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The Law of Ukraine "On National Security of Ukraine" dated June 21, 2018. Some Problematic Aspects

Ustawa Ukrainy „O bezpieczeństwie narodowym Ukrainy" z dnia 21 czerwca 2018 r. Wybrane problematyczne aspekty

Abstract
The Law of Ukraine "On National Security of Ukraine" dated June 21, 2018, establishes a number of the most important institutions in the field of national security and defense, individual elements of the mechanism for ensuring national security and defense capability of the Ukrainian state, and defines the structure of the security and defense sector of Ukraine. Along with the relevant provisions of the Constitution of Ukraine, it forms the regulatory basis of Ukrainian legislation in the field of national security and defense. In view of this, the shortcomings of the Law become of paramount importance, including cases of terminological inconsistency and uncertainty, problems associated with consolidating the scope and competence of subjects of the security and defense sector, attempts to fill gaps in constitutional regulation, and the lack of regulation of certain fundamental issues.

Keywords: national security and defense of the state, national interests, national values, security and defense sector, security forces, defense forces, constitution, law.

Abstrakt
Ustawa Ukrainy „O bezpieczeństwie narodowym Ukrainy" z dnia 21 czerwca 2018 r. ustanawia szereg kluczowych instytucji w sferze bezpieczeństwa narodowego i obrony, określa wybrane elementy mechanizmu zapewniania bezpieczeństwa narodowego oraz zdolności obronnej państwa ukraińskiego, a także definiuje strukturę sektora bezpieczeństwa i obrony Ukrainy. Wraz z odpowiednimi postanowieniami Konstytucji Ukrainy tworzy ona podstawę normatywną ukraińskiego ustawodawstwa w dziedzinie bezpieczeństwa narodowego i obrony. W konsekwencji, szczególnego znaczenia nabierają mankamenty tej ustawy, w tym przypadki niekonsekwencji i niejednoznaczności terminologicznej, problemy związane z utrwaleniem zakresu działania oraz kompetencji podmiotów sektora bezpieczeństwa i obrony, próby wypełniania luk w regulacji konstytucyjnej, jak również brak unormowania niektórych kwestii fundamentalnych.

Słowa kluczowe: bezpieczeństwo narodowe i obrona państwa, interesy narodowe, wartości narodowe, sektor bezpieczeństwa i obrony, siły bezpieczeństwa, siły obrony, konstytucja, ustawa.

Introduction

The Verkhovna Rada of Ukraine adopted the Law of Ukraine "On National Security of Ukraine" on June 21, 2018. Developing the provisions of the Constitution of Ukraine on national security and defense of the state, the Law establishes the foundations and principles of national security and defense of Ukraine as well as the goals and principles of state policy in the field of national security and defense; it establishes a number of the most important institutions in this area, individual elements of the mechanism for ensuring national security and defense capability of the Ukrainian state, and defines the structure of the security and defense sector of Ukraine.

A valuable feature of the Law is the consolidation of fundamental national interests of Ukraine in it, such as, in particular, comprehensive integration into the European space and membership in the European Union and the North Atlantic Treaty Organization. These and other national interests of Ukraine are formulated taking into account the vital material, intellectual and spiritual values of man, society, and the state. The normative definition of the national interests of Ukraine as fundamental social values causes systematic and purposeful activity of all subjects of the security and defense sector to ensure their real guarantee.

Terminological inconsistencies

The Law of Ukraine "On National Security of Ukraine" establishes a certain system of terms that should form the conceptual basis of legislation in the field of national security and defense. A notable feature of the Law is the rejection of the terminology inherited from the Soviet past and the use of terms established in the Western professional environment. For example, the term "military organization of the state", used in the Law of Ukraine "On the Fundamentals of National Security of Ukraine" dated June 19, 2003[1] and the Law of Ukraine "On Democratic Civilian Control over the Military Organization and Law Enforcement Bodies of the State" dated June 19, 2003,[2] in the Law of Ukraine "On National Security of Ukraine" is replaced by the term "security and defense sector". At the same time, the Law of Ukraine "On National Security of Ukraine" does not establish the definition of some terms used in it, and some terms are used in different variations. This causes a number of complications related to both understanding these terms and finding

[1] On the Fundamentals of National Security of Ukraine: Law of Ukraine dated June 19, 2003, no. 964-IV. Bulletin of the Verkhovna Rada of Ukraine 2003, no. 39, art. 351.

[2] On democratic civilian control over the military organization and law enforcement agencies of the state: Law of Ukraine dated June 19, 2003, no. 975-IV. Bulletin of the Verkhovna Rada of Ukraine 2003, no. 46, art. 366.

an answer to their correlation. The Law, in particular, uses the concepts of national values of Ukraine and democratic values of society. Since the Law does not define these concepts, they appear as self-evident. If the concept of "democratic values of society" is broad and its content does not give rise to significant discussions, then the concept of "national values of Ukraine" is fundamentally more specific and requires a normative definition. The concept of "social and state (national) values of Ukraine" is used in various semantic contexts in the Law of Ukraine "On the Basic Principles of State Policy in the Sphere of Establishing Ukrainian National and Civic Identity" dated December 13, 2022.[3] However, the current Ukrainian legislation does not contain a definition of the concept of "national values of Ukraine". This circumstance raises the question of how the concept of "national values of Ukraine" correlates with another concept enshrined in the Law – "national interests of Ukraine".[4] The concept of "national interests of Ukraine" itself is used in the Law in two variations: as "national interests of Ukraine" and as "fundamental national interests of Ukraine". If, according to Part 1 of Article 1 of the Law, "national interests of Ukraine" are "vital interests of a person, society and the state",[5] then what is the difference between them and "fundamental national interests of Ukraine"?

The Law defines the concepts of "security forces" and "defense forces", thus delimiting the relevant systems of bodies. However, the criteria for delimiting the security forces and defense forces in the Law are not clearly defined.[6] As a result, law enforcement and intelligence agencies, according to the Law, belong to both the security forces and the defense forces.

The problem of the balance between leadership and coordination functions in the field of national security and defense

The Law of Ukraine "On National Security of Ukraine" contains Article 13 entitled "Leadership in the Spheres of National Security and Defense", which enshrines the system of powers of the President of Ukraine in the sphere of national security and defense. Thus, Article 13 associates the leadership function in the sphere of national security and defense only with the person of the President of Ukraine. Here, both ignoring the role of other leading entities in the sphere of national

[3] On the Basic Principles of State Policy in the Sphere of Promoting Ukrainian National and Civic Identity: Law of Ukraine dated December 13, 2022, no. 2834-IX. Bulletin of the Verkhovna Rada of Ukraine 2023, no. 46, art. 116.

[4] *Analysis of the Law of Ukraine "On National Security of Ukraine",* https://www.helsinki.org.ua/articles/analiz-zakonu-ukrajiny-pro-natsionalnu-bezpeku-ukrajiny/[date of access: 01.02.2025].

[5] On national security of Ukraine: Law of Ukraine dated June 21, 2018, no. 2469-VIII. Bulletin of the Verkhovna Rada of Ukraine 2018, no. 31, art. 241.

[6] M. Sungurovskyi, *Critical comments on the draft law "On National Security"*, https://razumkov.org.ua/statti/khtos-mozhe-kazaty-iaku-systemu-bezpeky-buduiemo [date of access: 01.02.2025].

security and defense and an attempt to reduce the role of the President of Ukraine in the sphere of national security and defense to the leadership function are obvious. It is obvious that the President of Ukraine performs not only the function of supreme leadership, but also the function of coordination in the sphere of national security and defense. The functions and powers of the National Security and Defense Council of Ukraine, which, in accordance with Article 107 of the Constitution of Ukraine, "is a coordinating body on national security and defense issues under the President of Ukraine,"[7] are derived from the functions and powers of the President of Ukraine in the field of national security and defense and are means of ensuring these functions and powers. The coordination activities of the President of Ukraine in the field of national security and defense are aimed primarily at the system of executive bodies. The President of Ukraine influences the process of ensuring the national security and defense capability of Ukraine through the governing body in this system – the Cabinet of Ministers of Ukraine. The President of Ukraine exercises such influence on government activities in the field of national and defense not directly, but through the National Security and Defense Council of Ukraine. In essence, the National Security and Defense Council of Ukraine plays the role of a mediator in the mechanism of interaction between the President of Ukraine and the system of executive bodies in the field of national security and defense. Carrying out current control over the activities of executive bodies in the field of national security and defense, the National Security and Defense Council of Ukraine "shall submit relevant conclusions and proposals to the President of Ukraine" (Clause 2 of Part 1 of Article 4 of the Law of Ukraine "On the National Security and Defense Council of Ukraine" dated March 5, 1998).[8]

In the Law of Ukraine "On National Security of Ukraine", the coordinating role of the National Security and Defense Council of Ukraine in the field of national security and defense is reflected in Article 14 under the title "Coordination in the Fields of National Security and Defense". However, no other subjects are mentioned in Article 14 about coordinating activities in the field of national security and defense. In general, according to the approach applied in the Law of Ukraine "On National Security of Ukraine", leadership and coordination in the field of national security and defense appear as two functions, which are separately performed by two separate subjects – the President of Ukraine and, accordingly, the National Security and Defense Council of Ukraine.

[7] Constitution of Ukraine: Law of Ukraine of June 28, 1996, no. 254/96-vr. Bulletin of the Verkhovna Rada of Ukraine 1996, no. 30, art. 141.

[8] On the National Security and Defense Council of Ukraine: Law of Ukraine dated March 5, 1998, no. 183/98-VR. Bulletin of the Verkhovna Rada of Ukraine 1998, no. 35, art. 237.

The functions of leadership and coordination in the field of national security and defense are actually performed by a number of subjects of power, in addition to the President of Ukraine and the National Security and Defense Council of Ukraine. Part 1 of Article 15 of the Law of Ukraine "On National Security of Ukraine" states that "the powers of the Ministry of Defense of Ukraine include ... coordinating the activities of state bodies and local self-government bodies in preparing the state for defense in accordance with the established procedure."[9] According to Part 8 of Article 15 of the Law, "[t]he Minister of Defense of Ukraine shall exercise leadership over the Ministry of Defense of Ukraine, military-political and administrative leadership over the Armed Forces of Ukraine."[10] According to Part 3 of Article 18 of the Law, the Cabinet of Ministers of Ukraine, through the Minister of Internal Affairs of Ukraine, directs and coordinates the activities of the National Police of Ukraine, the National Guard of Ukraine, the State Border Service of Ukraine, the State Emergency Service of Ukraine and the State Migration Service of Ukraine. The leadership role of the Minister of Defense of Ukraine in relation to the Armed Forces of Ukraine is discussed in Part 1 of Article 8 of the Law of Ukraine "On the Armed Forces of Ukraine" dated March 25, 1992.[11] The leading role of the Minister of Internal Affairs of Ukraine in relation to the National Guard of Ukraine is discussed in Part 1 of Article 6 of the Law of Ukraine "On the National Guard of Ukraine" dated March 13, 1992.[12] The Cabinet of Ministers of Ukraine and the Minister of Internal Affairs of Ukraine as entities that direct and coordinate the activities of the police are discussed in Part 2 of Article 1 of the Law of Ukraine "On the National Police" dated July 2, 2015,[13] etc.

Taking into account the fact that the functions of leadership and coordination in the sphere of national security and defense are closely interconnected, it is advisable to allocate a special section in the Law of Ukraine "On National Security of Ukraine" under the title "Leadership and Coordination in the Sphere of National Security and Defense",[14] enshrining comprehensively and systematically in it the mechanism of leadership and coordination in the sphere of national

[9] On national security of Ukraine: Law of Ukraine dated June 21, 2018, no. 2469-VIII. Bulletin of the Verkhovna Rada of Ukraine 2018, no. 31, art. 241.

[10] Ibid.

[11] On the Armed Forces of Ukraine: Law of Ukraine dated March 25, 1992, no. 1934-XII. Bulletin of the Verkhovna Rada of Ukraine 1992, no. 9, art. 108.

[12] On the National Guard of Ukraine: Law of Ukraine dated March 13, 1992, no. 876-VII. Bulletin of the Verkhovna Rada of Ukraine 2014, no. 17, art. 594.

[13] On the National Police: Law of Ukraine dated July 2, 2015, no. 580-VIII. Bulletin of the Verkhovna Rada of Ukraine 2015, no. 40-41, art. 379.

[14] O. Nesterenko, *The system of subjects of ensuring national security and defense of Ukraine*, "Law and Security" 2020, no. 2 (77), p. 34.

security and defense. Such a mechanism should coordinate the competence in the sphere of national security and defense of the relevant entities, ensuring their effective interaction.

Participation of the Ukrainian people in ensuring national security

Part 1 of Article 17 of the Constitution of Ukraine enshrines the provision that "the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, the business of the entire Ukrainian people."[15] Thus, Part 1 of Article 17 emphasizes the role of the Ukrainian people in protecting the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security. The declarative nature of Part 1 of Article 17 of the Constitution of Ukraine is obvious, since the possibility of its real implementation directly depends on the legislative consolidation of the mechanism for its implementation. However, the Law of Ukraine "On National Security of Ukraine" does not establish such a mechanism.

Composition of the security and defense sector

In Part 16 of Article 1 of the Law of Ukraine "On National Security of Ukraine" the concept of the security and defense sector is defined. The peculiarity of this definition is that the concept itself establishes the composition of the security and defense sector. According to Part 16 of Article 1 of the Law, the security and defense sector is "a system of state authorities, the Armed Forces of Ukraine, other military formations established in accordance with the laws of Ukraine, law enforcement and intelligence agencies, special-purpose state authorities with law enforcement functions, civil defense forces, the defense-industrial complex of Ukraine, the activities of which are under democratic civilian control and, in accordance with the Constitution and laws of Ukraine, are functionally aimed at protecting the national interests of Ukraine from threats, as well as citizens and public associations who voluntarily participate in ensuring the national security of Ukraine."[16] At the same time, the Law of Ukraine "On National Security of Ukraine" contains a separate Article 12 entitled "Composition of the Security and Defense Sector". Part 1 of Article 12 establishes that "the security and defense sector of Ukraine consists of four interrelated components: security forces; defense forces; defense-industrial complex; citizens and public associations who voluntarily participate in ensuring

[15] Constitution of Ukraine: Law of Ukraine of June 28, 1996, no. 254/96-vr. Bulletin of the Verkhovna Rada of Ukraine 1996, no. 30, art. 141.

[16] On national security of Ukraine: Law of Ukraine dated June 21, 2018, no. 2469-VIII. Bulletin of the Verkhovna Rada of Ukraine 2018, no. 31, art. 241.

national security."[17] Specifying the composition of the security and defense sector, Part 2 of Article 12 establishes that "the security and defense sector includes: the Ministry of Defense of Ukraine, the Armed Forces of Ukraine, the State Special Service of Transport, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the State Border Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Anti-Terrorist Center under the Security Service of Ukraine, the Court Security Service, the State Security Department of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Apparatus of the National Security and Defense Council of Ukraine, the intelligence agencies of Ukraine, the central executive body that ensures the formation and implementation of the state military-industrial policy."[18] Thus, Part 2 of Article 12 narrows the composition of the security and defense sector compared to Clause 16 of Part 1 of Article 1 and Part 1 of Article 12 of the Law. In fact, Part 2 of Article 12 of the Law includes only certain state authorities (state bodies) or their structural divisions in the list of subjects of the security and defense sector. This list does not include either subjects of the defense-industrial complex, or citizens and public associations that voluntarily participate in ensuring national security and defense capability of the state.

Among the subjects of the security and defense sector listed in Part 2 of Article 12 of the Law of Ukraine "On National Security of Ukraine", the President of Ukraine is not mentioned, in particular. The President of Ukraine as a leading subject of the security and defense sector is mentioned in Article 13 of the Law "Leadership in the Spheres of National Security and Defense". Therefore, it is impossible to understand why the President of Ukraine as a subject of the security and defense sector is not mentioned in Part 2 of Article 12 of the Law. The list of subjects of the security and defense sector given in Part 2 of Article 12 of the Law also does not mention the Cabinet of Ministers of Ukraine, the National Security and Defense Council of Ukraine, etc.

Part 2 of Article 12 of the Law of Ukraine "On National Security of Ukraine" does not mention such subjects of the security and defense sector as citizens of Ukraine and their associations who voluntarily participate in ensuring the national security and defense capability of Ukraine. According to the Law, foreign citizens who serve in the Armed Forces of Ukraine or carry out volunteer activities for the benefit of the Armed Forces of Ukraine are also not subjects of the security and defense sector.

[17] Ibid.
[18] Ibid.

Public associations and citizens who voluntarily participate in ensuring the national security and defense capability of the state as separate subjects of the security and defense sector are directly mentioned in Clause 16 of Part 1 of Article 1 of the Law, which defines the concept of the security and defense sector, and in Part 1 of Article 12 of Section IV of the Law "Security and Defense Sector", which defines the composition of the security and defense sector. The consolidation in the Law of Ukraine "On National Security of Ukraine" of the status of citizens and public associations that voluntarily participate in ensuring the national security and defense capability of Ukraine as subjects of the security and defense sector is necessary at least in view of the provisions of Part 1 of Article 17 of the Constitution of Ukraine that "the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, the business of the entire Ukrainian people."[19] Citizens and public associations that voluntarily participate in ensuring the national security and defense capability of the state are important participants in the process of ensuring the national security and defense capability of Ukraine. This is clearly demonstrated by the circumstances of the modern Russian-Ukrainian war at its initial stage, when Ukrainian civil society actively opposed the Russian occupation by creating its own armed formations (volunteer battalions) and providing them with comprehensive assistance. At the same time, the activities of both the units themselves, created on the popular initiative, and the public organizations that facilitated them, were outside the scope of legal regulation.[20] Despite this, the role of civil society institutions in ensuring national security and defense capability of Ukraine is not properly reflected in the Law of Ukraine "On National Security of Ukraine". It is noteworthy that in the Concept for the Development of the Security and Defense Sector of Ukraine, approved by the decision of the National Security and Defense Council of Ukraine dated March 4, 2016, public organizations were recognized as active participants in the process of developing the security and defense sector (Chapter IV "The Role and Place of Society in the Development of the Security and Defense Sector".)[21]

[19] Constitution of Ukraine: Law of Ukraine of June 28, 1996, no. 254/96-vr. Bulletin of the Verkhovna Rada of Ukraine 1996, no. 30, art. 141.

[20] I. Doronin, *Legal problems of the participation of the Ukrainian people in ensuring national security*, [in:] *Education and science in the sphere of national security: problems and priorities of development: materials of the VI International Scientific and Practical Conference (Ostroh, May 17, 2024),* eds. M. S. Romanov, R. S. Martyniuk, E. M. Balashov, Ostroh ouse of the National University "Ostroh Academy", 2024, p. 16.

[21] On the decision of the National Security and Defense Council of Ukraine dated March 4, 2016, On the Concept of Development of the Security and Defense Sector of Ukraine: Decree of the President of Ukraine dated March 14, 2016, no. 92/2016, "Official Gazette of Ukraine" 2016, no. 23, art. 898.

The list of subjects of the security and defense sector specified by the Law of Ukraine "On National Security of Ukraine" does not mention local self-government bodies. Local self-government bodies play a significant role in ensuring national security, especially under the conditions of martial law or a state of emergency. The activities of local self-government bodies as subjects of the security and defense sector are regulated, in particular, in the Law of Ukraine "On Local Self-Government in Ukraine" dated May 21, 1997. Article 38 of this act enshrines detailed provisions on the powers of local self-government bodies to ensure security in the territory of the relevant territorial community.[22] It is also noteworthy that local self-government bodies were defined as "subjects of ensuring national security" in Article 4 of the Law of Ukraine "On the Fundamentals of National Security of Ukraine".[23]

Part 2 of Article 12 of the Law of Ukraine "On National Security of Ukraine" contains the following provision: "Other state bodies and local self-government bodies shall carry out their functions to ensure national security in cooperation with bodies that are part of the security and defense sector."[24] Thus, in accordance with the cited provision, local self-government bodies shall carry out certain functions to ensure national security. However, despite this, the Law of Ukraine "On National Security of Ukraine" does not mention them in the list of subjects of the security and defense sector.

It is obvious that the list of subjects of the security and defense sector, even reflected in general in the Law of Ukraine "On National Security of Ukraine", is not exhaustive. In reality, the circle of subjects that ensure the national security and defense capability of Ukraine, in addition to the Ukrainian people, also includes the Verkhovna Rada of Ukraine, the Constitutional Court of Ukraine, the State Bureau of Investigation, the Antimonopoly Committee of Ukraine, the National Anticorruption Agency, the Independent Anticorruption Commission, the National Agency of Ukraine for the Identification, Search and Management of Assets Obtained from Corruption and Other Crimes, people's deputies of Ukraine, and civil society institutions.

It is seen that all subjects that ensure the national security and defense capability of Ukraine can be divided into several groups. The first group is formed by state authorities, which, given their competence and staffing, directly ensure the national security and defense capability of Ukraine. These are such bodies as the

[22] On local self-government in Ukraine: Law of Ukraine dated May 21, 1997, no. 280/97-VR. Bulletin of the Verkhovna Rada of Ukraine 1997, no. 24, art. 170.

[23] On the Fundamentals of National Security of Ukraine: Law of Ukraine dated June 19, 2003, no. 964-IV. Bulletin of the Verkhovna Rada of Ukraine 2003, no. 39, art. 351.

[24] On national security of Ukraine: Law of Ukraine dated June 21, 2018, no. 2469-VIII. Bulletin of the Verkhovna Rada of Ukraine 2018, no. 31, art. 241.

Armed Forces of Ukraine, the Security Service of Ukraine, the National Police of Ukraine, the National Guard of Ukraine, etc. The second group is formed by state authorities that ensure the national security and defense capability of Ukraine indirectly, in the process of exercising their "titular" functions and powers. These are such state authorities as the Verkhovna Rada of Ukraine, the Constitutional Court of Ukraine, etc. The third group is formed by state authorities that perform leadership and coordination functions in the field of national security and defense. These are such state authorities as the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Security and Defense Council of Ukraine, etc. The fourth group is formed by entities that ensure the national security and defense capability of Ukraine in interaction with entities of the first group. With this approach, the entities of the fourth group are formed by the Ukrainian people in general and civil society institutions.

Attempts to fill the gaps in constitutional regulation

The Law of Ukraine "On National Security of Ukraine" contains Article 13 under the title "Leadership in the Spheres of National Security and Defense", which relatively comprehensively regulates the competence of the President of Ukraine in the sphere of national security and defense. From the point of view of legal technique, namely the level of its detail, Article 13 differs markedly from many other significantly generalized norms of the Law. According to Article 13 of the Law of Ukraine "On National Security of Ukraine", the role and place of the President of Ukraine in the sphere of national security and defense are that he exercises supreme leadership in this sphere over the system of bodies that ensure the national security and defense capability of Ukraine. According to Article 13, the leadership of the President of Ukraine in the sphere of national security and defense has the meaning of a basic authority, the implementation of which is subordinate to the entire system of powers of the President of Ukraine in the sphere of national security and defense, defined by the Law. The composition of Article 13 testifies that the powers of the President of Ukraine listed therein are derived from his leadership role in the sphere of national security and defense and are exercised by the Head of State in the process of leadership in the mentioned sphere.[25] Such a legal position, unfortunately, is not reflected in the Constitution of Ukraine, where there is no separate and integral regulation of the powers of the President of Ukraine in the sphere of national security and defense. A number

[25] O. Kotliarenko, *Characteristics of the content and scope of the powers of the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine*, "Analytical and Comparative Law" 2022, no. 2, pp. 52-58.

of the powers of the President of Ukraine in the sphere of national security and defense are defined indirectly in the Constitution, through the constitutional fixation of his other powers. This obvious flaw in the constitutional regulation of the status of the President of Ukraine as a guarantor of state sovereignty and territorial integrity of Ukraine provokes a discretionary form of implementation of his constitutional functions in the sphere of national security and defense. Another consequence of the absence of a separate and integral regulation of the powers of the President of Ukraine in the sphere of national security and defense in the Constitution of Ukraine is their "dispersion" among many laws.[26] Article 13 of the Law of Ukraine "On National Security of Ukraine" is designed to compensate for the shortcomings of the constitutional consolidation of the competence of the President of Ukraine in the field of national security and defense. However, it is noteworthy that the conditionality of part of the powers of the President of Ukraine, enshrined in Article 13 of the Law, by his constitutional powers in the field of national security and defense is not obvious.[27] It should be expected that the issue of the constitutionality of the provisions of Article 13 of the Law of Ukraine "On National Security of Ukraine" will be resolved by the body of constitutional jurisdiction in the process of their application.

Conclusions

Taking into account the role of the Law of Ukraine "On National Security of Ukraine" as a fundamental act in the system of legislation regulating legal relations in the field of national security and defense, it is necessary to define all the basic concepts used in this act. The law should avoid terminological inconsistency or ambiguity.

The Law of Ukraine "On National Security of Ukraine" must clearly adhere to the priorities of legal regulation in the field of national security and defense, outlined in the Constitution of Ukraine. Although the Ukrainian people and civil society institutions are mentioned in separate provisions of the Law that determine the composition of the security and defense sector, they are not endowed with any specific powers of the subjects of the security and defense sector. Without establishing any mechanisms for the participation of the Ukrainian people and civil society institutions in ensuring national security and defense capability of the state, the Law of Ukraine "On National Security of Ukraine" essentially ignored their importance as subjects of the security and defense sector. Thus, given the

[26] V. Topolynskyi, A. Ostapenko, *Historical and legal analysis of the legislative consolidation of the powers of the Supreme Commander-in-Chief of the Armed Forces of Ukraine*, "Law and Society" 2022, no. 4, p. 56.

[27] Analysis of the Law of Ukraine "On National Security of Ukraine", https://www.helsinki.org.ua/articles/analiz-zakonu-ukrajiny-pro-natsionalnu-bezpeku-ukrajiny/ [date of access: 01.02.2025].

provisions of Part 1 of Article 17 of the Constitution of Ukraine that ensuring the national security of Ukraine is "a matter of the entire Ukrainian people," the Law of Ukraine "On National Security of Ukraine" should have defined the main mechanisms for the participation of the Ukrainian people in ensuring national security and defense capability of the state.

Part 2 of Article 12 of the Law of Ukraine "On National Security of Ukraine" limits the range of subjects of the security and defense sector only to subjects of government authority. In addition, the list of these subjects is incomplete. It is necessary to define clearly, consistently and exhaustively the range of subjects of the security and defense sector in the Law of Ukraine "On National Security of Ukraine". The powers of state authorities, whose role in ensuring national security and defense capability of the Ukrainian state is decisive, must be directly enshrined in the Law. It is seen that among all subjects of government authority that directly or indirectly ensure national security and defense capability of Ukraine within the limits of their competence, it is necessary to define in the Law of Ukraine "On National Security of Ukraine", given its goals and nature, the role of such higher state bodies as the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine in the sphere of national security and defense. It is necessary to regulate in detail and holistically the powers of its leading subjects in the field of national security and defense – the President of Ukraine and the Cabinet of Ministers of Ukraine. The role of other security and defense sector entities in ensuring the national security and defense capability of Ukraine can be defined more generally in the Law of Ukraine "On National Security of Ukraine".

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