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Growing importance of the Security Council in Ukraine

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On 27 March, President Volodymyr Zelensky signed a decree annulling the 2013 decrees appointing two judges to the Constitutional Court (SK), including its chairman Oleksandr Tupytskiy. Zelenskiy justified his decision in terms of an audit of decisions taken by the former President Viktor Yanukovych in terms of threats to state security, being carried out by the National Security and Defence Council (NSDC) of which Zelenskiy is chairman. The move is another example of this body's growing importance in running the country over the past two months. In February this year the NSDC introduced sanctions against two parliamentary deputies from the pro-Russian Opposition Platform-For Life (OPZZh), including their media assets. In March, the Council removed 19 companies' licences to extract hydrocarbons, and launched an audit into all permits issued since 1991. As in the above-mentioned case, these decisions were justified in terms of national security.

Commentary

- It seems that in order to exercise power more effectively, President Zelensky has decided to entrust the NSDC with the role of preparing key decisions. This is a significant change from the way in which his predecessors governed. The Council is a convenient and more effective tool for Zelenskiy than parliament, in which (despite his party's formal majority) not all of his initiatives have been supported. The Council's decisions also allow Zelenskiy to bypass the corrupt Ukrainian courts, where cases are slow and do not usually yield the convictions desired by the government.
- Zelenskiy's actions have given rise to suspicions that the NSDC is being used to conduct government policy. The Council is chaired by the head of state, and coordinates & supervises the activity of the executive authorities in matters of national security and defence. Its makeup is approved by the president: it has 21 members, including the prime minister, the ministers of defence, foreign affairs and home affairs, the prosecutor general and the head of the Security Service of Ukraine. Decisions taken by the Council are approved by at least two-thirds of its members, but must be confirmed in the form of a presidential decree. The increased involvement of the Council in creating Ukrainian security policy is in line with the constitution and the law on the NSDC's competences. This is also unsurprising in the context of the war with Russia, because – by the power of the decrees it issues – it allows the government administration and secret services to become involved in implementing tasks aimed at neutralising Russian influence in the country. However, there are doubts about the use of the broadly and vaguely formulated concept of a 'threat to national security' to resolve the current internal problems related to the management of the state in the economic, political and administrative spheres.

- The NSDC's most important decisions in recent months have had a direct political effect, namely strengthening the president's position in domestic politics. The imposition of sanctions on Taras Kozak and Viktor Medvedchuk from the OPZZh on accusations of financing terrorism, and the closure of the pro-Russian media under their control, was also a blow against the President's direct political competition. In recent months, the OPZZh has been gaining in polls at the expense of the president's Servant of the People party, and after the Council took its most recent decisions, polls have shown an increase of several percent in support for Zelensky and his party. The imposition of sanctions on Medvedchuk saw the approval of most players on the political scene, especially the patriotic groups. The licenses for the extraction of hydrocarbons were revoked as the National Council of Research and Development decided that that they had been obtained during Yanukovych's presidency without a tender and at an undervalued price, and that the companies controlling them were associated with "a citizen of an aggressor country" (according to some media, this referred to the Ukrainian-Russian businessman Pavel Fuks). While there is no doubt that the mining permits were issued in a non-transparent manner, their cancellation without a court judgement may be seen as an announcement that the market is about to be reshuffled. In turn, the dismissal by decree of two incumbent judges on the Constitutional Court is an even more far-reaching precedent, as neither the constitution nor the law on the Constitutional Court provides for such a possibility. Tupytskiy's dismissal is the result of the conflict between President and court that has been ongoing since autumn 2020. Zelenskiy, like most parliamentarians, does not agree with Tupytskiy's rulings, which have undermined the legality of the operation of the country's anti-corruption institutions; the President claims that these decisions have served the interests of oligarchs and pro-Russian circles, and pose a threat to national security.