

*The article is devoted to the analysis of the provisions of the draft law "On National Security of Ukraine" No. 2469-VIII dated 21/06/2018. The components of the draft law which are analyzed are the following: the security and defence sector, the proposed composition of the "security forces" and "defence forces"; the division of powers of state bodies in the areas of national security and defence; the chosen model of legal regulation; subordination of the National Guard of Ukraine under the conditions of the legal regime of martial law; carrying out the Complex review of the security and defence sector and forming a perspective model of the security and defence sector, the chosen model of legal regulation.*

**Keywords:** *public administration, reform of the security and defence sector, internal affairs bodies.*

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**The security and defence sector in the context of the draft law "On National Security of Ukraine"**

**Presentation of the problem in general terms and its connection with important scientific and practical tasks.** The discrepancy of the national security system of the post-Soviet model with the requirements of geopolitical realities was the issue of Ukraine's independence. Experts and scholars have pointed out the need for systemic reform of the security and defense sector to meet the requirements of today. But for years these reforms have not been conducted or have had declarative character. The activities of state authorities focused on achieving short-term

political and economic goals, there was negligence of the needs of strategic development of society and the state.

The consequence of false national security policy was the occupation by the Russian Federation of the territory of the Autonomous Republic of Crimea and certain districts of Donetsk and Luhansk oblasts. Ukraine was unable to provide a timely and adequate rebuff to the aggressor and suffered tremendous human and economic losses, and its sovereignty and territorial integrity were threatened.

The Russian Federation and certain European states use force and threats against the Ukrainian state, use the language, ethnic, cultural features of its population and dependence on external support in their own interests, which today is very important in the face of a difficult economic situation and a rigid struggle for political power in the country.

Under these conditions, the need to introduce new approaches to national security management and the further reform of the security and defense sector has become crucial in order to preserve Ukrainian statehood and restore the territorial integrity of Ukraine.

**Analysis of recent publications on the issues and identification of previously unsettled parts of the general problem.**

Considerable attention to the issue of ensuring the national security of Ukraine at the present stage of state-building was given to such authors as V. O. Antonov, D. O. Bezzubov, M. P. Vavrynychuk, V. P. Gorbulin, O. P. Dzoban, I. I. Zavydnyak, S. Lykhachov, V. A. Lipkan, O. V. Melnyk, V. Ya. Nastiuk, N. R. Nyzhnyk, Yu. V. Nikitin, V. H. Pylypchuk, H. O. Ponomarenko, H. P. Sytnyk,

V. M. Spivak, V. M. Furashev, V. Shakhov and others.

They laid the theoretical and methodological foundations for the study of the principles of national security of Ukraine, its peculiarities, the legal foundations of the activities of state bodies and military formations in this sphere, their systems and competencies, modern threats in the conditions of geopolitical and social transformations, and others like that.

At the same time, the issue of further reformation of the security and defense sector, including taking into account the threats of a hybrid nature to national security, today remains urgent and requires further scientific support.

**Formulating the purpose of the article.**

The main objective of the article is to analyze the provisions on the activities of the security and defense sector in the context of the Law of Ukraine "On National Security of Ukraine", the need for a more thorough study of the problems of legal regulation of the activities of individual subjects of national security in modern conditions.

**Presentation of the main results and their justification.**

The Law "On National Security of Ukraine" [1] (hereinafter referred to as the Law) aims at defining the basic principles and principles of national security, the objectives and basic principles of state policy in this area, and the regulation of the structure and structure of the security and defense sector.

Among the main achievements of the Law are the introduction of a new system of command, control and coordination of security forces and defense forces, democratic civilian control over the work of the security and defense sector bodies and formations, the legislative establishment of expenditures for its financing, and the introduction of new approaches to strategic planning in these areas, which take into account changes in the security environment, economic and financial capabilities of the state.

The new Law abolished the law "On the Fundamentals of National Security of Ukraine" [2], "On Democratic Civilian Control over the Military Organization and Law Enforcement Bodies of the State" [3] and "On the

Organization of Defense Planning" [4], since they united their key positions.

Also, in order to avoid duplication of existing legislative acts regulating the activity of separate law enforcement agencies, the Law amended the laws of Ukraine "On the National Security and Defense Council of Ukraine" [5], "On the Security Service of Ukraine" [6], "On the Armed Forces of Ukraine" [7], "On the Defense of Ukraine" [8], "On the Rules of Procedure of the Verkhovna Rada of Ukraine" [9].

It should be noted that during the adoption of the Law in the Verkhovna Rada of Ukraine the main issues for discussion were the functions of the Security Service of Ukraine in terms of its powers in the field of economic security, as well as the creation of a parliamentary committee for monitoring the activities of the security and defense sector. At the same time, practically there was no discussion about the main security points of the Law, which testifies to its constructive content.

However, in our opinion, despite the overall positive impression, the Law has certain gaps and conflicts of law, methodology and conceptual character.

In particular, there are examples of legal uncertainty in certain provisions of the Law.

Thus, the Law defines the national security of Ukraine as "the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats" (paragraph 9, part 1, Article 1 of the Law). At the same time, when interpreting the components of national security, in particular the notion of "military security", the term of military threats (paragraph 2, part 1, Article 1 of the Law) is additionally introduced. In interpreting the notion of "state security" the threats of non-military character are meant (paragraph 4, part 1, Article 1 of the Law), while their division into real and potential concerns only threats of non-military character.

Also, certain terms, the definitions of which are given in the Art. 1 of the Law, further its text is not applied consistently, which also does not meet the requirements of Art. 8 of the Constitution of Ukraine [10]. In particular, in Part 2 of Art. 8 the term "public security and order" is used, and in Part 1 of Art. 18 of the Law "public security and the rule of law" is used. In addition, given in Art. 1 of the Law the

term "defense planning" in Part 4 of Art. 16 of the Law is replaced by the term "state defense planning".

*In addition, Part 1 of Art. 1 of the Law defines the national interests of Ukraine as "the vital interests of man, society and the state, the realization of which is ensured by the state sovereignty of Ukraine, its progressive democratic development, as well as safe living conditions and welfare of its citizens", which include, in particular, "military security", "state security" and "public safety and order". At the same time, Part 3 of Art. 3 of the Law introduces an additional term for fundamental national interests and provides them with a clear list in which none of these threats is indicated.*

*Part 1 of Article 12 of the Law defines the composition of the security and defense sector of Ukraine as four interconnected components: the security forces, defense forces, the military-industrial complex, as well as citizens and public associations that voluntarily participate in the provision of national security whose functions and powers are determined legislation of Ukraine. At the same time, Part 2 of this article provides a list of ministries and*

*other government bodies that are part of the security and defense sector, without clearly delineating them to the identified components. If the composition of the military-industrial complex, citizens and public associations is more or less clear, then the composition of the state bodies related to the security forces and the defense forces is provided by the general list, which may lead to ambiguous interpretations of the provisions of this article.*

Thus, the security forces include law enforcement and intelligence agencies, state bodies of special purpose with law enforcement functions, civil protection forces and other bodies to which the Constitution and laws of Ukraine are entrusted with the functions of ensuring the national security of Ukraine.

In addition to the Armed Forces of Ukraine, and other military formations formed in accordance with the laws of Ukraine, the law enforcement and intelligence agencies, special-purpose bodies with law enforcement functions assigned to the Constitution and laws of Ukraine to provide state defense are again assigned to the forces of the Defense Forces.

Consequently, the above provisions are devoted to the same issue, but differ

substantially in their content. That is, the provisions of parts 1 and 2 of this article need to be agreed among themselves.

Proceeding from the principle of the rule of law (Article 8 of the Constitution of Ukraine), legal norms should be clear and unambiguous in order to ensure their uniform application and the exclusion of unlimited interpretation in law enforcement practice.

In our opinion, certain provisions of the Law, which contain the proper names of some central executive bodies, limit the constitutional competence of the Cabinet of Ministers of Ukraine, which, according to paragraph 91 of Art. 116 of the Constitution of Ukraine shall form, reorganize and liquidate, in accordance with the law of the Ministry and other central executive authorities, within the limits of the funds provided for maintenance of executive bodies. Given that the issues of national security are often to be resolved in a short space of time, this circumstance may delay the adoption of important and immediate decisions.

Additional regulatory and legal clarification of the provisions of the Law concerning the subordination of the National

Guard of Ukraine in the conditions of the legal regime of martial law is required.

According to Art. 18 of the Law, in peacetime, the National Guard of Ukraine forms part of the security forces and performs law enforcement functions, as well as develops the capabilities necessary for the tasks of the defense forces.

With the introduction of the military state, the National Guard of Ukraine is prepared to perform its tasks for the purpose, under the conditions of the legal regime of the martial law, enters the forces of defense, performs tasks and obeys in accordance with the provisions of the Law of Ukraine "On the Legal Regime of Military Status" and the Law of Ukraine "On National the Guard of Ukraine".

It should be noted that such a prescription can only operate if the regime of the martial law is introduced throughout the territory of Ukraine. In the case of the introduction of this regime, only certain units of the National Guard of Ukraine may be subordinated to the Commander in certain regions of Ukraine.

Accordingly, the requirements regarding the subordination of the National Guard of Ukraine to the Commander-in-Chief of the

Armed Forces of Ukraine with the introduction of a martial law need to be reconciled with the provisions of the Law of Ukraine "On the National Guard of Ukraine". In addition, the definition of "enters" and "subordinates" needs to be clarified, since in the aforementioned order, obviously, it is only about operational subordination.

It is important to realize in practice the issue of joint implementation of the tasks for the defense of Ukraine by the National Guard of Ukraine and the Armed Forces of Ukraine. It should be noted that at present, the forces of the National Guard are not equipped at the appropriate level with military, special equipment, and the personnel is not adequately trained in military operations. This is due to the fact that mainly the National Guard forces are actually trained to provide public safety and public order during meetings, rallies, demonstrations and other mass events that endanger the lives and health of citizens. It is clear that the main tasks in the conditions of the military state regime will be carried out by the National Guard of Ukraine in the front-line. Therefore, the forces of the National Guard must receive appropriate equipment.

There is also a problem of the lawful implementation of the Law and bylaws, which may lead to their ineffectiveness. The Art. 92 of the Constitution of Ukraine stipulates that "the foundations of national security, the organization of the Armed Forces of Ukraine and the maintenance of public order are determined exclusively by the laws of Ukraine" [10]. At the same time, according to the Law, the National Security Strategy, which defines the main directions of the state policy in the field of national security and is the basis for its planning and implementation, is approved by the decision of the National Security and Defense Council of Ukraine and is approved by the President of Ukraine.

In addition, the decrees of the President of Ukraine approve the Strategy of military security of Ukraine, Strategy of public safety and civil protection, Strategy of development of the military-industrial complex of Ukraine, Strategy of cybersecurity of Ukraine and National intelligence program recognized as documents of long-term planning.

At the same time, the informational, energy and environmental spheres, which, according to the current National Security

Strategy of Ukraine [11], were also included in the list of the most topical threats, were not included in the priorities of long-term planning.

Considering the fundamental national interests of Ukraine, it should be noted that their list does not declare the goals of restoring the territorial integrity of Ukraine within the internationally recognized Ukrainian state border, that is, the de-occupation of the Crimea and certain districts of Donetsk and Luhansk oblasts.

At the same time, in Art. 8 of the Law, which determines the control of the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, and requires the implementation of civil control over the implementation of enterprises, institutions and organizations of all forms of ownership, officials and citizens of the laws of Ukraine, other normative legal acts on matters national security and defense, it is not even indicated that these territories were temporarily occupied by the Russian Federation, and the city with a special status of Sevastopol as a separate administrative unit in this in the context is not mentioned at all.

Considering that it was aggression on the part of the Russian Federation which led to the occupation of certain territories of Ukraine, became the basis for radical change of the national security vector and led to the adoption of this Law, including the fact that the current National Security Strategy of Ukraine [11] clearly and unambiguously determines that the Russian threat is of a long-term nature, it would be expedient to give special attention to it in the Law.

At the same time, among the fundamental national interests whose list appears to be too brief, "Ukraine's integration into the European political, economic, security, legal space, membership in the European Union and the North Atlantic Treaty Organization" is declared, which stipulates the use in our country of security EU and NATO standards. This provision of the law has received the most favorable evaluation from the overwhelming majority of experts.

However, in our opinion, relying on the application of these standards, it should be remembered that the EU and NATO have never been and are not in a state of war where, in fact, Ukraine is currently. Therefore, the

effectiveness of the security standards of these institutions has not been tested in practice. Therefore, taking as a model the system and principles of ensuring national security only of the EU and NATO, our state significantly limits its ability to adequately respond to military threats that are in fact real rather than potential.

Ability to improve security standards laid in Art. 27 of the Law, which defines the procedure for conducting a comprehensive review of the security and defense sector, which results in the formation of a forward-looking model of the security and defense sector through the consistent development of the capacities of its components for the accomplishment of tasks for the purpose and the formation on this basis of combat capable, mobile, trained at the appropriate level, comprehensively provided by the security forces and the forces of defense capable of protecting the national interests of Ukraine.

The main criteria for changing the number of components of the security and defense sector, in accordance with the Law, are changes in the security environment and the real economic and financial capabilities of the state. Considering that Art. 12 of the Law



provides a list of ministries and other state bodies that are part of the security and defense sector, but does not delimit them to the identified components, there is a possibility to further improve the mechanism for managing them.

An effective step in this direction could be the creation of a state body responsible for coordinating strategic management directly in the field of internal security of the country.

In this regard, the US experience, which after the powerful terrorist attacks, the Department of Homeland Security was created, which included about 80 state organizations that previously functioned independently or as part of various federal agencies, deserves attention.

This body provides solutions to the following main tasks:

development and implementation of internal security strategy;

coordination of activities of all state bodies and special services dealing with security issues;

prevention of terrorist actions, minimization of damage from them and liquidation of consequences.

The main activities of the Department are:

collecting, summarizing and analyzing intelligence information in order to identify possible threats to internal security;

preparation of the population for actions in emergency situations, including in the conditions of natural disasters and man-made disasters;

protection of the population and national territory from the possible use of chemical, biological, radiological and nuclear weapons;

ensuring the protection of the state border and security of transport;

protection of the most important objects of economy and infrastructure;

providing security to representatives of senior management of the country.

Most of these areas of ensuring internal security of the state are inherent in the Ministry of Internal Affairs of Ukraine, as well as central executive authorities, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs. However, as recent events have shown, coordination of efforts in these areas is imperfect, primarily due to the lack of

necessary powers to collect, summarize and analyze intelligence in order to identify possible threats to internal security, which significantly reduces the effectiveness of activities and urges to draw attention to the positive world experience, in particular the experience of the USA.

It should be noted that among the basic tasks of national security, such as the protection of the constitutional order, state sovereignty and territorial integrity of the state, the fight against crime, the protection of the rights, freedoms and legitimate interests of citizens, society and the state as a whole, new important problems have emerged: countering hybrid threats, which are also not reflected in the text of the Law.

### **Conclusions and perspectives of further research.**

Thus, in the Law "On National Security of Ukraine", the legislator attempted to regulate the activities of all security and defense sector security forces. However, the analysis of the main provisions of this Law indicates the existence of certain differences and contradictions between certain normative and legal acts. Therefore, the law should be

considered as a framework document that will regulate the legal basis of this sphere of public relations, and, in order to avoid complications during its implementation, requires the introduction of appropriate changes to the current legislation.

In the long run, it should be taken into account that ensuring the national security of the state is possible only by increasing the effectiveness of combating the interference of the special services of the aggressor country in the internal affairs of Ukraine, including with espionage, destructive activity of agents of influence in the structures of state power and civil society, all kinds of enemy intelligence, as well as through counteraction to terrorism, separatism and criminal structures that threaten the national security of Ukraine and promote the destabilization of society.

It is vitally important to achieve unwavering positions in the protection of information and cyberspace, to continuously monitor the situation, to effectively prevent conflict situations in interethnic, interconfessional, interregional and other areas of national and social relations, and promote their stabilization.

Also, the defense of the national interests of the state should take place at the international level through diplomatic, political, economic, energy, judicial and other methods.

This necessitates the further reformation of the security and defense sector, including by developing and implementing new approaches to national security management, in particular its internal component, which must effectively counter hybrid threats.

The basis for the process of reforming the security and defense sector should be a strong and transparent legislative framework that eliminates inaccuracies and inconsistencies between entities providing internal and external components of national security.

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