has a decentralized management character, as it does not provide for a hierarchical structure. The term «local self-government» indicates that in the case of a generalized approach, the LSG is seen as a type of social management where the object and the subject of management are combined, enabling the population to manage their local affairs.

Article 5 of the Law [7] defines LSGBs as subjects of ensuring cybersecurity without specifying which local self-government bodies carry out this activity.

The LSGBs system is a subsystem of the LSG system and consists of representative bodies of the LSG (village, settlement, district councils in the city, city, district and oblast councils); executive bodies of village, settlement, city and district councils in the city. Each of these bodies has its own competence. However, there are some problems with determining the structure of the system of LSGBs because in the Law [5] there are no concepts of «local self-government body» and «system of local self-government bodies». For example, the authors refer the bodies of self-organization of the population (BSPs) to the system of LSGBs [3, p. 131]. Another point of view is that BSPs are not part of the LSGBs. The legislation definition of BSP does not clarify the situation. Therefore, in the research on national security issues, BSPs are not considered as bodies of LSG» subjects of ensuring national security.

The other problem is the non-compulsory creation of district councils in cities and their executive bodies, and the executive body in village councils, representing territorial communities that number up to 500 residents. In the latter case, the functions of the executive body

(except for the disposal of land and natural resources) are performed by the village head. Formally, in this case, the village head becomes an LSGB and a subject of ensuring cybersecurity, but this should be defined in the Law [5].

Another problem that LSG researchers constantly point out is the lack of own executive bodies in district and oblast councils. Thus, their ability to address ensuring cybersecurity tasks is extremely limited and should be addressed by other local authorities.

The criterion for distinguishing local self-government bodies in ensuring cybersecurity is their competence, which is established by law. Structurally, competence is a set of subject matter of competence and powers, subject matter of competence is synonymous with the term «issues of local importance» [3, p.90, p.147].

The basic provisions for determining the competence of the LSG and the LSGBs are the provisions of the Constitution [4]. Part 1 of Article 143 defines the most important issues of local importance, which are resolved by territorial communities of villages, settlements, cities directly or through the LSGBs formed by them. This list of local issues is not exhaustive, local communities and LSGBs also address other less important issues of local importance, referred by law to their competence.

Part 2 of Article 143 lists only the two most important issues addressed by oblast and district councils, which represent the common interests of territorial communities of villages, towns and cities. District and oblast councils may also resolve other issues within their competence by law. However, among the issues of local importance listed in Article 143, there is no «ensuring cybersecurity».

Besides, cybersecurity is a component of information security. Ensuring information security is the most important function of the state and the cause of the whole Ukrainian people (Article 17 of the Constitution [4]). The Ukrainian people, as follows from the Preamble to the Constitution [4], are a totality of citizens of Ukraine of all nationalities. That is, we are not talking about individual groups of citizens, but about all citizens in general as a whole. Thus, ensuring cybersecurity is not the most important function for the LSG and its bodies.

In general, it can be concluded that the powers of a LSGBs to ensure cybersecurity are not directly established by the Constitution and are not the most important issues of local importance. However, the Constitution [4] allows the transfer of certain powers of executive bodies to LSGBs through the delegation mechanism. These may be powers to ensure various components of national security, in particular cybersecurity. Reimbursement of the costs of LSGBs for the implementation of these delegated powers by the state has been established, as well as the control of LSGBs by the relevant executive bodies. The implementation of the management functions of the LSGBs during the implementation of delegated powers can be considered as a component of public administration in the relevant sphere.

The Constitution limits the scope of delegated powers» only separate powers can be delegated, i.e. the main part of the powers must remain with the relevant executive body. The law [5] stipulates that separate powers may be delegated by law, which excludes the possibility of their delegation by bylaws. But the mechanism of delegation is not defined by law. It is clear that the delegation of powers should be based on clear criteria of expediency and the

mandatory consideration of the real capabilities of the LSG.

The next, in importance for determining the competence of the local self-government, is the Law of Ukraine [5]. Based on the theory of law [10, p.514], this Law can be classified as a constitutional (organic) law, as it is referred to in the text of the Constitution, it specifies the main provisions of the Constitution on LSG guarantees, organization of activities, legal status and responsibilities of bodies and officials persons of LSG. This is the main law in the field of LSG, it occupies an intermediate position in the hierarchy of legal act between the Constitution and ordinary laws. Thus, it has priority over the Law [7] in defining the powers of LSGBs to ensure cybersecurity. However, the analysis of the Law [5] shows that it lacks the subject matter of competence «ensuring cybersecurity».

The main law in the field of ensuring cybersecurity today is the Law of Ukraine [7], which regulates a range of issues to combat modern cyber threats.

The analysis of the Preamble of the Law shows the absence of LSGBs in the list of entities for which the Law establishes the powers and principles of coordination of activities in the field of cybersecurity, although below in Article 5 of the Law LSGBs refer to subjects of ensuring cybersecurity.

Item 5 of Article 5 of the Law [7] defines the general functions that the subjects of ensuring cybersecurity perform within their competence:

- 1) take measures to prevent the use of cyberspace in military, reconnaissance, terrorist and other illegal and criminal purposes;
- 2) carry out detection and response to cyber incidents and cyberattacks, elimination of their consequences;
- 3) carry out information exchange on implemented and potential cyber threats;
- 4) develop and implement preventive, organizational, educational and other measures in the field of cybersecurity, cyberprotection and cyberdefense;
- 5) ensure the conduct of information security audits, including at subordinate facilities and facilities belonging to the scope of their management;
- 6) carry out other measures to ensure the development and security of cyberspace.

The Law [7] does not single out a LSGBs as a separate subject and their specific powers are not defined. There is a general duty, not just for a LSGBs, to assist subjects of ensuring cybersecurity.

Another duty to implement cyberprotection measures arises if the LSGBs are owners of:

- communication systems where national information resources are processed and/or used in the interests of a LSGBs;
- critical information infrastructure facilities;
- communication systems used to meet public needs and/or the implementation of legal relations in the fields of e-government, e-government services, e-commerce, e-document management.

The connection of the specified communication systems to the Internet and/or other global data transmission networks (except for technological systems) is a prerequisite.

The next important law to consider is the Law of Ukraine [6]. It follows from the Preamble of the Law that it

defines and delimits the powers in the spheres of national security and defense only of state bodies. That is, the legislator did not set the task to establish and delimit the powers of LSGBs in these spheres.

According to the Law of Ukraine [6], LSGBs are not included in the security and defense sector. Demidenko V.O. in [1] concluded that this makes it absolutely impossible to ensure national security. However, the Law contains certain provisions on the involvement of LSGBs in ensuring national security, which to some extent can be attributed to certain aspects of ensuring cybersecurity:

ensuring public safety and order, which is a priority for LSG, exercising control in this area;

exercising democratic civilian control over the security and defense sector;

monitoring the status of pre-conscription training and selection of citizens for military service (for example, in the military formations of cybersecurity entities);

informing the public, in particular through the media, about their activities in the performance of tasks related to ensuring national security and defense.

Besides, there is a duty to carry out its ensuring national security functions in cooperation with the subjects that are part of the security and defense sector.

Thus, it can be stated that the competence of a LSGBs in the field of ensuring cybersecurity is not clearly and specifically defined, full and exclusive powers of LSGBs are not established, in the main law in the field of local self-government there is no subject matter of competence «ensuring cybersecurity».

It should be noted that according to the legal position of the CCU, the subjects matter of competence of LSG are not any issues of public life, but issues of local significance. The list of such issues is defined in the Constitution of Ukraine and the Law of Ukraine «On Local Self-Government in Ukraine» (paragraph 2 of item 4 of the motivating part of the CCU Decision [8], paragraph 2 of subitem 3.2 of the motivating part of the CCU Decision [9]). That is, the legislator had to supplement the Law of Ukraine [5] with the subject matter of competence «ensuring cybersecurity» and the relevant powers of the LSG, as was done about the powers in the field of defense (Article 36 of the Law of Ukraine [5]).

To determine the place of local self-government in the national cybersecurity system, it is necessary to find out what classification of cybersecurity ensuring subjects is traced in the current Law [7].

The analysis of the provisions of this Law shows that the following classification is used:

subjects of ensuring cybersecurity (all subjects);

subjects that directly implement ensuring cybersecurity measures within their competence (this is the majority of all subjects);

the main subjects of ensuring cybersecurity (this is the smallest part of all subjects and that belong to the previous group of subjects).

Part 2 of Article 8 of the Law of Ukraine [7] lists the main subjects of the national cybersecurity system. All these subjects are state bodies, which, in accordance with the assigned tasks, perform the main part of the functions of ensuring the security of cyberspace of Ukraine.

Subjects that directly implement cybersecurity ensuring measures within their competence are defined in Part 4 of Article 5 of the Law [7] and consist of state and non-state subjects of ensuring cybersecurity.

The provisions of Article 5 of the Law [7] actually define the system of public administration in the field of cybersecurity, the management vertical of its operation and provide a list of cybersecurity entities that directly implement or participate in the realization of state policy in the field of cybersecurity, carry out ensuring cybersecurity measures in the process of its activities. LSGBs are non-governmental subjects that directly implement cybersecurity activities within their competence, but are not part of the main subjects. The functions of a LSGBs in ensuring cybersecurity, as the analysis of their competence shows, are not the main ones in their activities.

Висновки

The LSGBs is a non-governmental decentralized subsystem of public administration at the territorial level. However, the realization of managerial functions by LSGBs within the delegated powers of executive bodies in the field of cybersecurity of Ukraine can be considered as a component of public administration in this area. LSGBs are not part of the security and defense sector and are non-governmental subjects that directly carry out cybersecurity activities within their competence, and cybersecurity functions are not basic in their activities.

Powers in the field of cybersecurity should be differentiated for each type of LSGBs, depending on their place in the LSGBs system, the real need for these powers to ensure cybersecurity and the ability to perform them.

Ukrainian legislation on cybersecurity by LSGBs is contradictory and needs to be improved and developed further. First of all, it concerns:

the elimination of the considered terminological gaps and problems with the definition of the structure of the LSG system;

the determination of the subject matter of the LSG competence «ensuring cybersecurity» and the relevant powers in the Law [5];

the clear legislative definition of the mechanism of delegation of powers in this area.

An area for further research is the analysis of the actual cyber security capabilities of each type of local government in Ukraine, taking into account the importance to national security and defense of the territory of their operation and the critical infrastructure facilities located on that territory.

Література.

1. Демиденко В.О. Місце й роль органів місцевого самоврядування в забезпеченні національної безпеки України. *Науковий вісник Національної академії внутрішніх справ*. 2018. № 3 (108). С.238–249.
2. Демиденко В.О. Принципи застосування органами місцевого самоврядування законодавства України у сфері кібербезпеки. *Юридичний часопис Національної академії внутрішніх справ*. 2018. № 1 (15). С.141–153.
3. Лазор О.Д., Лазор О.Я. Місцеве управління: поняття, терміни, визначення. Словник-довідник. Навчальний посібник. 2-е навч.-наук. вид., перероб. та доп. Київ: Дакор, 2006. 352 с.
4. Конституція України : Закон від 28 черв. 1996 р. № 254. Редакція від 01.01.2020. Офіц. сайт Верхов. Ради України. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (дата звернення: 22.03.2021).

LOCAL GOVERNMENT

5. Про місцеве самоврядування України: Закон України від 21 травня 1997 р. № 280/97-ВР. Офіц. сайт Верхов. Ради України. Редакція від 18.03.2021. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text> (дата звернення: 22.03.2021).

6. Про національну безпеку України : Закон України від 21 черв. 2018 р. № 2469. Офіц. сайт Верхов. Ради України. Редакція від 24.10.2020. URL: <https://zakon.rada.gov.ua/laws/show/2469-19#Text> (дата звернення: 22.03.2021).

7. Про основні засади забезпечення кібербезпеки України: Закон України від 5 жовт. 2017 р. № 2163-19. Офіц. сайт Верхов. Ради України. Редакція від 24.10.2020. URL: <https://zakon.rada.gov.ua/laws/show/2163-19#Text> (дата звернення: 22.03.2021).

8. Рішення КСУ від 26 березня 2002 року N 6-рп/2002. Офіц. сайт Верхов. Ради України. URL: <https://zakon.rada.gov.ua/laws/show/v006p710-02#Text> (дата звернення: 22.03.2021).

9. Рішення КСУ від 1 квітня 2010 року N 10-рп/2010. Офіц. сайт Верхов. Ради України. URL: <https://zakon.rada.gov.ua/laws/show/v010p710-10#Text> (дата звернення: 22.03.2021).

10. Скакун О.Ф. Теория государства и права (энциклопедический курс): Учебник. Харьков: Эспада, 2005. 840 с.

9. Rishenni KSU vid 1 kvitnja 2010 roku N 10-rp/2010. Ofic. sajt Verkhov. Rady Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/v010p710-10#Text> (data zvernennja: 22.03.2021).

10. Skakun O.F. Teoryja gosudarstva i prava (encyklopedycheskyj kurs): Uchebnyk. Kharkov: Espada, 2005. 840 s.

References.

1. Demydenko V.O. Misce j rolj orghaniv miscevogho samovrjaduvannja v zabezpechenni nacionaljnoji bezpeky Ukrainy. *Naukovyj visnyk Nacionaljnoji akademiji vnutrishnikh sprav*. 2018. # 3 (108). S.238–249.

2. Demydenko V.O. Prynцыпу zastosuvannja orghanamy miscevogho samovrjaduvannja zakonodavstva Ukrainy u sferi kiberbezpeky. *Jurydychnyj chasopys Nacionaljnoji akademiji vnutrishnikh sprav*. 2018. № 1 (15). S.141–153.

3. Lazor O.D., Lazor O.Ja. Misceve upravlinnja: ponjattja, terminy, vyznachennja. *Slovnyk-dovidnyk. Navchalnyj posibnyk. 2-e navch.-nauk. vyd., pererob. ta dop. K.: Dakor, 2006. 352 s.*

4. Konstytucija Ukrainy : Zakon vid 28 cherv. 1996 r. №254. Redakcija vid 01.01.2020. Ofic. sajt Verkhov. Rady Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (data zvernennja: 22.03.2021).

5. Pro misceve samovrjaduvannja Ukrainy: Zakon Ukrainy vid 21 travnja 1997 r. № 280/97-VR. Ofic. sajt Verkhov. Rady Ukrainy. Redakcija vid 18.03.2021. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text> (data zvernennja: 22.03.2021).

6. Pro nacionaljnu bezpeku Ukrainy : Zakon Ukrainy vid 21 cherv. 2018 r. № 2469. Ofic. sajt Verkhov. Rady Ukrainy. Redakcija vid 24.10.2020. URL: <https://zakon.rada.gov.ua/laws/show/2469-19#Text> (data zvernennja: 22.03.2021).

7. Pro osnovni zasady zabezpechennja kiberbezpeky Ukrainy: Zakon Ukrainy vid 5 zhovt. 2017 r. № 2163-19. Ofic. sajt Verkhov. Rady Ukrainy. Redakcija vid 24.10.2020. URL: <https://zakon.rada.gov.ua/laws/show/2163-19#Text> (data zvernennja: 22.03.2021).

8. Rishennja KSU vid 26 bereznja 2002 roku N 6-rp/2002. Ofic. sajt Verkhov. Rady Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/v006p710-02#Text> (data zvernennja: 22.03.2021).