

NATIONAL AND CROSS-BORDER SECURITY AS LEGAL CATEGORIES: THEORETICAL AND LEGAL ANALYSIS

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Annotation. The article examines the concepts of “national security” and “cross-border security” as legal categories in the context of global security transformation. The relevance is determined by Russia’s full-scale aggression against Ukraine, which fundamentally changed European security architecture and necessitated rethinking theoretical foundations of ensuring national and regional stability.

Cross-border security is defined as an independent legal category occupying an intermediate position between national and regional security levels. Its complex nature is substantiated, encompassing political, scientific-technological, environmental, humanitarian, and demographic components. A distinction between “cross-border security” and “security of cross-border cooperation” is proposed, proving that ensuring cross-border security is a prerequisite for intensifying economic, social and cultural ties between border regions of neighboring states.

Key words: national security, cross-border security, national interest, cross-border cooperation, constitutional security.

1. Relevance of the research.

Russia’s full-scale armed aggression against Ukraine has revealed significant shortcomings of this model and demonstrated the unpreparedness of European institutions to respond promptly to threats of such a scale. The war forced the EU to reconsider the basic principles of its security policy, significantly increase defense spending and, for the first time in history, use the European Peace Fund mechanism to supply lethal weapons to a third country. At the same time, Russian aggression accelerated the process of rethinking NATO’s role as a key guarantor of European security and prompted historic decisions to join the Alliance by Finland and Sweden.

 **2. The purpose of the study** is to clarify the essence and content of the concepts of “national security” and “transborder security” as legal categories, determine their correlation and place in the hierarchy of levels of the security system, as well as substantiate the complex nature of transborder security and identify its main types.

3. The state of the development of the problem.

Issues of national security and its conceptual and categorical apparatus have been studied in the works of many domestic scientists. In particular, N. Kholyavko, Y. Sorokaletova and T. Yanchenko analyzed the essence and types of national security of the country in the context of innovative development and cross-border security. L. Kazakova carried out a comprehensive analysis of the conceptual and categorical apparatus of national security of the state, substantiating the expanded interpretation of this category. A. Yanchuk investigated the features of improving the regulatory and legal support of state security of Ukraine in modern conditions.

An important contribution to understanding the relationship between national security and constitutional values was made by O. Lemak, who considered the relationship between the

Ukrainian nation and national security, as well as the role of the Constitution in eliminating the challenges that are the consequences of globalization, and I. Shved, who determined the place of prosecutor's offices in the mechanism of ensuring constitutional security of the state. V. Shakhov and V. Madison analyzed the category of national interest in the context of the geostrategy of Ukraine.

The theoretical foundations of cross-border processes and cross-border cooperation were developed in the works of S. Ustych, who studied the essence of modern cross-border processes and their categorical reflection, and N. Mikula, who in a fundamental monograph substantiated the conceptual principles of interterritorial and cross-border cooperation.

The issue of cross-border security was directly studied by M. Dubyna, who determined its essence, types and place in the system of security levels. However, despite the presence of significant scientific achievements, a comprehensive study of the relationship between national and cross-border security, especially in the context of modern security challenges associated with Russian aggression, remains insufficiently developed and requires further scientific study.

4. Presentation of the research material.

In the era of deepening globalization processes and intensification of world economic ties, the issues of guaranteeing the national security of states are becoming particularly acute. Security issues occupy a prominent place among the key factors of social development, socio-economic stability and political life of countries.

An effective national security system involves the formation of a multi-level protective mechanism, where the number of countermeasure models significantly exceeds the spectrum of potential threats and dangers. From an organizational point of view, the structure of national security is implemented through three main forms: the activities of state and private security structures; the market for specialized services in the field of economic security; the performance of security functions by hired employees of the appropriate profile. The state in the system of ensuring national security performs two key tasks: regulating public relations in the interests of society and ensuring its own self-preservation as a political institution [1, p. 11].

Applying a systemic approach to the analysis of the issue under study, the essence of transborder processes can be defined as communication between subjects, their relationships and interaction, as well as the natural movement of matter, energy, etc., associated with crossing the state border. Therefore, transborder processes (transborder as a phenomenon) are not identical to international relations, but are a much broader category. They encompass not only various forms of subject interaction across the border, which constitutes the content of international relations, but also a wide range of natural transborder phenomena - the circulation of water and air masses, the migration of animal populations, that is, a kind of object interaction. Undoubtedly, transborder processes are richer in content and compared to interstate relations, the participants of which are exclusively state institutions [2, p. 49].

It should be noted that the study of the issues of national security is primarily due to the global economic and spiritual and moral crisis that has engulfed the vast majority of countries in the world, as well as the aggravation of internal and external contradictions of various nature. These factors encourage states with young democratic traditions to search for more effective mechanisms for protecting the constitutional order and ensuring national sovereignty [3, p. 345].

Thus, the main purpose of the state is to ensure the safe existence of society. As O. Lemak rightly notes, it is security that is the central element of the "social contract" between citizens and the state apparatus acting on their behalf – this idea is fundamental to the contractual theory of the origin of the state. The security of society, that is, social or public security, in this context is identical to the concept of national security, since the nation encompasses all citizens, as well as stateless persons who are on the territory of the state and fall under its jurisdiction. Therefore, national (social) security means the security of all persons living on the territory of Ukraine without exception [4, p. 40]. The same researcher claims that any threat to society automatically acquires the character of a national danger; at the same time, the identification of these concepts allows us to overcome the false delimitation of their content, according to which national security is associated exclusively

with forceful actions of a military or similar nature, while social security supposedly concerns only the civil, peaceful situation of citizens in the state [5, p. 91].

National security is a determining factor in the existence of a state not only as a subject of international law, but also as a guarantor of the rights and freedoms of its citizens. The protection of national interests is a fundamental condition for the functioning of a sovereign state, ensuring its self-preservation and sustainable development of society [6, p. 128].

Researcher I. Shved, analyzing the functions of the prosecutor's office in the system of ensuring constitutional security, defines national security as a normatively established stable legal state of the population of the state. This state is characterized by the ability to satisfy the needs necessary for existence and development, with minimal risks to fundamental constitutional values. It is guaranteed by the presence of an effective mechanism for protecting the rights and legitimate interests of individuals by state authorities from potential and real internal and external threats capable of harming the vital interests of citizens [7, p. 32].

Researcher L. Kazakova, relying on doctrinal developments and analysis of the legislative framework for defining national security as a legal category, proposes to interpret the national security of Ukraine more broadly than only its military component. According to the scientist, this concept encompasses not only the state's activities to protect state sovereignty, territorial integrity, democratic constitutional order and other national interests from real and potential threats, but also state measures to ensure the rights and freedoms of man and citizen both at the national level and in the international dimension [6, p. 129]. Regardless of the chosen methodological approach to interpreting the concept of "security", notes I. Shved, the category of "interest" invariably remains central [7, p. 34]. In this case, in particular, V. Shakhov and V. Madisson consider the national interest as an integrated expression of the interests of all members of society, which is realized through the political system. It combines the interests of each individual, the interests of national, social and political groups with the interests of the state as a holistic entity [8, p. 45].

So, according to the cited scientists, the national interests of the state can be defined as the vital needs of the existence and development of man, social groups, society, the state and the natural environment, recognized by society. These needs are enshrined in the Constitution and other regulatory legal acts of the constitutional level in the form of programmatic target guidelines. In essence, national interests constitute the fundamental values of the people [8, p. 46].

Thus, we can state that in modern legal science, national security is considered as a complex legal category that integrates several interrelated elements: a normatively established legal status of the protection of the individual, society and the state; a system of institutional mechanisms for countering internal and external threats; a set of guarantees for the implementation of national interests. At the same time, the category of "national interest" itself acts as a system-forming element of the doctrine of national security, since it is through it that the constitutionalization of the vital needs of society and their transformation into programmatic target guidelines of state policy takes place.

Doctrinal analysis also confirms the methodological error of a narrow interpretation of national security exclusively through the prism of the military-force component. Modern legal doctrine justifies an expanded understanding of this category, which encompasses the protection of the constitutional order, ensuring human rights and freedoms, economic stability and social development. This approach is consistent with the fundamental provisions of the contractual theory of the origin of the state, according to which security is a central element of the social contract between citizens and the state, and therefore the primary function of public authority.

We draw attention to the etymology of the concept of "transborder security", which consists of two components: "transborder space" and "security". The Latin prefix "trans" means "on the other side", "through". In this sense, this term is used in various scientific disciplines – economics, political science, psychology, medicine, technical sciences, etc. [9, p. 238]. N. Mikula in the monograph "Interterritorial and cross-border cooperation" offers the following options for translating the word "trans" – "to transfer", "to transfer", "to move" [11, p. 14]. Therefore, this term always indicates the process of overcoming a certain border, including the state border.

Thus, cross-border security involves the study of threats to common interests and objects of adjacent territories of two or more states, while the security of cross-border cooperation concerns

the protection of practical activities to establish interaction between border regions, which are carried out by authorities and territorial communities. At the same time, cross-border security is an essential factor in the formation of effective cooperation between communities of different states. Its provision should contribute to the intensification of economic, social and cultural ties between regions in order to improve the quality of life, primarily of residents of border territories, as well as minimize the negative consequences of the existence of the state border. The phenomenon of cross-border security is complex in nature, since by its nature it covers numerous areas of security activity. This is primarily due to the multifaceted nature of public life and the ability of threatening factors to influence various spheres of human activity [9, p. 239].

M. Dubyna states that cross-border security is a qualitatively new level, which in its essence occupies an intermediate position between national security and regional security. Traditionally, the issues of cross-border cooperation are studied through the prism of regional development. At the same time, given that cross-border security covers a cross-border region, which includes the territories of at least two neighboring states, it would be methodologically incorrect to reduce it exclusively to the level of regional security. Cross-border security has its own specifics that distinguish it from other levels of the security system [9, p. 239].

In domestic practice, the above-quoted researcher also notes, an approach has been formed according to which cross-border security is mainly identified with the security of the state border or environmental security. Thus, the Law of Ukraine "On the Fundamentals of National Security" in Article 8 defines the priority directions of state policy in the field of national security in individual areas. In particular, in the military sphere and the sphere of state border security, one of the priorities is the deepening of cross-border cooperation with neighboring states. However, cross-border security, according to M. Dubina, is not limited solely to the protection of the state border, but is a complex multi-component system, similar to regional and national security [9, p. 242].

The scientist concludes that cross-border security can be defined as a state of protection from negative external and internal influences on the common interests, objects and processes of two or more territories divided by a state border, which are united on the basis of these common elements. Among the main types of cross-border security, it is advisable to distinguish: political, scientific and technological, environmental, humanitarian, internal and demographic cross-border security [9, p. 244].

Summarizing the analyzed doctrinal approaches to the definition of cross-border security, we state that this concept is an independent legal category that occupies a special place in the hierarchy of security levels - between national security and regional security. In contrast to the narrow interpretation established in domestic practice, which reduces cross-border security to the protection of the state border or environmental aspects, modern doctrine justifies its complex nature. Cross-border security covers the state of security of common interests, objects and processes of adjacent territories of different states and includes political, scientific and technological, environmental, humanitarian, internal and demographic components. In our opinion, the methodologically important distinction between the concepts of "cross-border security" and "security of cross-border cooperation" is: the first concerns the protection of common interests of border territories, the second - the security of practical activities to establish interregional interaction. Ensuring cross-border security is a necessary prerequisite for intensifying economic, social and cultural ties between border regions, minimizing the negative consequences of the existence of the state border, and improving the quality of life of the population of the relevant territories.

5. Conclusion.

The study shows that after the full-scale invasion of the Russian Federation into Ukraine, the issue of cross-border security has become particularly relevant. National security is a complex legal category that encompasses the state of security of the individual, society and the state, mechanisms for countering threats and guarantees for the implementation of national interests. Its narrow interpretation exclusively through the military-power component is methodologically incorrect, since this category also includes the protection of the constitutional order, human rights, and economic stability.

Cross-border security occupies an intermediate position between national and regional security. It should not be reduced only to border protection or environmental security – it is complex in nature, covering political, scientific and technological, environmental, humanitarian and demographic dimensions. It is important to distinguish between the concepts of “cross-border security” and “security of cross-border cooperation”.

Russian aggression has revealed the vulnerability of existing collective security mechanisms. Promising areas of research include the development of legal mechanisms for ensuring cross-border security in armed conflicts and the formation of a new model of regional security, taking into account the experience of countering hybrid threats.

References:

1. Kholiavko, N.I., Sorokalietova, Yu., & Yanchenko, T. (2014). Sutnist ta vydy natsionalnoi bezpeky krainy [The essence and types of national security of the country]. In *Innovatsiyny rozvytok i transkordonnaa bezpeka: ekonomiczni, ekolohichni, pravovi ta sotsiokulturni aspekty: Materialy III Mizhnarodnoi naukovo-praktychnoi konferentsii studentiv i molodykh uchenykh* [Innovative development and cross-border security: economic, environmental, legal and socio-cultural aspects: Proceedings of the III international scientific-practical conference of students and young scientists] (pp. 362). ChDTU. [in Ukrainian]
2. Ustych, S. (2013). Sutnist suchasnykh transkordonnykh protsesiv ta yikhnie katehorialne vidobrazhennia [The essence of modern cross-border processes and their categorical reflection]. *Ukrainskyi sotsiolohichnyi zhurnal*, (1–2), 47–53. <https://periodicals.urksoc.ua/usocjour/article/view/4410> [in Ukrainian]
3. Yanchuk, A.O. (2016). Osoblyvosti vdoskonalennia normatyvno-pravovoho zabezpechennia derzhavnoi bezpeky Ukrayny v suchasnykh umovakh [Features of improving the regulatory and legal support of state security of Ukraine in modern conditions]. *Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh spraw*, (1), 343–355. http://nbuv.gov.ua/UJRN/Nvlduvs_2016_1_40 [in Ukrainian]
4. Lemak, O.V. (2014). Ukrainska natsiia i natsionalna bezpeka: aspeky spivvidnoshennia [Ukrainian nation and national security: aspects of correlation]. *Naukovyi visnyk Uzhhorodskoho natsionalnoi universytetu. Seria "Pravo"*, (27), 40–44. <https://dspace.uzhnu.edu.ua/items/b80dc6f3-15d6-420b-b4b0-2557c9232fec> [in Ukrainian]
5. Lemak, O.V. (2015). Rol Konstytutsii derzhavy v usunenni vyklykiv ta zahroz, yaki ye naslidkamy protsesu hlobalizatsii [The role of the state Constitution in eliminating challenges and threats resulting from the globalization process]. *Prykarpatskyi yurydychnyi visnyk*, (3), Vol. 2, 89–94. <http://pjv.nuoua.od.ua/prikarpatskij-yuridichnij-visnik-3-2-2015> [in Ukrainian]
6. Kazakova, L.O. (2021). Natsionalna bezpeka derzhavy: poniatyino-katehoriiniy aparat [National security of the state: conceptual and categorical apparatus]. *Rehionalni studii*, (24), 128–132. <https://doi.org/10.32782/2663-6170/2021.24.18> [in Ukrainian]
7. Shved, I.I. (2018). *Mistse orhaniv prokuratury v mekhanizmi zabezpechennia konstytutsiinoi bezpeky derzhavy* [The place of prosecution bodies in the mechanism of ensuring constitutional security of the state] (Candidate's thesis). Uzhhorod. [in Ukrainian]
8. Shakhov, V., & Madisson, V. (2013). Natsionalnyi interes i natsionalna bezpeka v heostratehii Ukrayny [National interest and national security in Ukraine's geostrategy]. *Visnyk Natsionalnoi akademii derzhavnoho upravlinnia*, (11), 44–56. http://nbuv.gov.ua/UJRN/Vnadu_2013_2_8 [in Ukrainian]
9. Dubyna, M.V. (2013). Sutnist transkordonnoi bezpeky ta yii vydy [The essence of cross-border security and its types]. *Visnyk Chernihivskoho derzhavnoho tekhnolohichnogo universytetu. Seria: Ekonomichni nauky*, (4), 238–244. http://nbuv.gov.ua/UJRN/Vcndtue_2013_4_34 [in Ukrainian]
10. Bielov, D.M., Hromovchuk, M.V., & Bilak, O.P. (2022). Mizhmunitsypalne spivrobitnytstvo v strukturni transkordonnoho spivrobitnytstva [Intermunicipal cooperation in the structure of cross-border

cooperation]. *Naukovyi visnyk UzhNU. Seriia "Pravo"*, 72(4), 226–231. <https://visnyk-juris-uzhnu.com/wp-content/uploads/2022/10/38.pdf> [in Ukrainian]

11. Mikula, N. (2004). *Mizhterritorialne ta transkordonne spivrobitnytstvo* [Interterritorial and cross-border cooperation]. IRD NAN Ukrayny. [in Ukrainian]

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