

# LEGAL BASIS FOR ENSURING AND FINANCING NATIONAL SECURITY OF UKRAINE IN THE LIGHT OF INTERNATIONAL EXPERIENCE

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**Annotation.** Ensuring national security is one of the most pressing issues at the current stage of state-building which needs to be addressed, and the issue of proper financing of the national security and defense sector is one of the priorities. The article examines the legal framework for financing the national security system of Ukraine, and characterizes different views of scholars on the interpretation of the concepts of “national security system”, “system of ensuring national security”, “financing” and “budget expenditures”. It is substantiated that national security is one of the main factors of stable development of the State, since it ensures sustainable development of society, timely detection, prevention and neutralization of real and potential threats to national interests. It is determined that the main task for Ukraine today is to ensure national security, which will contribute to reforming of all spheres of state and public activity. It is important to ensure that the content of transformations in this area is related to the preservation and strengthening of state sovereignty and territorial integrity. In addition, financial and budgetary legal relations should become more focused on ensuring effective financing of the national security and defense sector suffering from the consequences of war. The article summarizes the experience of foreign countries in the field of ensuring and financing national security. The author substantiates the need to apply international experience, taking into account Ukrainian realities, in ensuring and financing national security.

**Key words:** financial legal relations, budgetary legal relations, budget expenditures, national security, national security system, financing of national security and defense.

## 1. Introduction.

Modern science has a developed system of knowledge on the problems of ensuring security and its effective financing, as it is formed on the basis of new views, ideas, ways of thinking of scientists and global development trends. At the same time, fundamental changes of the worldview in response to the key challenges of our time require rethinking of traditional positions and formation of fundamentally new concepts. Theoretical and practical aspects related to national security require an integrated approach that combines general theoretical research, achievements of sectoral sciences and needs of practice in the interests of security of the individual, society and the state. These aspects are gaining relevance in connection with the increase and change in the types of security, the emergence of new possible threats and challenges, and dynamic changes in the global geopolitical space.

The current situation in the modern world is characterized by unresolved social problems, the presence of “points of tension”, and the desire of other countries to implement their geopolitical plans. At the same time, the martial law in our country and the emergence of various threats to its citizens and society have affected and changed the usual way of functioning of the budget system of Ukraine. Therefore, there is a need to plan effective measures aimed at ensuring national security and proper financing of the national security and defense sector.

As part of the system of ensuring the national security of the state, Ukraine currently focuses on the following important areas: economic, social, environmental, information and international. Since the effectiveness of ensuring the national security of the state depends on the state of its economy, the realization of national interests is mainly conditioned by the availability of appropriate economic (financial) opportunities.

The priority tasks of the supreme public authorities in the current conditions are developing of effective directions of budgetary policy under martial law, search for new ways of filling the revenue part of State Budget of Ukraine, and attracting additional financial resources through international support. Therefore, the problem of ensuring the legal framework for financing national security requires detailed analysis and research.

**2. The aim of the work** is to define the legal framework for the formation of the national security system of Ukraine, to clarify the specifics of financial support for the national security and defense sector, and to find ways and directions for improving national legislation with due regard for international experience.

### **3. Research methods.**

The methodological basis of the research is a set of methods and techniques of scientific knowledge, both general scientific and special. In particular, to ensure the objectivity, comprehensiveness and completeness of the research, as well as to obtain scientifically based and reliable results, the following methods were used in the article: analysis, synthesis, generalization, logical, systematic, comparative-legal, formal-logical, logical-legal.

### **4. Review and discussion.**

The national security of any state, given its multidimensional nature and complexity, requires a social security system whose main task is to perform certain actions aimed at protecting national values and realizing national interests.

Due to the military aggression of the Russian Federation against Ukraine, social tension and the economic crisis, creating of a holistic and effective system of national security of the state and legal regulation of financing the national security of Ukraine is a priority today. In this context, approaches to understanding both the national security system and the system of ensuring national security require further research. The concept of "national security system" is rather complicated in its interpretation, and therefore scholars who study this issue identify it with the concept of "system of ensuring national security". However, the "national security system" is a system-forming category, unlike the "system of ensuring national security", and therefore it is assigned the role of a supporting element.

According to V. Antonov, the national security system should be understood as a set of separate relatively independent and necessary interconnected and separated elements that form a certain integrity that ensures the development and protection of vital interests of a person and a citizen, society and the state, from internal and external threats. This approach, according to the author, makes it possible to study the national security system as a complex system of interconnected constituent elements, objects, phenomena and processes that are in certain relations and contradictions that unfold in space and time [1, p. 97-98]. Ukrainian scientists O. Dzoban and O. Sosnin consider the category under study as a certain set of public and state structures and non-governmental organizations that function in the field of protection of the rights and freedoms of citizens, basic values of society from internal and external threats, as well as a subsystem of state legislative acts and regulations of non-governmental (public) organizations [2, p. 91]. In turn, V. Lipkan emphasizes that due to the lack of methodological approaches to the analysis of national security, including its basic categories, there are gaps in the definition of the national security system. Therefore, the researcher claims that the national security system is a set of needs, interests and values of an individual, society and the state, internal and

external threats and dangers, objective and subjective, natural, man-made and anthropogenic factors that affect the state of national security [3, p. 261].

It is worth mentioning that there are different views of researchers on the concept of “system of ensuring national security”. Some scholars see the definition of the term based on the adequacy of threats and appropriate means to be used by the state. Thus, M. Levytska claims that the system of national security is formed in order to timely identify and objectively assess threats to national interests and take appropriate measures to eliminate them [4, p. 149]. The opinion of O. Bodruk is somewhat different, he understands under the definition of the concept of system of ensuring national security the ability of the state to protect its interests and fulfill its security task in both domestic and foreign policy [5, p. 201]. Considering the system of ensuring national security as an integral part of the national security system, Professor H. Sytnyk interprets it as a set of interrelated and interdependent mechanisms (institutional, organizational, legal and other) and subjects of ensuring national security (state officials, state authorities and local self-government bodies, state institutions and agencies, security sector forces and means, civil society institutions, individual citizens), which, on the basis of the current legislation, transform the national security policy into targeted coordinated activities (political, legal, organizational, military and other measures) to implement national interests... [6, p. 168-169]. At the same time, the scientist mentions that the national security system should be understood as an open, dynamic, social system, the purpose of which is to create conditions for the realization of national interests, ensuring the integrity of the social organism and the ability of the state to defend these interests [6, p. 117].

It is worth noting that the concepts of “national security system” and “system of ensuring national security” have not yet acquired their legal definition, and therefore are not reflected in the current legislation of Ukraine. It is proposed that the system of national security should be understood as a system of theoretical and methodological, regulatory, legal, information and analytical, organizational, managerial, scientific, technical and other measures aimed at ensuring the process of threat and danger management, in which state and non-state institutions guarantee the progressive development of Ukrainian national interests, sources of spiritual and internal well-being of the people of Ukraine, and effective functioning of the system of national security of Ukraine itself.

In our country, the problem of developing a system of ensuring national security requires a comprehensive review and improvement (beginning from the provisions of the Constitution of Ukraine and up to departmental instructions) due to the outdated legislation in this area, especially in matters of relations and coordination of actions of state authorities and law enforcement agencies both in peacetime and in times of crisis. It is worth noting that in 2014, the level of Ukraine's national security system proved to be unable to effectively stand up to Russian aggression. Most of the weapons, military and special equipment were morally and physically outdated. The system of management of military formations and law enforcement agencies, their intelligence, logistical, personnel and other provisions did not meet the requirements of conducting military conflicts [7, p. 7]. Over the past 9 years, work on the formation of a system of national security support and financing has been ongoing. The key task was to solve the problem of the system of ensuring and financing national security not in a fragmented manner, gradually replenishing it with individual elements, but in a comprehensive manner – as an integral multidimensional and multilevel system. However, in the first days of the full-scale invasion, it turned out that the previously formed security and defense sector as the main component of the national security system was not fully formed and was not ready to fully operate as a single functional structure. At present, the primary task of building a national security system in Ukraine is to create an effective mechanism for detecting, predicting and neutralizing threats and other destabilizing factors of social development, to promote normalization of the functioning of the basic structures of society, in particular, to bring the Ukrainian state out of the internal crisis, to revive the full life of the Ukrainian nation. The development of the social organism should be oriented towards increasing the level of national security. The ability of society's structures, especially the economy, to perform, in addition to their direct functions, the functions of national security, gives grounds to consider them as security guarantees, and national security as a system of social and state guarantees formed by a set of certain means of protection against specific threats, as well as the level of development of all sectors of society.

In the post-war period, the main purpose of the system of ensuring national security should be aimed at achieving national security goals (prevention of real and potential threats which make it impossible or difficult or may make it impossible or difficult to realize national interests and preserve national values of Ukraine), as well as the strategic goal of the state - creation of an independent, democratic and sovereign country. The statement of M. Shevchenko, who notes that the realization of this goal is possible only through the establishment of all functions of ensuring national security, as well as defining of its of specific tasks, is relevant [8, p. 17].

With the adoption of the Law of Ukraine "On National Security of Ukraine" [9], as well as the entry into force of the Decree of the President of Ukraine "On the Decision of the National Security and Defense Council of Ukraine of September 14, 2020 "On the National Security Strategy of Ukraine" [10], a conceptual update and legal regulation of activities in the field of national security and defense of Ukraine began, which created the conditions for building an effective vertical management of the security and defense sector. Today, the central executive authorities continue to work on the development of those regulatory documents that fulfill the tasks in the field of national security and defense. It is important to take into account the experience of building national security systems of the leading countries of the world in the process of forming the legal framework of our state.

Having considered the basic principles of the formation of the system of ensuring the national security of Ukraine, it is appropriate to move on to issues related to the financing of national security and defense.

The Budget Code of Ukraine defines budget financing as budget revenues and expenditures related to changes in the amount of debt, deposits and securities, funds from the privatization of state property (in relation to the state budget), changes in budget balances used to cover the budget deficit or determine the budget surplus [11].

According to clause 13 of Article 2 of the Budget Code of Ukraine, budget expenditures are funds allocated for the implementation of budget programs provided by the relevant budget [11]. The above-mentioned interpretation of the category "budget expenditures" does not fully reveal its content and specific features, which leads to the search for new approaches to its definition. Interpretation of budget expenditures by legal scholars mostly differs from that given by economists. Thus, O. Orliuk understands budget expenditures as direct targeted expenditures of the state that ensure its smooth functioning and reflect economic relations related to the distribution and redistribution of a part of the national income that is concentrated in the budget [12]. At the same time, A. Monaienko defines "budget expenditures" as public, continuous and direct expenses of the state related to its functioning in terms of distribution and use of money recourses by the centralized funds in order to ensure the fulfillment of the tasks and functions of the state [13, p. 443]. More accurate is the definition of budget expenditures provided by V. Chernadchuk, he defines budget expenditures as permanent, continuous, irrevocable, normatively established and provided competent expenditures from the respective budgets of social and territorial entities for the purposes and in the amount provided for by the budget act in order to finance recognized public needs [14, p. 191]. Given the above definitions, it can be concluded that they are general and do not fully reveal the essence of budget expenditures. In this regard, we propose to amend the Budget Code of Ukraine and to define "budget expenditures" as a part of the state's financial resources that are concentrated in the budgets of the respective levels and are directed to the implementation of programs and activities assigned to public authorities and local self-government bodies in accordance with the provisions of budget legislation.

According to Article 87 of the Budget Code of Ukraine, expenditures made from the State Budget of Ukraine include expenditures on national defense [11]. Taking the above interpretation as a basis, we can formulate the following definition of the concept of "budget expenditures for national security and defense" - these are budget resources that are directed to the implementation of tasks and functions to ensure national security and defense of the state, provided for by the relevant budget.

The problem of ensuring and financing national security is extremely important for Ukraine and is constantly in the focus of attention of countries around the world. However, today there is no a unified definition of the concepts of "national security", "national security system", "system of ensuring national security", and "budget expenditures". Each country individually and taking into account its capabilities

determines the areas that it considers to be national security, the list of objects and subjects of its provision, based on the tasks that the state faces both at the national and international levels.

It is well known that the national security system of any country is based on conceptual political and regulatory documents that highlight official views on the role and place of the state in the world, its national values, interests and goals, ways and means of preventing external and internal dangers and threats. Having studied the experience of foreign countries, it was found that there are two models of creating national security systems, namely, the Anglo-Saxon and European models.

The current system of national security of the United States of America (hereinafter – the USA) has a complex and, at the same time, expensive structure. The legal regulation of the US national security system is carried out by the Laws “On National Security”, “On Combating Terrorism” and others. The key link in the US national security system at the strategic level is the President as the head of the executive branch and the Supreme Commander-in-Chief of the Armed Forces [15, p. 325]. The US President has his advisors, in particular, the main one is the National Security Advisor, who is a political analyst, coordinator and member of the US National Security Council and is a member of the Executive Office of the President. The Executive Office of the President of the United States includes the White House Bureau, which is responsible for the implementation of the tasks [16, p. 141-142]. At the center of the US national security system there is the National Security Council, which is a division of the Executive Office of the President of the United States and acts as a coordinating and supervisory body, which includes representatives of all responsible agencies and institutions. The structure, functions and responsibilities (in particular, of each department) of the National Security Council are clearly defined at the legislative level of the United States. As we can see, the US National Security Council is the body that offers options for decisions to the president that later form the basis of national security policy [17, p. 157-158]. The US Department of Defense has a special place in the structure of the national security service, and the Secretary of Defense is the chief assistant of the president on defense issues [15, p. 326]. The United States has gone through a long period of formation in building a modern system of national security and defense. In this country, a significant amount of financial, logistical and human resources is allocated to this area, and this contributes to the growth of the US authority in the world geopolitical arena. Modern Ukraine needs to adopt the positive experience of the United States, which has already been gained, namely, to eliminate duplication of competence of different subjects of national security in the state, creating a direct line of managing the agencies whose activities are aimed at ensuring national security and providing significant financial resources. The issue of the appropriate level of expenditures on defense is extremely important for the United States, as it relates to guaranteeing the security of the states and the ability to maintain peace and deter all threats at all times. Given the amount of the annual budget allocated to the US defense, the country’s security is guaranteed, and the constant development of the defense industry (a means of ensuring the country’s defense capability, its inviolability and protecting the sovereignty of the state) is carried out by financing knowledge-intensive military industries. In addition, the entire defense budget of the United States is transparent, as the principle of openness is enshrined in the main document – the Constitution. Congress is responsible for providing the necessary funds, and therefore, on behalf of the population, on behalf of taxpayers, Congress wants to see clearly where and what these funds are spent on [18].

The UK’s system of national security is very effective. This is because the given parliamentary state has developed its own type of security governance, which differs significantly from those common in countries with influential presidential power. The essence of such governance is the dispersion of tasks and functions, as well as responsibilities across different structures and departments. Moreover, there is a significant number of super-agency councils and committees that do not overlap with each other but ensure the overall functioning of the national security system. The Prime Minister is responsible for the entire security mechanism. His advisor is the coordinator for security and intelligence, who directs the activities of various agencies, and ministers, on the other hand, are responsible for security in their sectors [19, p. 137-138]. The executive department (ministry) in the UK government is the Ministry of Defense of the United Kingdom, which is responsible for implementing the defense policy of the state, determined by the British government, and directly manages the Armed Forces of the United Kingdom. It is extremely important that this complex system of ensuring the national security of the United Kingdom is regulated by a significant number of legislative acts, and they have a minimum





of terminological contradictions and a maximum of specificity in terms of tasks, functions and responsibilities.

The main factor and guarantor of national sovereignty and counteraction to external threats for the member states of the European Union (hereinafter – the EU) remains the military-political alliance NATO, which includes 31 states. The American military presence on the continent, and especially the nuclear component of the Alliance, are the guarantors of European security [20, p. 56]. In addition, the North Atlantic Alliance (NATO) is a determining factor of stability and security in Europe, which positively affects the political transition processes and stabilizes the situation on the continent. In general, in European countries, the system of governance of the security and defense sector is connected with the creation of centralized strategic leadership, which helps to improve the quality of decision-making. The creation of threat assessment centers is important in view of the fact that the main function is to monitor the situation on the basis of information from all sources available to the state, to assess the level of threats, according to which the state security and defense authorities should act, and to establish the degree of readiness of the relevant components to respond to crisis situations [20, p. 36]. A common feature of European countries in improving the strategic management of the security and defense sector is the vesting of the head of state with the functions of the supreme commander-in-chief, except for the Netherlands, Germany and Sweden, where the constitution assigns such powers to the government [21, p. 59]. In France, the Supreme Council of Defense under the President acts as a coordinating and advisory body of the state administration of the defense forces, which develops and provides the President with sound recommendations on the implementation of military policy and military construction, taking into account modern conceptual approaches to solving certain issues [21, p. 59-60]. In Poland, the National Security Council is an advisory body to the president on external and internal national security, within which the National Security Bureau was established, which serves as the secretariat of the Council, namely, organizes work and objectively assesses the situation and ensures cooperation with the government on national security issues. During the years of independence, Poland managed to create an effective system of national security, in which the president and the government are responsible for ensuring national security in general, and the National Security Council and the National Security Bureau coordinate actions and overall management of this system. As we can see, NATO's mission is to ensure the security of the Euro-Atlantic region, and therefore defense spending should be well aligned with the security environment. Commitments to defense investment (paragraph 14 of the 2014 Wales Summit Communiqué) still remain the political foundation of NATO member states and include increased defense spending. These commitments not only clearly set a target of 2% of GDP for defense spending, but also set an additional target for Allies to spend more than 20% of their defense budgets on major equipment, including related research and development.

## 5. Conclusions.

After analyzing the experience of the USA, the UK and some European countries, it was found that historical traditions, geographical location, population, area of countries, level of funding, perfection of legislation and the existence of international treaties play an important role in the formation of the national security system. However, in general, the structure of the national security system in the world is based on trends that assume that ensuring national security is the primary task of any state, which is to eliminate or overcome the destructive effects of internal, regional and global factors that impede or slow down the achievement of nationally significant goals aimed at ensuring the peaceful life of the nation, as well as preventing possible threats. According to international experience, reliable protection of the population and territory of the state, basic national values and interests, sources of material wealth and spiritual development of the nation from external and internal threats is guaranteed not only by the combat capability of the Armed Forces, the effectiveness of the intelligence and counterintelligence services, law enforcement agencies, and the network of diplomatic missions, but also by the level of development of the economy, all its structures and infrastructures, the capacity of public authorities, social protection of the population, etc. That is why, after the war, Ukraine needs to work on rebuilding the economy and its further development, which, in turn, will allow to create an effective and perfect system of ensuring and financing national security. At the same time, such transformations should be carried out taking into account the positive experience of other countries, which consists in identifying contradictions in the legislative and regulatory frameworks and bringing them into line; ensuring transparency of budget expenditures, which would

allow to establish the actual state of use of budget funds for national security and defense of Ukraine; clear demarcation and elimination of duplication of competences of various subjects of ensuring national security in the state; creation of a direct line of management of departments whose activities are aimed at ensuring national security; an increase in state budget expenditures, which will contribute to the implementation of measures to ensure state sovereignty, increase the defense capability and security of the state, and overcome the negative consequences caused by the large-scale armed aggression of the Russian Federation against Ukraine.

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