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Legal Regulation of the National Security of Ukraine: the Current State and Directions of Improvement

In the conditions of modern transformations in the field of legal science, the scientific and theoretical analysis of regulatory and legal framework of the national security of Ukraine has not been carried out at the proper level. Thus, the protection of national interests and the security of the individual, society and the state as a whole remains one of the priority issues. Thus, one should emphasise the fact that one of the most important conditions for the effective functioning of any state and society as a whole is national security. In the context of this, the important task of our state is provision of national security, both nationally and internationally. This study will contribute to the formation of new legislative initiatives in the field of national security of Ukraine, in particular to the emphasis on both positive characteristics and the discussion aspects of the Law of Ukraine «On National Security of Ukraine». On the ground of carried out research, the following conclusions are formulated: a) it is substantiated that the adoption of the Law of Ukraine «On National Security of Ukraine» is an important step in the field of legal regulation of the national security of Ukraine; b) emphasis is placed on both the positive characteristics and the discussion aspects and reservations of the Law of Ukraine «On National Security of Ukraine»; c) attention was drawn to the feasibility of introduction of monitoring of the implementation of the Law of Ukraine «On National Security of Ukraine», in particular on the part of the public.

Keywords: legal and regulatory framework; national security; government agencies; institution; powers of state bodies.

Problem statement. National security is one of the most important conditions for the effective functioning of any state and society as a whole. In view of this, national security is a basic necessity and an important task for each country, both nationally and internationally. Under the current conditions, the threat to the national security of one state can rapidly become a threat to international security. Despite the comprehensive legal and regulatory framework of national security, the protection of national interests and the security of individuals, societies and states in the context of the effectiveness of state regulation from external and internal threats remains one of the top priorities. Considering the acute socio-political crisis, the armed aggression of the Russian Federation, and the increase in crime, Ukraine faces issues of improving the regulatory framework of national security.

Analysis of recent research and publications. The problem of normative legal provision of Ukraine's national security at different stages of the formation and development of our state, as a sovereign and independent, democratic, social and legal state, was investigated, in particular, by O. Bantyshev, V. Bilous, V. Gorbulin, O. Delinskyi, V. Kartavtsev, O. Kopan, V. Krutovyi, M. Levytska, V. Lipkan, Y. Maksymenko, M. Melnyk, N. Nyzhnyk, G. Ponomarenko, O. Pulym, G. Sytnyk, A. Semenchenko and others.

The purpose of the article is a systematic analysis of the current national legislation, which in turn will ensure the implementation of new effective legislative initiatives. After all, only on the basis of the conducted analysis it is possible to identify the shortcomings of legislation in the field of national security and, on the basis thereof, determine the further ways of forming new legislative initiatives in the field of national security of Ukraine.

Presenting main material. In the context of the investigated issue, Ukraine began to develop the regulatory framework, becoming an independent state at the beginning of the 90's. It should be noted that in different countries, the security problems of the state abroad are referred to in different ways, for example, national security strategy, military doctrine, military security, defence security, etc.

The system of legal regulation of national security consists of the norms of the Constitution of Ukraine, as well as a set of laws and subordinate normative legal acts that form the legislative field for its functioning and fulfillment of its purpose [1]. However, despite the presence of a significant number of legal acts, Ukraine failed to escape the threat to national security in 2014–2015. Thus, in the first place, the review of the national legislation which regulates the issues of national security becomes an actuality.

In the scientific literature, characterizing the most significant features of the legal nature of laws in the field of national security and defence as a source of law, scientists note that:

- firstly, these laws, in view of their socio-political significance, occupy a special place after the Constitution and form a relatively independent normative and legal array of interconnected acts regulating relations in the field of national security and defence;
- secondly, laws in the field of national security and defence have priority over ordinary laws;
- thirdly, laws in the field of national security and defence have a well-defined regulatory scope;

- fourthly, in terms of content and function, the laws in the field of national security and defence are complex with a fairly wide scope of application;

- fifthly, they are characterized by increased stability and private life;

- sixthly, they have a specific regulatory action, that is, the implementation of norms in the legal relations that take place in the field of national security and defence [2, p. 71].

Since the declaration of Ukraine's independence and until now certain aspects of national security have been enshrined in normative and legal acts of various levels. It should be emphasised that some of them have ceased to exist in connection with the realities of the present and the conditions in which the national security of our country found itself. The basic normative legal act concerning national security is the Declaration on State Sovereignty. However, it should be noted that the notion of national security in the Declaration is absent, but the terms «environmental security», «external and internal security», «state security» and «international security» are found. Despite the lack of the notion of national security, the adoption of the above-mentioned document has become a significant factor in the beginning of the intensification of national security research in Ukraine.

In the Law of Ukraine «On the Defence of Ukraine» of December 6, 1991, the legislator defines the notion of armed aggression as the use by another state or group of states of armed forces against Ukraine and determines the actions considered as an armed aggression against Ukraine [4].

On January 16, 1997, the Verkhovna Rada of Ukraine adopted the Concept (the basis of state policy) of the national security of Ukraine which defined the essence of the concept of national security, the main objects of national security and the principles of its provision; outlined the essence and priority national interests of Ukraine, identified the main threats to the national security of Ukraine, outlined the main directions of the state policy of national security of Ukraine [5]. In March 1998 the Law of Ukraine «On the National Security and Defence Council of Ukraine» was adopted, which defined its composition, structure, competence and function [6].

On June 19, 2003, the Law of Ukraine «On the Fundamentals of National Security of Ukraine» [7] was adopted, but considering the fact that it did not correspond to the realities of the present, as well as the conditions in which the national security of Ukraine found

itself, one of the urgent tasks arose before the state authorities, that is on the necessity of cardinal actions in the sphere of determining the national interests of the state, ways of their achievement and ensuring national security as an integral part of the conditions of the existence and development of Ukraine. After all, taking into account the time of adoption of this law, the dynamics of global change, we can focus on its functional inapplicability.

Adoption of these normative legal acts should be considered as an extremely important step towards the creation of legal regulation in the field of national security. Thus, the aforementioned laws, including the part which has expired, are fundamental legal principles of state policy aimed at protecting national interests and guaranteeing the security of individuals, societies and states in Ukraine from external and internal threats in all spheres of life of the Ukrainian state and society [8].

Taking into account the fact that due to Russia's armed aggression against Ukraine within the framework of legal regulation, there were problems in protecting the interests of our state more systematically on the renewed fundamental institutional basis. Issues related to the resolution of threats to state sovereignty and the creation of ways to restore the territorial integrity of Ukraine within its internationally recognized state border become matters of actuality. In order to solve these urgent tasks, an updated legal framework is required, the action of which is aimed directly at protecting the vital interests of man and citizen, society and the state and guaranteeing the security of individuals, societies and state in Ukraine from both external and internal threats. In the context of solving these problems, an effective mechanism was the reappraisal of the National Security Strategy and the Military Doctrine of Ukraine, the Laws of Ukraine «On the Basics of National Security of Ukraine» and «On the Principles of Internal and Foreign Policy».

One of the latest regulatory and legal decisions was the creation of the Military Cabinet of the National Security and Defence Council of Ukraine as a working body of the National Security and Defence Council of Ukraine during a special period [9]. In accordance with Ukrainian legislation, a special period is a period that begins after the announcement of a mobilization decision (other than a targeted one) or bringing it to the executors about latent mobilization, or since the introduction of a martial law in Ukraine or in its separate areas, and includes the time of mobilization, wartime and partially rebuilding period after the end of hostilities [4].

Among the normative legal acts, the Decree of the President of Ukraine «On the Strategy of National Security of Ukraine» dated May 26, 2015 [10], as well as the new version of the Military Doctrine of Ukraine 2015, occupy an important place. Thus, in the Strategy of 2015 it is stated that the complex improvement of legislation on national security and defence of Ukraine, in particular, the adoption of the Law of Ukraine on amendments to the Law of Ukraine «On the Fundamentals of National Security of Ukraine», which will define the mechanisms of national security and defence leadership, will regulate the structure and composition of the sector of security, defence, management, coordination and interaction of its organs [10]. In the National Security Strategy of Ukraine, dated May 26, 2015, in its general provisions, it is stated that our country will defend its fundamental values as defined by the Constitution and laws of Ukraine – independence, territorial integrity and sovereignty, dignity, democracy, human rights and freedoms, supremacy rights, prosperity, peace and security [10]. However, the question arises as to why there is no such sphere as humanitarian, since ignoring this particular sphere may pose a real threat to preserving the statehood of Ukraine.

It should be emphasised that the reform of the national security and defence system became a priority of the state in accordance with the Strategy for Sustainable Development «Ukraine 2020», approved by the Decree of the President of Ukraine dated January 12, 2015, No. 5/2015 [11] and the decision of the National Security and Defence Council of Ukraine «On urgent measures to protect Ukraine and strengthen its defence capability» of August 28, 2014, entered into force by Decree of the President of September 24, 2014, No. 744/2014 [12].

In addition, Resolution of the Verkhovna Rada of Ukraine dated June 4, 2015 No. 509-VIII adopted the Legislative Reform Plan in Ukraine [13], the second section of which, «National Security and Defence System Reform», envisaged the consideration and adoption during 2015–2016 of 48 legislative acts, which in turn should provide the normative basis for carrying out reforms in the field of national security of Ukraine. The draft Law of Ukraine «On National Security of Ukraine» was identified as one of the priorities of the Plan.

According to I. Gerashchenko, People's Deputy of Ukraine, systemic changes in the security sector are key for bringing Ukraine closer to NATO standards. Thus, the bill enhances democratic civilian control over the security and defence sector, introduces a new command system and fixes an important provision for a civilian defence

minister, introduces systemic changes to the profile of the Ukrainian Defence Ministry, which is approaching NATO standards [14].

D. Snegyriv, a military expert, believes that this bill is the reformation of the army into the European, NATO format, when the head of the Armed Forces of Ukraine will be a civilian person, who must personify the control of the society over the activities of the Armed Forces [14].

In pursuance of the Plan of Legislative Support of Reforms in Ukraine and in order to ensure compliance of national legislation with the human rights standards enshrined in international instruments, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On National Security of Ukraine» on June 21, 2018, which in accordance with Articles 1, 2, 17, 18 and 92 of the Constitution of Ukraine defines the principles of national security and defence, the goals and basic principles of state policy, which will guarantee the protection of society and every citizen from threats. It also defines and delimits the powers of state bodies in the areas of national security and defence, creates a basis for the integration of policies and procedures of state authorities, other state bodies whose functions relate to national security and defence, security forces and defence forces, a system of command, control and coordination of operations of the security forces and defence forces, implements a comprehensive approach to planning in the areas of national security and defence, thus ensuring democratic civil control over the bodies and units of the security and defence sector [15]. In connection with the adoption of the law a number of laws have ceased to exist, in addition to the Law of Ukraine «On the Fundamentals of National Security of Ukraine», 2003, the Laws of Ukraine «On Democratic Civilian Control over the Military Organization and Law Enforcement Bodies of the State», 2003, and «On the Organization of Defence Planning», 2005, have expired.

In the context of our study, we consider it necessary to focus attention on both positive characteristics and the discussion aspects and reservations of the Law of Ukraine «On National Security of Ukraine». Among the positive characteristics, we can distinguish, in particular:

- the protection of a person and citizen is fixed as a goal of state policy in the areas of national security and defence;
- in the areas of security and defence planning is carried out in accordance with the principle of observance of Ukraine's international obligations;
- one of the tasks is to ensure the rule of law, which is singled out, in particular in the context of the concept of democratic civilian

control as a mechanism for overseeing the activities of the security and defence sector agencies;

- Ukraine's security and defence sector consists of four interconnected components: security forces; defence forces; defence industrial complex; citizens and public associations that voluntarily participate in ensuring national security (Part 1, Article 12). Functions and powers of the components of the security and defence sector are determined by the legislation of Ukraine.

Discussion topics and reservations can be summarized as follows:

- despite the consistent use of the conventional classification of armed conflicts, the law reflects an approach on the ground of which war and armed conflict act as types, and the armed conflict is seen as an international armed conflict or an internal armed conflict. So, in the part of effective implementation of the provisions of the law, in our opinion, there may be problems, because these terms play one of the key roles in this context;

- there is no such thing as occupation defined. It is also appropriate to take into account such a process as de-occupation;

- the formal distinction is made between the security forces and the defence forces of Ukraine, for example, according to pp. 17–18 Part 1, Article 1 both law enforcement and intelligence agencies are included in both categories;

- citizens and non-governmental organizations are considered as an integral part of the security and defence sector. However, at the legislative level there is no provision for legal status, authority, responsibility, etc.;

- in Article 3 of the Constitution of Ukraine the highest social value is the person, his life and health, inviolability and safety, but the notions of military security, state security, national security do not correspond to the provisions of the aforementioned norm, and directly Part 1 of Article 3 of the law;

- only general principles of democratic civil control are fixed (Part 2 of Article 4 of the law);

- Article 5 of the law contains provisions, which refer to Article 106 and 107 of the Constitution of Ukraine, relate to the exercise by the President of Ukraine of the control over the security and defence sector both directly and through the National Security and Defence Council of Ukraine headed by him and, if necessary, setting up advisory, consultative and other subsidiary bodies and

services, extend his powers, in connection with which they are unconstitutional;

– in establishing requirements for the publication of strategic documents for long-term planning in the areas of national security and defence, there is a selectivity, so under these fall only the Strategy of National Security of Ukraine (Part 4, Article 26) and the Strategy of Public Security and Civil Protection of Ukraine (Part 4 Article 29).

Conclusions. Consequently, modern international and national security actualizes the relations between the states, on the basis of which we can conclude about the trends of integration processes and the unity of the world. The state of national security is determined either by existing or potential threats that are associated with both current and projected internal and external assessment of the nature of these threats. But it is inappropriate to create rational countermeasures for all cases of life because, firstly, it is impossible to foresee them all, and secondly, to consolidate them in normative legal acts. Therefore, in the context of the aforementioned, the adoption of the new law has become an important step in the field of legal regulation of Ukraine's national security and compliance with its current conditions, but certain provisions of the Law of Ukraine «On National Security» require the coordination with other normative legal acts and, in the first place, with the Constitution of Ukraine. Therefore, in our opinion, it is considered expedient to introduce monitoring of the implementation of the above-mentioned law, including on the part of the public.

REFERENCES

1. Krutov, V.V. (2008). *Stanovlennia ta rozvytok nederzhavnoi systemy bezpeky pidpriemnytstva [Stanovlennya ta rozvytok nederzhavnoyi systemy bezpeky pidpriemnytstva]*. Kyiv: Feniks [in Ukrainian].
2. Antonov, V.O. (2015). Problema formuvannia novoi normatyvno-pravovoi bazy Natsionalnoi bezpeky Ukrainy na tli novykh vylykiv ta zahroz [The problem of the formation of the new regulatory framework of the National Security of Ukraine against the background of new challenges and threats]. *Chasopys Kyivskoho universytetu prava, Journal of the Kyiv University of Law*, 3, 70-73 [in Ukrainian].
3. Deklaratsiia pro derzhavnyi suverenitet Ukrainy [Declaration on State Sovereignty of Ukraine]. (1990). *Vidomosti Verkhovnoi Rady URSR, Bulletin of Verkhovna Rada of USSR*, 31 [in Ukrainian].
4. Zakon Ukrainy "Pro oboronu Ukrainy": vid 6 hrud. 1991 r. No. 1932-XII [Law of Ukraine "On the Defense of Ukraine" from December 6, 1991, No. 1932-XII]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://zakon.rada.gov.ua/laws/show/1932-12> [in Ukrainian].
5. Postanova Verkhovnoi Rady Ukrainy "Pro Kontseptsiiu (osnovy derzhavnoi polityky) natsionalnoi bezpeky Ukrainy": vid 16 sich. 1997 r. No. 3/97-VR [Resolution of the Verkhovna Rada of Ukraine "On the Concept (Fundamentals of State Policy) of National Security of Ukraine" from January 16, 1997, No. 3/97-VR]. (n.d.).

zakon.rada.gov.ua. Retrieved from <http://zakon.rada.gov.ua/laws/show/en/3/97-вп> [in Ukrainian].

6. Zakon Ukrainy "Pro Radu natsionalnoi bezpeky i oborony Ukrainy": vid 5 berez. 1998 r. No. 183/98-VR [Law of Ukraine "On the Council of National Security and Defense of Ukraine" from March 5, 1998, No. 183/98-VR]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://zakon.rada.gov.ua/laws/show/183/98-вп> [in Ukrainian].

7. Zakon Ukrainy "Pro osnovy natsionalnoi bezpeky Ukrainy": vid 19 cherv. 2003 r. No. 964-IV [Law of Ukraine "On the Fundamentals of National Security of Ukraine" from June 19, 2003, No. 964-IV]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://zakon.rada.gov.ua/laws/show/964-15> [in Ukrainian].

8. Horbulin, V.P., & Lytvynenko, O.V. (2008). *Natsionalna bezpeka: ukraïnskyi vymir* [National Security: Ukrainian Dimension]. Kyiv: Inter tekhnolohiia [in Ukrainian].

9. Ukaz Prezydenta Ukrainy "Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy "Pro dodatkovyi zakhody shchodo zmitsnennia natsionalnoi bezpeky Ukrainy": vid 18 liut. 2015 r. No. 139/2015 [Decree of the President of Ukraine "On the decision of the Council of National Security and Defense of Ukraine" On additional measures to strengthen the national security of Ukraine" from February 18, 2015, No. 139/2015]. (n.d.). *www.president.gov.ua*. Retrieved from <http://www.president.gov.ua/documents/19048.html> [in Ukrainian].

10. Ukaz Prezydenta Ukrainy "Pro Stratehiu natsionalnoi bezpeky Ukrainy": vid 26 trav. 2015 r. No. 287/2015 [Decree of the President of Ukraine "On the Strategy of National Security of Ukraine" from May 26, 2015, No. 287/2015]. (n.d.). *www.president.gov.ua*. Retrieved from <http://www.president.gov.ua/documents/19521.html?PrintVersion> [in Ukrainian].

11. Ukaz Prezydenta Ukrainy "Pro Stratehiu staloho rozvytku "Ukraina - 2020": vid 12 sich. 2015 r. No. 5/2015 [Decree of the President of Ukraine "On the Strategy of Sustainable Development" Ukraine-2020" from January 12, 2015, No. 5/2015]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://www.zakon.rada.gov.ua/go/5/2015> [in Ukrainian].

12. Rishennia Rady Natsionalnoi bezpeky i oborony Ukrainy "Pro nevidkladni zakhody shchodo zahystu Ukrainy ta zmitsnennia yiyi oboronozdatnosti": vid 28 serp. 2014 r. [Decision of the Council of National Security and Defense of Ukraine "On urgent measures to protect Ukraine and to protect its defense" from August 28, 2014]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://www.zakon.rada.gov.ua/go/744/2014> [in Ukrainian].

13. Postanova Verkhovnoi Rady Ukrainy "Pro Plan zakonodavchoho zabezpechennia reform v Ukraini": vid 4 cherv. 2015 r. No. 509-VIII [Resolution of the Verkhovna Rada of Ukraine "On the Plan of Legislative Support of Reforms in Ukraine" from June 4, 2015, No. 509-VIII]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://zakon.rada.gov.ua/laws/show/509-19> [in Ukrainian].

14. Ne publichnyi kontrol i standarty NATO: shcho varto znaty pro novyi zakon pro natsbezpeku [Not public control and NATO standards: what should be known about the new law on national security]. (n.d.). *24tv.ua*. Retrieved from https://24tv.ua/zakon_pro_natsionalnu_bezpeku_ukrayini_2018_vse_pro_zakon_natsbezpeki_n933297 [in Ukrainian].

15. Zakon Ukrainy "Pro natsionalnu bezpeku Ukrainy": vid 21 cherv. 2018 r. No. 2469-VIII [Law of Ukraine "On National Security of Ukraine" from June 21, 2018, No. 2469-VIII]. (n.d.). *zakon.rada.gov.ua*. Retrieved from <http://zakon.rada.gov.ua/laws/show/2469-19> [in Ukrainian].

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Правове регулювання національної безпеки України: сучасний стан і напрями вдосконалення

*Однією з найважливіших умов ефективного функціонування будь-якої держави та суспільства є національна безпека. У цьому контексті важливим завданням як на національному, так і на міжнародному рівнях постає забезпечення національної безпеки. Попри ґрунтовне нормативно-правове регулювання національної безпеки, одним із нагальних залишається питання захисту національних інтересів і гарантування безпеки особи, суспільства й держави. З огляду на гостру соціально-політичну кризу та збройну агресію Російської Федерації, у статті досліджено актуальні проблеми нормативно-правового регулювання національної безпеки України в умовах сучасних перетворень. Увагу акцентовано як на прогресивних, так і на дискусійних аспектах Закону України «Про національну безпеку України». **Мета** цієї публікації – сприяти формуванню нових законодавчих ініціатив у сфері національної безпеки України. На підставі здійсненого дослідження сформульовано такі **висновки**: по-перше, прийняття нового закону є важливим кроком у сфері правового регулювання національної безпеки України; по-друге, окремі положення Закону України «Про національну безпеку» потребують узгодження з іншими нормативно-правовими актами, передусім – із Конституцією України.*

Ключові слова: нормативно-правове забезпечення; національна безпека; державні органи; установи; засади державної політики.