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**OBJECTIVES AND FUNCTIONS OF THE NATIONAL GUARD OF UKRAINE
AS A SUBJECT OF ENSURING STATE SECURITY UNDER MARTIAL LAW**

In the provisions of the scientific article, the authors study the provision of state security under martial law through the prism of the objectives and functions of the National Guard of Ukraine as a military formation with law enforcement functions, which is part of the system of the Ministry of Internal Affairs of Ukraine and has the objectives of protecting and safeguarding the life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other unlawful encroachments, protecting public safety and order, ensuring public security, as well as in interaction with the state authorities to ensure state security.. The authors determine that the specificity of the National Guard's activity lies in its organisational and legal nature, since it is a military formation with law enforcement functions, which accordingly affects its immediate objectives and functions. Since the National Guard belongs to law enforcement agencies, its objectives coincide with law enforcement objectives. Therefore, the study of the latter is of great theoretical and practical importance for assessing the essence and content of the National Guard of Ukraine as a subject of ensuring state security under martial law.

The authors determine that it is advisable to amend the current legislation of Ukraine in terms of supplementing Article 2 of the Law of Ukraine 'On the National Guard of Ukraine' with the following provision: participation in ensuring the State security of Ukraine in cooperation with law enforcement agencies, the Security Service of Ukraine, the Armed Forces of Ukraine and other military formations under martial law.

Key words: *state, security, law, objective, guard, nation, subjects, functions.*

Батюк О. В., Пузанов А. Г. Завдання та функції Національної гвардії України як суб'єкта забезпечення державної безпеки в умовах воєнного стану

У положеннях наукової статті, автори досліджують забезпечення державної безпеки в умовах воєнного стану через призму завдань та функцій Національної



гвардії України, як суб'єкта військового формування з правоохоронними функціями, що входить до системи Міністерства внутрішніх справ України та має завдання із захисту та охорони життя, прав, свобод і законних інтересів громадян, суспільства і держави від кримінальних та інших протиправних посягань, охорони громадської безпеки і порядку та забезпечення громадської безпеки, а також у взаємодії з правоохоронними органами - із забезпечення державної безпеки. Автори визначають, що специфіка діяльності Національної гвардії полягає в її організаційно-правовій природі, адже вона є військовим формуванням з правоохоронними функціями, що відповідно позначається на її безпосередніх завданнях та функціях. Оскільки належність Національної гвардії до правоохоронних органів зумовлює те, що її завдання збігаються із завданнями правоохоронного характеру. Тобто вивчення останніх має важливе теоретичне та практичне значення для оцінки сутності та змісту діяльності Національної гвардії України як суб'єкта забезпечення державної безпеки в умовах воєнного стану.

Авторами визначено, що доцільно внести зміни у чинне законодавство України в частині доповнення статті 2 Закону України «Про Національну гвардію України» положенням наступного змісту: участь у забезпеченні державної безпеки України у взаємодії з правоохоронними органами, Службою безпеки України, Збройними Силами України та іншими військовими формуваннями в умовах дії воєнного стану.

Ключові слова: держава, безпека, закон, завдання, гвардія, нація, суб'єкти, функції.

The relevance of the topic is due to the fact that in 2014, the issue of protecting Ukraine's sovereignty and territorial integrity became quite acute, but the components of the security and defence sector of Ukraine were unable to respond effectively to the challenges of the time. The defence providers did not fully demonstrate the ability to act proactively and counter modern methods of hybrid warfare. It was the Decree of the President of Ukraine No. 56/2022 of 16 February 2022 that approved the decision of the National Security and Defence Council of Ukraine of 30 December 2021 'On the Strategy for Ensuring State Security', which identifies real and potential threats to the state security of Ukraine, directions and objectives of state policy in the field of state security, is the basis for planning and implementing state security policy [1]. It is reasonable to agree with scholars who note that the ability of the National Guard of Ukraine, hereinafter referred to as the NGU, to effectively use its potential to counter both military threats and threats to public security and order in the context of the Russian Federation's hybrid war against Ukraine is of particular importance. The peculiarity of this war is that the aggressor uses a range of different methods of influence on Ukraine, where military means are not dominant, their use is concealed and officially denied. At the same time, the emphasis of the methods of confrontation is often shifted towards the widespread use of political, economic, informational, humanitarian and other non-military measures, including massive cyberattacks on control centres and energy infrastructure, as well as energy isolation, and restrictions on the supply of oil products [7].

Analysis of recent research and publications. The theoretical basis for studying the issues of general principles of ensuring the state security and its individual components was made by: O. Vovk [13], S. Gordienko [6], V. Zelenetskyi [18], S. Kuznichenko [19], I. Koziakov [12], A. V. Kumeiko [17], V. Lipkan [20], V. Nastiuk [14], M. Panov [21], V. Pylypchuk [16], V. Tikhyi [21], A. Yanchuk [15], and others. It is worth noting that the tasks and functions of the National Guard of Ukraine have been studied in certain aspects by such scholars as: Allerov Y. V. [7], Gokh I. M. [8], Kryvenko O. V. [7], Kuts H. M. [10], Lavnichenko O. V. [9], Morkvin D. A. [8], Chuvakov O. A. [11], Chukhlaty A. V. [9], however, there were no studies on the disclosure of objectives and functions of the National Guard of Ukraine as a subject of ensuring state security under martial law, which determined the need and relevance of this scientific article.



The aim of the article is to study the regulatory legal acts and scientific works which define the objectives and functions of the National Guard of Ukraine as a subject of ensuring state security under martial law, and on this basis to propose to improve the provisions of current Ukrainian legislation in terms of defining the function of the National Guard of Ukraine to ensure state security under martial law.

Presentation of the research material and its main results. When considering the problems of the objectives and functions of the National Guard of Ukraine as a subject of ensuring state security under martial law, it is advisable to first of all refer to the etymological definition of state security.

Thus, a large explanatory dictionary of the modern Ukrainian language defines the concept of security as a condition when nothing threatens someone or something[3].

In our opinion, security as a concept is used to describe a wide range of phenomena related to social, environmental, technological, economic, organisational factors and is one of the basic human needs.

It is important to note that the current legislation in the Law of Ukraine 'On National Security of Ukraine' provides the following definition of the term: 'state security is the protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from real and potential non-military threats'[4]. An almost identical definition is given to the term 'national security of Ukraine - protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats' [4].

As Professor S. Gordienko notes, it is clear that the concept of 'state security' is quite complex, multidimensional, integrated from many concepts and, therefore, covers the security of not only the state, but also of an individual and society as a whole [6].

We believe that the definition of 'state security' has many common conceptual features with the concept of national security. However, there are important nuances that point to the difference in the specific features of these concepts.

In order to crystallise the understanding of the conceptual features of these definitions, it is also worth mentioning the definition of 'military security' (Article 1, paragraph 2), which means 'the protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from military threats' [4].

In our opinion, it is reasonable to agree with scholars who believe that, given the above definitions, the category of 'military security' can be considered a parity confrontation for the concept of 'state security'. These ideologemes are mutually exclusive and are used in different conditions of socio-political existence. In the case of state security, the focus is on protection 'from real and potential non-military threats', while in the case of military security, the focus is on protection 'from military threats' [10].

Scholars also point to the subordination of the concept of state security to the definition of national security, namely: 'in response to the emergence of the concept of "national security", the term "state security" has acquired a narrower meaning and means the creation of conditions that would ensure the inviolability of the existing constitutional order, sovereignty and territorial integrity of the state' [11].

We believe it is worth agreeing with scholars who note that the common thing for the doctrinal definition of 'state security' is that it is a component (type) of the category 'national security' and correlates with it as a separate and general thing [12]. For example, O. Vovk writes that state security is an integral part of national security, a condition of protection of state power, sovereignty, territorial integrity, public harmony, which is ensured by the activities of state bodies both in law and in reality [13, p. 47].

V. Nastiuk considers state security to be a system of general and special measures that ensure the reliable and stable existence of the state as a political organisation of the whole society, as well as its protection from real and potential threats (risks) of external and internal nature that may harm its normal functioning [14, p. 56]. According to A. Yanchuk, state security is a form



(type) of ensuring national security, which is implemented by state institutions using intelligence, counterintelligence, operational and investigative activities in order to protect and defend state sovereignty, independence, constitutional order, territorial integrity, economic, scientific, technical and defence potential of Ukraine, its public administration and national interests from external and internal threats from special services of foreign states, organised crime, individuals and counteracting the commission of criminal corruption offences that pose a threat to the national security of Ukraine [15, p. 351].

V. Pylypchuk substantiates that state security is the protection of state sovereignty, constitutional order, territorial integrity, economic, scientific, technical and defence potential of Ukraine from external and internal threats, intelligence, terrorist and other illegal encroachments of special services of foreign states, as well as organised criminal organisations, individual groups and individuals on the vital interests of Ukraine [16].

In our opinion, it is advisable to analyse the provisions of the current legislation of Ukraine regulating the National Guard of Ukraine as a subject of ensuring state security under martial law.

It is important to note that clause 3 of the 'Strategy for Ensuring State Security' defines the subjects of ensuring state security as a special purpose state body with law enforcement functions, law enforcement and intelligence agencies and other state bodies and persons involved in ensuring state security in accordance with the legislation of Ukraine [1];

It is the provisions of Article 1 of the Law of Ukraine 'On the National Guard of Ukraine' that clearly regulate that the National Guard of Ukraine is a military formation with law enforcement functions, which is part of the system of the Ministry of Internal Affairs of Ukraine and is intended to perform tasks of protection and defence of life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other unlawful encroachments, protection of public safety and order, ensuring public security, as well as in cooperation with law enforcement agencies - to ensure state security and protection of the state border, suppression of terrorist activities, activities of illegal paramilitary or armed formations (groups), terrorist organisations, organised groups and criminal organisations [2].

It should be noted that according to Article 12(2) 'Composition of the Security and Defence Sector' of the Law of Ukraine 'On National Security of Ukraine', the security and defence sector includes: The Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Special Transport Service, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Anti-Terrorist Centre at the Security Service of Ukraine, the Court Security Service, the State Protection Service of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, The National Security and Defence Council of Ukraine, the intelligence agencies of Ukraine, and the central executive body that ensures the formation and implementation of the state military-industrial policy [4].

It should also be noted that part 5 of Article 18. 'Ministry of Internal Affairs of Ukraine' of the Law of Ukraine 'On National Security of Ukraine' defines the National Guard of Ukraine as a military formation with law enforcement functions designed to perform tasks of protection and defence of life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other unlawful encroachments, protection of public order and public security, as well as in cooperation with other bodies - to ensure state security and protection of the state border of Ukraine, suppression of terrorist activities, activities of illegal paramilitary or armed groups, organised criminal groups and organisations.

In peacetime, the National Guard of Ukraine is part of the security forces and performs law enforcement functions, as well as develops the capabilities necessary to perform tasks as part of the defence forces.

With the introduction of martial law, the National Guard of Ukraine is brought to readiness to perform assigned tasks under the legal regime of martial law, is part of the defence forces, performs tasks and is subordinated in accordance with the provisions of the Law of



Ukraine 'On the Legal Regime of Martial Law' and the Law of Ukraine 'On the National Guard of Ukraine' [2, 4, 5].

We believe that the specificity of the National Guard's activity lies in its organisational and legal nature, since it is a military formation with law enforcement functions, which accordingly affects its direct objectives and functions. Since the National Guard belongs to law enforcement agencies, its objectives coincide with law enforcement objectives. Therefore, the study of the latter is of great theoretical and practical importance for assessing the essence and content of the National Guard of Ukraine as a subject of ensuring state security under martial law.

It should be noted that the National Guard's affiliation with law enforcement agencies means that its objectives coincide with those of law enforcement. As clearly regulated by the current legislation of Ukraine, the objective of the National Guard of Ukraine is to protect and defend life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other unlawful encroachments, to protect public safety and order, to ensure public security, as well as in cooperation with law enforcement agencies to ensure state security and protection of the state border, to stop terrorist activities, activities of illegal paramilitary or armed groups, terrorist organisations, organised groups and criminal organisations [2].

It should be noted that the main functions of the National Guard of Ukraine, as defined by the Law of Ukraine 'On the National Guard of Ukraine', are:

- 1) protection of the constitutional order of Ukraine and the integrity of its territory from attempts to change them by force;
- 2) protection of public safety and order, protection and defence of life, health, rights, freedoms and legitimate interests of citizens
- 3) participation in ensuring public safety and protection of public safety and order during meetings, rallies, marches, demonstrations and other mass events that pose a threat to the life and health of citizens;
- 4) providing protection of state authorities, the list of which is determined by the Cabinet of Ministers of Ukraine, participation in the implementation of state protection measures for state authorities and officials;
- 5) protection of nuclear installations, nuclear materials, radioactive waste, other sources of ionising radiation of state ownership, important state facilities, the list of which is determined by the Cabinet of Ministers of Ukraine;
- 5-1) protection of critical infrastructure facilities, the list of which is determined by the Cabinet of Ministers of Ukraine; participation in the elimination of the consequences of crisis situations at the critical infrastructure facilities protected by it;
- 6) protection of special cargoes, the list of which is determined by the Cabinet of Ministers of Ukraine;
- 7) protection of diplomatic missions, consular offices of foreign states, representative offices of international organisations in Ukraine;
- 8) protection of central logistical support bases of the Ministry of Internal Affairs of Ukraine, protection and defence of military facilities, bases (institutions, establishments) of the National Guard of Ukraine;
- 8-1) protection of enterprises, institutions and organisations belonging to the sphere of management of the central executive body implementing the state policy in the field of state reserves, the list of which is determined by the Cabinet of Ministers of Ukraine;
- 9) participation in the implementation of measures related to the termination of armed conflicts and other provocations at the state border, as well as measures to prevent mass crossing of the state border from the territory of neighbouring states;
- 10) participation in special operations to neutralise armed criminals, combat sabotage and reconnaissance forces of the aggressor (enemy), stop the activities of paramilitary or armed groups (formations) not provided by law, organised groups and criminal organisations on the territory of Ukraine, as well as in measures related to the suppression of terrorist activities;
- 11) participation in the suppression of mass riots;



12) participation in the restoration of law and order in case of interethnic and interfaith conflicts, unblocking or stopping unlawful actions in case of seizure of important state facilities or areas that threaten the safety of citizens and disrupt the normal operation of state authorities and local self-government bodies;

13) participation in the maintenance or restoration of law and order in areas of particularly severe man-made or natural emergencies (natural disasters, catastrophes, especially large fires, use of weapons of destruction, pandemics, panzootics, etc.) that pose a threat to the life and health of the population;

14) participation in the restoration of the constitutional order in case of attempts to seize state power or change the constitutional order by means of violence, in the restoration of the activities of state authorities and local self-government bodies;

15) participation in the liquidation of the consequences of emergency or crisis situations at the facilities under its protection;

16) participation in the implementation of measures of the legal regime of martial law;

17) participation in the performance of territorial defence tasks;

18) defence of important state objects, special cargoes, the lists of which are determined by the President of Ukraine, the Cabinet of Ministers of Ukraine, central logistics bases of the Ministry of Internal Affairs of Ukraine;

19) participation in the suppression of group unlawful actions of persons taken into custody or convicted, as well as elimination of the consequences of such actions in pre-trial detention and penitentiary institutions;

20) ensuring the entry of information into the Unified Register of Persons Missing in Special Circumstances and keeping such information up-to-date within the limits established by law [2].

In conclusion, it should be noted that after studying the tasks and functions of the National Guard of Ukraine as a subject of ensuring state security under martial law, we believe that it is advisable to supplement Article 2 of the Law of Ukraine ‘On the National Guard of Ukraine’ with the following provision: participation in ensuring state security of Ukraine in cooperation with law enforcement agencies, the Security Service of Ukraine, the Armed Forces of Ukraine and other military formations under martial law.

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